

HOUSE BILL NO. 37
INTRODUCED BY M. CAMPBELL
BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT GENDER NEUTRALIZING AND CONFORMING TITLES 10 THROUGH 90 OF THE MONTANA CODE ANNOTATED TO CURRENT BILL DRAFTING STANDARDS; AND AMENDING SECTIONS 10-1-201, 10-1-202, 10-1-206, 10-1-302, 10-1-405, 10-1-503, 10-1-601, 10-1-611, 10-1-804, 10-1-805, 10-1-806, 10-2-103, 10-2-105, 10-2-107, 10-3-101, 10-3-102, 10-3-112, 10-3-204, 10-3-302, 10-3-303, 10-3-313, 10-3-314, 10-3-501, 10-3-503, 10-3-505, 10-3-605, 10-3-607, 10-3-702, 10-3-1106, 13-1-114, 13-1-201, 13-2-112, 13-2-206, 13-2-221, 13-3-102, 13-3-103, 13-3-201, 13-3-211, 13-10-203, 13-10-305, 13-10-325, 13-10-501, 13-10-507, 13-10-602, 13-12-210, 13-13-118, 13-13-120, 13-13-225, 13-13-227, 13-13-602, 13-14-111, 13-14-211, 13-14-212, 13-15-201, 13-15-204, 13-15-205, 13-15-403, 13-15-404, 13-15-502, 13-15-504, 13-15-505, 13-15-506, 13-16-101, 13-16-201, 13-16-203, 13-16-204, 13-16-211, 13-16-301, 13-16-302, 13-16-307, 13-16-415, 13-16-416, 13-16-417, 13-16-418, 13-16-419, 13-19-101, 13-19-203, 13-19-301, 13-19-302, 13-19-304, 13-19-305, 13-19-306, 13-19-307, 13-19-308, 13-19-310, 13-27-305, 13-27-306, 13-27-308, 13-27-404, 13-27-405, 13-27-503, 13-35-106, 13-35-201, 13-35-204, 13-35-209, 13-35-214, 13-35-215, 13-35-217, 13-35-218, 13-35-221, 13-35-301, 13-36-101, 13-36-102, 13-36-103, 13-36-104, 13-36-201, 13-36-202, 13-36-204, 13-36-205, 13-36-206, 13-36-207, 13-36-208, 13-36-209, 13-36-210, 13-36-211, 13-37-104, 13-37-105, 13-37-116, 13-37-119, 13-37-122, 13-37-125, 13-37-201, 13-37-202, 13-37-203, 13-37-204, 13-37-205, 13-37-206, 13-37-207, 13-37-208, 13-37-215, 13-37-217, 13-37-225, 13-37-228, 13-37-231, 13-38-101, 13-38-201, 13-38-202, 13-38-203, 13-38-205, 15-1-104, 15-1-204, 15-1-601, 15-1-603, 15-1-702, 15-1-705, 15-1-707, 15-2-101, 15-2-103, 15-2-104, 15-2-304, 15-6-225, 15-8-501, 15-8-502, 15-16-503, 15-17-318, 15-24-1101, 15-24-1201, 15-24-1206, 15-24-2403, 15-30-113, 15-30-129, 15-30-132, 15-30-134, 15-30-135, 15-30-143, 15-30-156, 15-30-173, 15-30-205, 15-30-206, 15-30-302, 15-30-307, 15-30-314, 15-30-331, 15-31-521, 15-31-523, 15-31-524, 15-31-551, 15-32-101, 15-32-103, 15-33-104, 15-35-104, 15-44-102, 15-59-105, 15-60-207, 15-70-232, 16-1-203, 16-1-204, 16-3-105, 16-3-212, 16-3-223, 16-3-231, 16-3-232, 16-3-233, 16-3-242, 16-3-302, 16-3-306, 16-3-406, 16-4-104, 16-4-108, 16-4-110, 16-4-201, 16-4-209, 16-6-105, 16-6-205, 16-6-207, 16-6-209, 16-6-309, 16-6-313, 16-10-203, 16-11-134, 17-1-103, 17-1-112, 17-1-131, 17-5-715, 17-5-927, 17-5-1516, 17-6-204, 17-6-213, 17-7-113, 17-8-104, 17-8-308, 18-1-402, 18-1-403, 18-2-204, 18-2-424, 18-5-204, 18-5-411, 18-11-105, 19-1-301, 19-1-702, 19-1-705, 19-2-904, 19-3-202, 19-9-302, 19-17-406, 19-18-106, 19-18-202, 19-18-502,

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81-9-218, 81-9-220, 81-9-230, 81-9-235, 81-9-313, 81-9-314, 81-9-315, 81-9-316, 81-9-402, 81-9-403, 81-20-204, 81-20-209, 81-21-102, 81-22-203, 81-22-205, 81-22-207, 81-22-402, 81-22-415, 81-23-201, 81-23-305, 81-23-403, 82-1-105, 82-1-108, 82-1-202, 82-1-203, 82-2-101, 82-2-102, 82-2-103, 82-2-105, 82-2-106, 82-2-107, 82-2-108, 82-2-109, 82-2-112, 82-2-114, 82-2-115, 82-2-203, 82-2-205, 82-2-401, 82-2-402, 82-2-405, 82-2-421, 82-4-142, 82-4-238, 82-4-355, 82-10-103, 82-10-401, 82-10-402, 82-10-506, 82-10-507, 82-11-103, 82-11-117, 82-11-141, 82-11-142, 82-11-151, 82-11-206, 82-11-209, 82-11-212, 82-11-303, 82-11-304, 82-11-305, 82-11-306, 82-15-204, 82-15-205, 85-1-622, 85-2-132, 85-2-134, 85-2-214, 85-2-218, 85-2-224, 85-2-234, 85-2-405, 85-2-412, 85-2-413, 85-2-416, 85-2-418, 85-2-804, 85-3-301, 85-3-411, 85-3-421, 85-5-102, 85-5-103, 85-5-104, 85-5-105, 85-5-108, 85-5-109, 85-5-110, 85-5-202, 85-5-302, 85-5-401, 85-5-402, 85-5-405, 85-5-406, 85-7-1504, 85-7-1506, 85-7-1507, 85-7-1508, 85-7-1615, 85-7-1618, 85-7-1703, 85-7-1811, 85-7-1901, 85-7-1912, 85-7-1924, 85-7-2017, 85-7-2027, 85-7-2114, 85-7-2115, 85-7-2116, 85-7-2133, 85-7-2153, 85-7-2166, 85-8-111, 85-8-115, 85-8-119, 85-8-121, 85-8-307, 85-8-308, 85-8-312, 85-8-314, 85-8-321, 85-8-345, 85-8-362, 85-8-364, 85-8-402, 85-8-403, 85-8-404, 85-8-612, 85-9-103, 85-9-304, 85-9-401, 85-9-402, 85-9-421, 85-9-502, 85-9-504, 85-9-628, 85-20-104, 85-20-105, 85-20-106, 87-1-204, 87-1-205, 87-1-206, 87-1-207, 87-1-208, 87-1-210, 87-1-225, 87-1-302, 87-1-402, 87-1-501, 87-1-511, 87-1-701, 87-1-704, 87-2-112, 87-2-203, 87-2-204, 87-2-602, 87-2-604, 87-2-1002, 87-3-123, 87-3-206, 87-3-221, 87-3-405, 87-3-506, 87-3-507, 87-4-301, 87-4-303, 87-4-602, 87-4-702, 87-4-703, 87-4-704, 87-4-705, 87-4-903, 87-4-904, 87-4-915, 87-4-1002, 87-4-1003, 87-5-108, 90-2-1111, 90-4-305, 90-4-309, 90-4-314, 90-4-317, 90-5-202, 90-6-120, 90-6-204, 90-6-303, AND 90-7-319, MCA."

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

Section 1. Section 10-1-201, MCA, is amended to read:

"10-1-201. Officers. (1) The governor shall appoint all officers of the militia.

(2) Officers must be citizens of the United States.

(3) Before a person can be appointed an officer by the governor, ~~he shall~~ the person must be examined and adjudged qualified to be an officer by an examining board. The composition, appointment, and examination procedure of the board and the nature and scope of examinations ~~shall~~ must be prescribed by federal law or regulation or state regulations.

(4) Each officer shall hold office under ~~his~~ the appointment until ~~he~~ the officer is regularly appointed to another grade or office or until ~~he~~ the officer is regularly retired, discharged, dismissed, or placed in the reserve."

Section 2. Section 10-1-202, MCA, is amended to read:

"10-1-202. Oath of office. (1) Except when a comparable oath is subscribed to under federal law or regulation, every officer shall take and subscribe to the following oath of office:

"I,, do solemnly swear that I will support and defend the constitution of the United States and the constitution of the state of Montana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the president of the United States and the governor of the state of Montana; that I make this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office of in the upon which I am about to enter, so help me God."

(2) If an officer refuses or neglects to take the oath, ~~he shall be~~ the officer is considered to have resigned the office and a new appointment ~~shall~~ must be made."

Section 3. Section 10-1-206, MCA, is amended to read:

"10-1-206. Examination as to fitness -- board of examination. (1) The governor, when ~~he~~ the governor considers it necessary, may order an officer to appear before a board of examination. The board of examination ~~shall consist~~ consists of three officers, senior in rank to the officer whose fitness for service is under examination. The board may:

(a) inquire into the fitness for military service due to physical disability of an officer under 10-1-203(1)(b);
 (b) inquire into the moral character, capacity, and professional fitness of an officer in order to make a recommendation under 10-1-205(2)(e).

(2) The board, under 10-1-203(1)(b), may recommend the retention of the officer being examined or ~~his~~ recommend the officer's retirement because of a physical inability to perform active service.

(3) The board, under 10-1-205(2)(e), may recommend the discharge and the vacating of ~~his~~ the officer's commission or warrant.

(4) The findings of the board become effective only upon the approval of the governor."

Section 4. Section 10-1-302, MCA, is amended to read:

"10-1-302. Oath of enlistment. (1) Except when a comparable oath of enlistment is subscribed to under federal law or regulation, every person who enlists or reenlists shall take and subscribe to the following oath of enlistment:

"I hereby acknowledge to have voluntarily enlisted this day of in the of the United States and

the state of Montana for a period of years under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America and to the state of Montana, and that I will serve them honestly and faithfully against all their enemies, and that I will obey the orders of the president of the United States, the governor of the state of Montana, and the officers appointed over me."

(2) Any officer of the organized militia or any officer of the armed forces of the United States, detailed to duty with any component of the organized militia of this state, may administer the oath of enlistment to enlisted men personnel."

Section 5. Section 10-1-405, MCA, is amended to read:

"10-1-405. Confinement of persons committed by military court. The keepers of a municipal or county jail shall receive a person committed to them by a military court and shall confine ~~him~~ the person in accordance with the direction of the court."

Section 6. Section 10-1-503, MCA, is amended to read:

"10-1-503. Allowances for incidental expenses. Each commanding officer may receive an allowance for the incidental expenses of ~~his~~ the command."

Section 7. Section 10-1-601, MCA, is amended to read:

"10-1-601. Actions against militia members -- ~~attorney's~~ attorney fees. When an action is commenced in a court against a member of the organized militia for an act done in ~~his~~ an official capacity in the discharge of ~~his~~ the member's duty or for an alleged omission to do an act ~~which~~ that it was ~~his~~ the member's duty to perform, the defendant ~~shall~~ must be defended by the attorney general at the expense of this state, but private counsel may be employed by the defendant."

Section 8. Section 10-1-611, MCA, is amended to read:

"10-1-611. Authority of commanding officer to arrest. The commanding officer at any drill, parade, encampment, or other duty may order those under ~~his~~ the commanding officer's command to perform any military duty ~~he~~ the commanding officer requires. The commanding officer may arrest, for the time of the drill, parade, encampment, or other duty, an officer or enlisted ~~man~~ person who disobeys the orders of ~~his~~ a superior officer."

Section 9. Section 10-1-804, MCA, is amended to read:

"10-1-804. Bonus. A member is entitled to receive a bonus payment for each year of service for which ~~he~~ the member extends or reenlists. The bonus ~~shall~~ must be paid to each eligible member within 60 days following the successful completion of a year of service for which ~~he~~ the member extended or reenlisted. The secretary shall set the amount of the bonus based on the appropriation for that purpose."

Section 10. Section 10-1-805, MCA, is amended to read:

"10-1-805. Eligibility. The bonus must be granted to a person who:

- (1) extends ~~his~~ the person's original enlistment or reenlists in the Montana national guard;
- (2) holds a rank commensurate with a unit vacancy in accordance with the national guard bureau's policy;
- (3) does not have 20 years of total service;
- (4) is not a civil service employee in a full-time capacity with the national guard, including but not limited to active duty for training or full-time training duty;
- (5) is not eligible for any federally funded national guard bonus for the reenlistment or extension covered by this part; and
- (6) attends 90% of the scheduled drills and annual training in the year for which the benefit is to be paid."

Section 11. Section 10-1-806, MCA, is amended to read:

"10-1-806. Administration. (1) The secretary shall administer this part. ~~He~~ The secretary shall maintain records and make rules necessary for its administration.

(2) ~~He~~ The secretary shall determine the eligibility of members to receive the bonus and disburse a bonus payment upon a determination of eligibility."

Section 12. Section 10-2-103, MCA, is amended to read:

"10-2-103. Seal -- acknowledgments -- officers. (1) The board may provide for a seal.

(2) The members and employees of the board may take acknowledgments, depositions, and administer oaths and affirmations in any matters connected with the affairs of the board or with the official duties of the members or employees of the board.

(3) The board shall select from its membership a ~~chairman~~ presiding officer, a ~~vice-chairman~~ vice presiding officer, and a secretary."

Section 13. Section 10-2-105, MCA, is amended to read:

"10-2-105. Extra compensation for service forbidden. A member or employee of the board may not accept, receive, or charge any money or thing of value for the performance of any service rendered to any veteran or ~~his or her~~ the veteran's dependents, at any time or in any manner, other than the compensation allowed by law. A person who violates this section is guilty of a misdemeanor."

Section 14. Section 10-2-107, MCA, is amended to read:

"10-2-107. Contracts for federal reimbursement funds. The governor of this state and the ~~chairman~~ presiding officer and secretary of the board may sign contracts with the federal government or any agency ~~thereof~~ of the federal government for the reimbursement of the board for any work ~~which that~~ the board may do for which any federal statute provides reimbursement to the states."

Section 15. Section 10-3-101, MCA, is amended to read:

"10-3-101. Declaration of policy. Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action and natural disasters and in order to provide for prompt and timely reaction to an emergency or disaster, to ~~insure~~ ensure that preparation of this state will be adequate to deal with disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state, it is declared to be necessary to:

- (1) authorize the creation of local or interjurisdictional organizations for disaster and emergency services in the political subdivisions of this state;
- (2) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or ~~man-made~~ human-caused disasters;
- (3) provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;
- (4) clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from emergencies and disasters;
- (5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;
- (6) authorize and provide for coordination of activities relating to disaster prevention, preparedness, response, and recovery by agencies and officers of this state and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;

(7) provide an emergency and disaster management system embodying all aspects of emergency or disaster prevention, preparedness, response, and recovery;

(8) assist in prevention of disasters caused or aggravated by inadequate planning for public and private facilities and land use;

(9) supplement, without in any way limiting, authority conferred by previous statutes of this state and increase the capability of the state, local, and interjurisdictional disaster and emergency services agencies to perform disaster and emergency services; and

(10) authorize the payment of extraordinary costs and the temporary hiring, with statutorily appropriated funds under 10-3-312, of professional and technical personnel to meet the state's responsibilities in providing assistance in the response to, recovery from, and mitigation of disasters in either state or federal emergency or disaster declarations."

Section 16. Section 10-3-102, MCA, is amended to read:

"10-3-102. Limitations. ~~Nothing in parts~~ Parts 1 through 4 of this chapter may not be construed to give any state, local, or interjurisdictional agency or public official authority to:

(1) interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by parts 1 through 4 of this chapter or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(2) interfere with dissemination of news or comment on public affairs; ~~but~~ However, any communications facility or organization, ~~(including but not limited to radio and television stations, wire services, and newspapers),~~ may be required to transmit or print public service messages furnishing information or instructions in connection with an emergency or disaster; ~~;~~

(3) affect the jurisdiction or responsibilities of police forces, firefighting forces, units of the armed forces of the United States, or ~~of any personnel thereof,~~ of those entities when on active duty; ~~;~~ but state, local, and interjurisdictional disaster and emergency plans ~~shall~~ must place reliance upon the forces available for performance of functions related to emergencies and disasters; or

(4) limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other powers vested in ~~him~~ the governor under the constitution, statutes, or common law of this state independent of or in conjunction with any provisions of parts 1 through 4 of this chapter."

Section 17. Section 10-3-112, MCA, is amended to read:

"10-3-112. Employment requirements for personnel -- political involvement of organizations prohibited. (1) A person may not be employed in any disaster and emergency services organization established under parts 1 through 4 of this chapter who advocates a change by force or violence in the constitutional form of the government of the United States or in this state or the overthrow of any government in the United States by force or violence or who has been convicted of or is under indictment or information charging any subversive act against the United States. Each person who is appointed to serve in an organization for disaster and emergency services shall, before entering upon ~~his~~ the person's duties, take an oath, in writing, before a person authorized to administer oaths in this state, ~~which oath shall be~~ that is substantially as follows:

"I ..., swear (or affirm) that I will support and defend The Constitution of the United States and The Constitution of the State of Montana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me, God."

(2) An organization for disaster and emergency services established under this chapter may not participate in any form of political activity, nor may it be employed directly or indirectly for political purposes."

Section 18. Section 10-3-204, MCA, is amended to read:

"10-3-204. Intergovernmental arrangements. (1) This state enacts into law and enters into the interstate mutual aid compact with all states, as defined ~~therein~~ in the compact, ~~which states that~~ have enacted or ~~shall hereafter~~ enact the compact in the form substantially contained in 10-3-207.

(2) The governor may enter into the compact with any state if ~~he~~ the governor finds that joint action with the state is desirable in meeting common intergovernmental problems of emergency and disaster planning, prevention, response, and recovery.

(3) ~~Nothing in subsections~~ Subsections (1) and (2) may not be construed to limit previous or future entry of this state into the interstate mutual aid compact.

(4) All interstate mutual aid compacts and other interstate agreements dealing with disaster and emergency services ~~shall~~ must be reviewed and made current at intervals not to exceed 4 years.

(5) If a person holds a license, certificate, or other permit issued by any state or political subdivision ~~thereof~~ of a state evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving that skill in this state to meet an emergency or disaster and this state shall give due recognition to the license, certificate, or other permit.

(6) When considered of mutual benefit, the governor may, subject to limitations of law, enter into

intergovernmental arrangements with neighboring provinces of Canada for the purpose of exchanging disaster and emergency services."

Section 19. Section 10-3-302, MCA, is amended to read:

"10-3-302. Declaration of emergency -- effect and termination. (1) A state of emergency may be declared by the governor when ~~he~~ the governor determines that an emergency as defined in 10-3-103 exists.

(2) An executive order or proclamation of a state of emergency ~~shall activate~~ activates the emergency response and disaster preparation aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and ~~be~~ is authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disasters and disaster-related emergencies.

(3) A state of emergency may not continue for longer than 20 days unless continuing conditions of the state of emergency exist, which ~~shall~~ must be determined by a declaration of an emergency by the president of the United States or by a declaration of the legislature by joint resolution of continuing conditions of the state of emergency."

Section 20. Section 10-3-303, MCA, is amended to read:

"10-3-303. Declaration of disaster -- effect and termination. (1) A state of disaster may be declared by the governor when ~~he~~ the governor determines that a disaster has occurred.

(2) An executive order or proclamation of a state of disaster ~~shall activate~~ activates the disaster response and recovery aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and ~~be~~ is authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disaster and disaster-related emergencies.

(3) A state of disaster may not continue for longer than 30 days unless continuing conditions of the state of disaster exist, which ~~shall~~ must be determined by a declaration of a major disaster by the president of the United States or by the declaration of the legislature by joint resolution of continuing conditions of the state of disaster.

(4) The governor shall terminate a state of emergency or disaster when:

- (a) the emergency or disaster has passed;
- (b) the emergency or disaster has been dealt with to the extent that emergency or disaster conditions no longer exist; or
- (c) at any time the legislature terminates the state of emergency or disaster by joint resolution. However, after termination of the state of emergency or disaster, disaster and emergency services required as a result of the emergency or disaster may continue."

Section 21. Section 10-3-313, MCA, is amended to read:

"10-3-313. Temporary housing for disaster victims -- site acquisition and preparation. (1) Whenever the governor has declared a state of emergency or state of disaster or the president has declared an emergency or a major disaster to exist in this state, the governor is authorized:

(a) to enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to be occupied by emergency or disaster victims and to make ~~such~~ the units available to any political subdivision of the state;

(b) to assist any political subdivision of this state ~~which~~ that is the locus of temporary housing for emergency or disaster victims to acquire sites necessary for ~~such~~ temporary housing and to do all things required to prepare ~~such~~ the site to receive and utilize temporary housing units by:

(i) advancing or lending funds available to the governor from any appropriation made for those purposes by the legislature or from any other source;

(ii) "passing through" funds made available for those purposes by any agency, public or private; or

(iii) becoming a copartner with the political subdivision for the execution and performance of any temporary housing project for emergency or disaster victims;

(c) under ~~such~~ regulations ~~as he shall prescribe~~ that the governor prescribes, to temporarily suspend or modify for not to exceed 60 days any state laws or regulations relating to public health, safety, zoning, or transportation, ~~(within or across the state), laws or regulations within this state~~ when by proclamation ~~he~~ the governor declares ~~such~~ the suspension or modification essential to provide temporary housing for emergency or disaster victims.

(2) Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for emergency or disaster victims and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, ~~which~~ that are necessary to prepare or equip ~~such~~ the sites to utilize the

housing units.

(3) ~~Nothing contained in parts~~ Parts 1 through 4 of this chapter ~~shall~~ may not be construed to limit the governor's authority to apply for, administer, and expend any grants, gifts, or payments in aid of emergency or disaster prevention, preparedness, response, or recovery."

Section 22. Section 10-3-314, MCA, is amended to read:

"10-3-314. Community disaster loans. Whenever, at the request of the governor, the president has declared a major disaster to exist in this state, the governor is authorized:

(1) upon ~~his~~ the governor's determination that a political subdivision of the state will suffer a substantial loss of tax and other ~~revenues~~ revenue from an emergency or disaster and has demonstrated a need for financial assistance to perform its governmental functions, to apply to the federal government, on behalf of the political subdivision, for a loan. The proceeds are statutorily appropriated, as provided in 17-7-502, to the governor, who may receive and disburse the proceeds of any approved loan to any applicant political subdivision.

(2) to determine the amount needed by any applicant political subdivision to restore or resume its governmental functions and to certify the same to the federal government. However, ~~no~~ the application amount may not exceed 25% of the annual operating budget of the applicant for the fiscal year in which the emergency or disaster occurs.

(3) to recommend to the federal government, based upon ~~his~~ the governor's review, the cancellation of all or any part of repayment when, in the first 3 full fiscal years following the emergency or disaster, the ~~revenues~~ revenue of the political subdivision ~~are~~ is insufficient to meet its operating expenses, including additional ~~emergency-~~ emergency-related or disaster-related expenses of a the political subdivision ~~operation character."~~

Section 23. Section 10-3-501, MCA, is amended to read:

"10-3-501. Policy of state. (1) The legislature recognizes that an enemy attack upon the United States is a possibility; that such an attack might be of unprecedented size and destructiveness; that a considerable period of time may elapse after an enemy attack before federal operational control over the management of resources can be instituted; and that federal planning and activities with respect to postattack recovery and rehabilitation are predicated on the ability of the states and their political subdivisions to prepare for and respond promptly to the problems created by an enemy attack. Therefore, it is necessary to confer upon the governor and upon the executive heads of governing bodies of political subdivisions of this state the emergency powers provided for in this part.

(2) It is the purpose of this part and the policy of this state that all resource management functions of this state be coordinated to the maximum extent with the comparable functions of the federal government, of other states and localities, and of private agencies to the end that the most effective preparation and use may be made of available ~~manpower~~ personnel, resources, and facilities in an emergency."

Section 24. Section 10-3-503, MCA, is amended to read:

"10-3-503. Governor's powers and duties. (1) The governor has general direction and control of the emergency resources management within this state and all officers, boards, agencies, individuals, or groups established under the emergency resources management plan.

(2) In performing ~~his~~ duties under this part, the governor may cooperate with the federal government, with other states, and with private agencies in all matters pertaining to the emergency management of resources.

(3) In performing ~~his~~ duties under this part and to effect its policies and purpose, the governor may make, amend, and rescind the necessary orders and rules to carry out this part within the limits of authority conferred upon ~~him~~ the governor, with due consideration of the emergency resources management plans of the federal government."

Section 25. Section 10-3-505, MCA, is amended to read:

"10-3-505. Proclamation of emergency -- effect and termination. (1) Following an attack, ~~the governor, if he~~ the governor finds ~~such that~~ action ~~is~~ necessary to deal with the danger to the public safety caused ~~thereby by the attack~~ or to aid in the postattack recovery or rehabilitation of the United States or any part ~~thereof of the United States~~, the governor shall declare by proclamation the existence of a postattack recovery and rehabilitation emergency. ~~Any such A proclamation shall be~~ is ineffectual unless the legislature is then in session or the governor simultaneously issues an order convening the legislature in special session within 45 days.

(2) During the period when the proclamation issued under subsection (1) ~~of this section~~ is in force or during the continuance of any emergency declared by the president of the United States or the congress calling for postattack recovery and rehabilitation activities, subject to the limitations set forth in this part and in a manner consistent with any rules or orders and policy guidance issued by the federal government, the governor may issue, amend, and enforce rules and orders to:

(a) control, restrict, and regulate, by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation, or other means, the use, sale, or distribution of food, feed, fuel, clothing and other commodities, materials, goods, or services;

(b) prescribe and direct activities in connection with but not limited to use, conservation, salvage, and prevention of waste of materials, services, and facilities, including production, transportation, power, and communication facilities, training and supply of labor, utilization of industrial plants, health and medical care, nutrition, housing, including the use of existing and private facilities, rehabilitation, education, welfare, child care, recreation, consumer protection, and other essential civil needs; and

(c) take ~~such~~ other action ~~as~~ that may be necessary for the management of resources following an attack.

(3) All rules and orders issued under authority conferred by this part have the effect of law during the continuance of a proclamation or declaration of emergency as contemplated by this section when a copy of the rule or order is filed in the office of the secretary of state or, if issued by a local or area official, when filed in the office or offices of the county clerk and recorder. If, by reason of destruction or disruption attendant upon or resulting from attack, the filing requirements of this subsection cannot be met, public notice by ~~such~~ means ~~as~~ that may be available ~~shall~~ must be considered a complete and sufficient substitute. All existing laws, ordinances, rules, and orders inconsistent with the provisions of this part or any rule or order issued under the authority ~~thereof shall be~~ of this part is inoperative during the period of time and to the extent ~~such~~ that inconsistency exists.

(4) Any authority exercised under a proclamation of emergency contemplated by this section may be exercised with respect to the entire territory over which the governor or other official, as the case may be, has jurisdiction or to any specified part ~~thereof~~ of the territory.

(5) The governor's power and authority to issue a proclamation following an attack ~~shall~~ must be terminated by the passage of a joint resolution of the legislature or by declaration of the termination of the emergency by the president or by the congress; ~~however~~ However, the proclamation ~~shall~~ must terminate automatically 6 months after issuance and a similar proclamation may not be issued unless concurrence is given ~~thereto~~ by a joint resolution of the legislature."

Section 26. Section 10-3-605, MCA, is amended to read:

"10-3-605. Filling vacancy for city or town executive. ~~In the event that~~ If the executive head of any city or town is unavailable following an enemy attack to exercise the powers and discharge the duties of ~~his~~ office, then those members of the city or town council or commission available shall, by majority vote, choose a successor to act as the executive head of ~~such~~ the city or town."

Section 27. Section 10-3-607, MCA, is amended to read:

"10-3-607. Relocating seat of state government. If the seat of state government at Helena is rendered unsuitable for use in that capacity, the seat of state government may be moved to an alternate location within the boundaries of the state of Montana by proclamation of the governor. ~~He~~ The governor shall consider other Montana cities in order of their population in the last federal census, giving consideration to available communications, office space, and ~~such other factors as may seem to him~~ considered pertinent. ~~Such~~ The move of the seat of government ~~shall be~~ is effective until it is again moved by proclamation of the governor or action by the legislature."

Section 28. Section 10-3-702, MCA, is amended to read:

"10-3-702. Definitions. As used in this part, the following definitions apply:

(1) "Jurisdiction" means the jurisdiction of any law enforcement agency within Montana.

(2) "Tactical incident" means any situation in which it is reasonable to expect the possibility of the loss of life or the taking of a hostage unless extraordinary steps are taken. These situations may include but are not limited to:

- (a) a barricaded ~~gunman~~ person with a gun;
- (b) a person taken hostage;
- (c) arrests in extraordinary circumstances;
- (d) civil disorder;
- (e) terrorist activity;
- (f) protection of a dignitary; and
- (g) courtroom security in extraordinary circumstances.

(3) "Tactical team" means a small group of highly disciplined law enforcement officers trained to provide a quick and ready response to ~~high-risk~~ high-risk conditions and situations that go beyond the capabilities of normally trained and equipped officers. With specialized training, tactics, and equipment, this small group of officers provides a greater expectation of resolving incidents without loss of property, injury, or loss of life."

Section 29. Section 10-3-1106, MCA, is amended to read:

"10-3-1106. Submission of agreement to attorney general. (1) As a condition precedent to an agreement becoming effective under this part, the agreement must be submitted to and receive the approval of the state attorney general.

(2) The attorney general shall approve an agreement submitted ~~to him~~ under this part unless ~~he~~ the attorney general finds that it is not in proper form, does not meet the requirements set forth in this part, or otherwise does not conform to the laws of Montana. If ~~he disapproves~~ an agreement, ~~he is disapproved,~~ the attorney general shall provide a detailed, written statement to the appropriate governing bodies of the fire protection services, emergency medical care providers, and local government subdivisions.

(3) If the attorney general does not disapprove an agreement within 60 days after its submission ~~to him~~, it is considered approved."

Section 30. Section 13-1-114, MCA, is amended to read:

"13-1-114. Computation of elector's age and term of residence. An elector's age and the term of ~~his~~ an elector's residence must be computed by including the day of election."

Section 31. Section 13-1-201, MCA, is amended to read:

"13-1-201. Chief election officer. The secretary of state is the chief election officer of this state, and it is ~~his~~ the secretary of state's responsibility to obtain and maintain uniformity in the application, operation, and interpretation of the election laws other than those in Title 13, chapters 35, 36, or 37 ~~of this title.~~"

Section 32. Section 13-2-112, MCA, is amended to read:

"13-2-112. Register of electors to be kept. Each election administrator shall keep an official register of electors in the manner ~~he~~ that the administrator considers most efficient. The original signed registration form for each elector ~~shall~~ must be filed alphabetically in a separate file for each precinct. Additional files and records may be established for convenience. The information recorded in the official register of electors and the design of the registration forms ~~shall~~ must be prescribed by the secretary of state."

Section 33. Section 13-2-206, MCA, is amended to read:

"13-2-206. Citizenship requirements. A person ~~shall~~ may not be permitted to register until ~~he~~ the person attains United States citizenship."

Section 34. Section 13-2-221, MCA, is amended to read:

"13-2-221. Agency-based registration. (1) Qualified individuals must be given the opportunity to register to vote when applying for or receiving services or assistance:

- (a) at an agency that provides public assistance;
 - (b) at or through an agency that provides state-funded programs primarily engaged in providing services to persons with disabilities; or
 - (c) at another agency designated by the secretary of state with the consent of the agency.
- (2) Agency-based registration sites must:
- (a) distribute application for voter registration forms with each application for services or assistance; and
 - (b) assist an applicant in completing an application for voter registration form; unless the applicant refuses assistance.
- (3) The completed application for voter registration form must be transmitted by the agency to the election administrator of the county of the elector's residence within the time period specified by 42 U.S.C. 1973gg, et seq.

(4) As used in this section, ~~the following definitions apply:~~

~~— (a) "Agency" "agency" means a state agency as defined in 2-4-102(2)(a) or an office of a political subdivision.~~

~~— (b) "Political subdivision" means a city, county, consolidated city-county government, or town."~~

Section 35. Section 13-3-102, MCA, is amended to read:

"13-3-102. Change of precinct boundaries. (1) The county governing body may change the boundaries of precincts, but not within 100 days before any primary or between a general election and the primary for that election. When the changes are required to make precinct boundaries conform to legislative district boundaries following the adoption of a districting and apportionment plan under Article V, section 14, of the 1972 Montana constitution or other district boundaries changed by the districting and apportionment plan, the changing of precinct boundaries must be accomplished within 45 days of the filing of the final plan.

(2) All changes must be certified to the election administrator 3 days or less after the change is made.

(3) The officials responsible for preparing a districting and apportionment plan shall consider the problems of conforming present precinct boundaries to the new districts as well as existing boundaries of wards, school districts, and other districts. The election administrator of counties involved in the plan ~~shall~~ must be consulted before adoption of the final plan."

Section 36. Section 13-3-103, MCA, is amended to read:

"13-3-103. Certification of boundary changes. (1) Not more than 10 days after an order of the

governing body has established or changed the boundaries of an election precinct, the governing body shall ~~cause to be prepared and delivered to the election administrator~~ ensure that a written legal description and a map showing the borders of all precincts and districts in which elections are held within the county are prepared and delivered to the election administrator.

(2) Not more than 10 days after school district or other election district boundaries have been changed, the governing body making the change shall certify any changes or alterations in the boundaries to the election administrator and deliver a written legal description and a map showing boundaries of the wards, school districts, or other election districts. The map must be sufficiently detailed to clearly identify the wards or districts and the territory included in each."

Section 37. Section 13-3-201, MCA, is amended to read:

"13-3-201. Purpose. The purpose of this part is to promote the fundamental right to vote by improving access to polling places for individuals with disabilities and elderly individuals ~~to polling places~~. The provisions of this part acknowledge that, in certain cases, it may not be possible to locate a polling place that meets the standards for accessibility, either because an accessible polling place does not exist or, if it does, its location in the precinct would require undue travel for a majority of the electors. In those cases when an accessible polling place is not available, this part provides voters with disabilities and elderly voters an alternative means for casting a ballot on election day."

Section 38. Section 13-3-211, MCA, is amended to read:

"13-3-211. Emergency exemption. (1) The secretary of state shall exempt a polling place from the requirements of this part if an emergency occurs within 10 days prior to an election. An emergency is considered to exist if a polling place becomes unavailable by reason of loss of lease, fire, snow, or natural disaster.

(2) If an emergency occurs, the election administrator in the county shall designate a new polling place in accordance with the procedure provided in 13-3-105. The new polling place ~~must be~~ is considered temporary and ~~must be~~ is exempt from the survey procedures established under 13-3-206. However, ~~such the~~ the polling place may not be used in a subsequent election unless it is surveyed as required in 13-3-206."

Section 39. Section 13-10-203, MCA, is amended to read:

"13-10-203. Indigent candidates. If an individual is unable to pay a filing fee, the filing officer shall accept the following documents in lieu of a filing fee:

(1) from a successful write-in candidate, a verified statement that ~~he~~ the candidate is unable to pay the filing fee;

(2) from a candidate for nomination, a verified statement that ~~he~~ the candidate is unable to pay the filing fee and a written petition for nomination as a candidate that meets the following requirements:

(a) the petition contains the name of the office to be filled and the candidate's name and residence address;

(b) the petition contains signatures numbering 5% or more of the total vote cast for the successful candidate for the same office at the last general election;

(c) the signatures are those of electors residing within the political subdivision of the state in which the candidate petitions for nomination; and

(d) the signatures have been certified by the appropriate election administrator by the procedure provided in 13-27-303 and 13-27-304."

Section 40. Section 13-10-305, MCA, is amended to read:

"13-10-305. Independent forfeits place on ballot. An individual who has filed as an independent candidate forfeits ~~his~~ the individual's place on the general election ballot as an independent candidate if ~~he~~ the individual accepts a write-in nomination for an office as provided in 13-10-204."

Section 41. Section 13-10-325, MCA, is amended to read:

"13-10-325. Withdrawal from nomination. (1) A candidate for nomination or candidate for election to an office may withdraw from the election by sending a statement of withdrawal to the officer with whom ~~his~~ the candidate's declaration, petition, or acceptance of nomination was filed. The statement must contain all information necessary to identify the candidate and the office sought and the reason for withdrawal. ~~It shall~~ The statement must be sworn or affirmed before an officer empowered to administer oaths. A candidate may not withdraw later than 85 days before a general election or 75 days before a primary election.

(2) Filing fees paid by the candidate may not be refunded."

Section 42. Section 13-10-501, MCA, is amended to read:

"13-10-501. Petition for nomination by independent candidates or political parties not eligible to participate in primary election. (1) Except as provided in 13-10-504, nominations for public office by an independent candidate or a political party ~~which~~ that does not meet the requirements of 13-10-601 may be made

by a petition for nomination.

(2) The petition must contain the same information and the oath of the candidate required for a declaration for nomination.

(3) If a petition is filed by a political party, it must contain the party name and, in five words or less, the principle ~~which such~~ that the body represents.

(4) The form of the petition ~~shall~~ must be prescribed by the secretary of state, and ~~he~~ the secretary of state shall furnish sample copies to the election administrators and on request to any individual.

(5) Each sheet of a petition must contain signatures of electors residing in only one county."

Section 43. Section 13-10-507, MCA, is amended to read:

"13-10-507. Independent candidates -- association with political parties not allowed. (1) A person seeking office as an independent candidate may not be associated with a political party for 1 year prior to the submission of ~~his~~ the person's nomination petition.

(2) For the purposes of subsection (1), "associated with a political party" means having run for office as a partisan candidate or having held an office with a political party designation."

Section 44. Section 13-10-602, MCA, is amended to read:

"13-10-602. Use of party name. (1) ~~Every~~ A political party and its regularly nominated candidates, members, and officers have the sole and exclusive right to the use of the party name. ~~No~~ A candidate for office may not use any word of the name of any other political party or organization other than that by which ~~he~~ the candidate is nominated.

(2) An independent or nonpartisan candidate ~~shall~~ may not use any word of the name of any existing political party or organization in ~~his~~ the candidacy."

Section 45. Section 13-12-210, MCA, is amended to read:

"13-12-210. Number of ballots to be provided for each precinct. (1) The election administrator shall provide each election precinct with sufficient ballots for the electors registered, plus an extra supply to cover spoiled ballots.

(2) The election administrator shall keep a record in ~~his~~ the administrator's office showing the exact number of ballots that are delivered to the election judges of each precinct."

Section 46. Section 13-13-118, MCA, is amended to read:

"13-13-118. Taking ballot to disabled elector. (1) The chief election judge may appoint two election judges who represent different political parties to take a ballot to an elector able to come to the premises where a polling place is located but unable to enter the polling place because of a disability. The elector may request assistance in marking ~~his~~ the ballot as provided in 13-13-119.

(2) The judges shall have the elector sign an oath form stating ~~he~~ that the elector is entitled to vote and shall write in the precinct register by the elector's name "voted on the premises by oath" and sign their names.

(3) When the ballot or ballots are marked and folded, the judges shall immediately take them into the polling place and give them to the judge at the ballot box. The judge receiving the voted ballots shall distinctly announce ~~he~~ that the judge has "a ballot offered by (name), an elector physically unable to enter the room. Does anyone object to the reception of the ballot?" If ~~no~~ an objection is not heard, the judge shall remove the stub and place the ballot and stub in the proper boxes. Any challenge to the elector's right to vote ~~shall~~ must be resolved as provided in Title 13, chapter 13, part 3."

Section 47. Section 13-13-120, MCA, is amended to read:

"13-13-120. Poll watchers -- announcement of elector's name. The election judges shall permit one poll watcher from each political party to ~~station himself~~ be stationed close to the poll lists in a location that does not interfere with the election procedures. At the time when each elector signs ~~his~~ the elector's name, one of the election judges shall pronounce the name loud enough to be heard by the poll watchers. A poll watcher who does not understand the pronunciation has the right to request that the judge repeat the name. Poll watchers ~~shall~~ must also be permitted to observe all of the vote counting procedures of the judges after the closing of the polls and all entries of the results of the elections."

Section 48. Section 13-13-225, MCA, is amended to read:

"13-13-225. Special absentee election boards -- members -- appointment. (1) The election administrator shall designate and appoint a number of special absentee election boards as needed to serve in various places to deliver ballots to electors who are entitled to vote by absentee ballot as provided in 13-13-229.

(2) In a partisan election, each special absentee election board must consist of two members, one from each of the two political parties receiving the highest number of votes in the state during the last preceding general election. Board members shall reside in the county in which they serve.

(3) A member of a special absentee election board may not be a candidate or a spouse, ascendant,

descendant, brother, or sister of a candidate or of a candidate's spouse or the spouse of any one of these if the candidate's name appears on a ballot in the county."

Section 49. Section 13-13-227, MCA, is amended to read:

"13-13-227. Oath of board members. Before assuming any of his the responsibilities under this part, each member of a special absentee election board ~~must~~ shall take and subscribe the official oath in the same manner as prescribed for an election judge in 13-4-105."

Section 50. Section 13-13-602, MCA, is amended to read:

"13-13-602. Fail-safe and provisional voting by mail. (1) To ensure the election administrator has information sufficient to determine the elector's eligibility to vote, an elector voting by mail may enclose in the outer return envelope, together with the voted ballot in the secrecy envelope, a copy of a current and valid photo identification with the elector's name or a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.

(2) ~~if The elector's ballot must be handled as a provisional ballot under 13-15-107 if:~~

~~(a) a provisionally registered elector voting by mail does not enclose with the ballot the information described in subsection (1);~~

~~(b) if the information provided under subsection (1) is invalid or insufficient to verify the elector's eligibility;~~ or

~~(c) if the elector's name does not appear on the precinct register, the elector's ballot must be handled as a provisional ballot under 13-15-107."~~

Section 51. Section 13-14-111, MCA, is amended to read:

"13-14-111. Application of general laws. ~~Candidates~~ Except as otherwise provided in this chapter, ~~candidates~~ for nonpartisan offices, including judicial offices, ~~shall~~ must be nominated and elected according to the provisions of this title ~~except as otherwise provided in this chapter."~~

Section 52. Section 13-14-211, MCA, is amended to read:

"13-14-211. Judicial offices separate and independent offices for election purposes. (1) Each vacancy for justice of the supreme court is a separate and independent office for election purposes. The chief

justice of the supreme court shall assign an individual number to the justices and certify these numbers to the office of the secretary of state.

(2) Each vacancy for judicial office in a district ~~which~~ that has more than one district judge is a separate and independent office for election purposes.

(3) Each vacancy for office in a county ~~which~~ that has more than one justice of the peace is a separate and independent office for election purposes."

Section 53. Section 13-14-212, MCA, is amended to read:

"13-14-212. Form of ballot on retention of certain incumbent judicial officers. (1) ~~If there is no candidate other than the incumbent~~ is the only candidate for the office of chief justice, supreme court justice, district court judge, or justice of the peace, the name of the incumbent must be placed on the official ballot for the general election as follows:

Shall (insert title of officer) (insert name of the incumbent officer) of the (insert title of the court) of the state of Montana be retained in office for another term?

(2) Following the question, provision must be made, subject to rules adopted pursuant to 13-12-202, for a voter to indicate a "yes" or "no" vote."

Section 54. Section 13-15-201, MCA, is amended to read:

"13-15-201. Preparation for count. (1) Subject to 13-10-311, to prepare for a manual or automatic count of ballots, the counting board or, if appointed, the absentee counting board shall take ballots out of the box to determine whether each ballot is single.

(2) An absentee ballot must be rejected and handled as provided in 13-15-108 if ~~in~~ the envelope ~~there~~ is contains more than one voted ballot for each election.

(3) The board shall count all ballots to ensure that the total number of ballots corresponds with the total number of names in the pollbook.

(4) If the board cannot reconcile the total number of ballots with the pollbook, the board shall submit to the election administrator a written report stating how many ballots were missing or in excess and any reason of which they are aware for the discrepancy. Each judge on the board shall sign the report.

(5) A ballot that is not marked as official is void and may not be counted unless all judges on the board agree that the marking is missing because of an error by election officials, in which case the ballot must be marked "unmarked by error" on the back and must be initialed by all judges.

(6) If two or more ballots are folded or stuck together to look like a single ballot, they must be laid aside until the count is complete. The counting board shall compare the count with the pollbooks, and if a majority believes that the ballots folded together were voted by one elector, the ballots must be rejected and handled as provided in 13-15-108, otherwise they must be counted."

Section 55. Section 13-15-204, MCA, is amended to read:

"13-15-204. Signing and certifying pollbook. Immediately after the votes are counted and the ballots sealed up, the pollbook ~~shall~~ must be signed and certified to by the election judges in a form prescribed by the secretary of state."

Section 56. Section 13-15-205, MCA, is amended to read:

"13-15-205. Items to be delivered to election administrator by election judges -- disposition of other items. (1) Before they adjourn, the election judges shall enclose in a strong envelope or package, securely fastened:

- (a) the precinct register;
- (b) the list of individuals challenged;
- (c) the pollbook;
- (d) both of the tally sheets.

(2) The election judges shall enclose in a separate package or envelope, securely sealed, all unused ballots with the numbered stubs attached.

(3) The election judges shall enclose in a separate package or envelope, securely sealed, all ballots voted, including those not counted or allowed, and detached stubs from all counted or rejected absentee ballots. This envelope ~~shall~~ must be endorsed on the outside "ballots voted". At the primary election the unvoted party ballots ~~shall~~ must be enclosed in a separate package or envelope, securely sealed, and marked on the outside "unvoted ballots".

(4) Each election judge shall write ~~his~~ the judge's name across all seals.

(5) The return form provided for in 13-15-101 ~~shall~~ must be returned with the items provided for in this section but may not be sealed in any of the packages.

(6) The envelopes or packages required by this section ~~shall~~ must be delivered to the election administrator by the chief election judge or another judge appointed by the chief judge in the manner ordered by the election administrator.

(7) The election administrator shall instruct the chief election judge in writing on the proper disposition of all other election materials and supplies."

Section 57. Section 13-15-403, MCA, is amended to read:

"13-15-403. Canvass to be public -- nonessentials to be disregarded -- petition for recount. (1) The canvass ~~shall~~ must be public. It ~~shall~~ must proceed by opening the returns, auditing the tally books or other records of votes cast, determining the vote for each individual and for and against each ballot issue from each precinct, compiling totals, and declaring or certifying the results.

(2) The board shall record all write-in votes shown in the returns from each precinct.

(3) The returns may not be rejected because of failure to show who administered the oath to the election judges, failure to complete all the certificates in a pollbook, or ~~because of~~ failure of any other act making up the returns that is not essential to determine for whom the votes were cast.

(4) If during a canvass the board finds an error in a precinct or precincts affecting the accuracy of vote totals, the board immediately may petition for a recount of the votes cast in the precinct or precincts, as provided in 13-16-201, or for an inspection of ballots, as provided in 13-16-420."

Section 58. Section 13-15-404, MCA, is amended to read:

"13-15-404. Information to be entered on record. (1) The secretary of the board shall prepare and file in the official records of ~~his~~ the secretary's office a report of the canvass ~~which~~ that lists:

(a) the total number of electors voting in each precinct, district, or portion of a district in the county and the total in the county;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue;

(d) the votes by precinct, district, or portion of a district within the county for each individual and for and against each ballot issue;

(e) the total votes in the county for each individual and for and against each ballot issue; and

(f) for municipal elections, the total number of electors voting in each municipality and the votes by municipality for each individual and for and against each ballot issue.

(2) Write-in votes for an individual ~~shall~~ must be entered in the report in the same place as the votes for other individuals for the same office but ~~shall~~ must be identified as write-in votes."

Section 59. Section 13-15-502, MCA, is amended to read:

"13-15-502. Composition and meeting of board of state canvassers. Within 20 days after the election, or sooner if the returns are all received, the state auditor, superintendent of public instruction, and attorney general shall meet as a board of state canvassers in the office of the secretary of state and determine the vote. The secretary of state shall serve as secretary of the board, keep minutes of the meeting of the board, and file them in the official records of ~~his~~ the secretary of state's office."

Section 60. Section 13-15-504, MCA, is amended to read:

"13-15-504. Governor to issue commissions. Upon receipt of the statements required by 13-15-507 and 13-37-127, the governor shall issue commissions to the individuals elected. If the governor has been elected to ~~succeed himself~~ an additional term, the secretary of state shall issue the commission."

Section 61. Section 13-15-505, MCA, is amended to read:

"13-15-505. Canvass to be public -- procedure. (1) The canvass ~~shall~~ must be public. It ~~shall~~ must proceed by opening the returns from each county, auditing the records from each county for errors, determining the vote for each individual and for and against each ballot issue in each county, compiling totals, and declaring and certifying the results.

(2) The board shall record all write-in votes shown in the returns received from each county."

Section 62. Section 13-15-506, MCA, is amended to read:

"13-15-506. Report of the canvass. (1) The secretary of the board shall prepare and file in the official records of ~~his~~ the secretary of state's office a report of the canvass ~~which~~ that lists:

(a) the total number of electors voting in each county and in each legislative house district and the total in the state;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue; and

(d) the votes by county and legislative house district and the total votes for each individual and for and against each ballot issue.

(2) Write-in votes for an individual ~~shall~~ must be entered in the report in the same place as votes of other individuals for the same office but ~~shall~~ must be identified as write-in votes."

Section 63. Section 13-16-101, MCA, is amended to read:

"13-16-101. County governing body as county recount board. (1) The county recount board ~~shall~~ must consist of three members.

(2) Three members of the governing body ~~shall~~ must be appointed by the ~~chairman~~ presiding officer if there are more than three members of the governing body.

(3) If three members of the governing body cannot attend when the board meets, any vacant ~~place~~ position must be filled by one or more county officers chosen by the remaining members of the governing body.

(4) If a member of the recount board is a candidate for an office or nomination for which votes are to be recounted, ~~he shall~~ the member must be disqualified.

(5) The election administrator is secretary of the recount board, and the board may hire any additional clerks as needed.

(6) The board may appoint county employees or hire clerks to assist as needed."

Section 64. Section 13-16-201, MCA, is amended to read:

"13-16-201. Conditions under which recount to be conducted. (1) A recount must be conducted if:

(a) a candidate for a precinct office or for a county, municipal, or district office voted for in only one county, other than a legislator or a judge of the district court, ~~or a precinct office~~ is defeated by a margin not exceeding 1/4 of 1% of the total votes cast or by a margin not exceeding 10 votes, whichever is greater, and the defeated candidate, within 5 days after the official canvass, files with the election administrator a verified petition stating that the candidate believes that a recount will change the result and that a recount of the votes for the office or nomination should be conducted;

(b) a candidate for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district court is defeated by a margin not exceeding 1/4 of 1% of the total votes cast for all candidates for the same position; and the defeated candidate, within 5 days after the official canvass, files a petition with the secretary of state as set forth in subsection (1)(a). The secretary of state shall immediately notify by certified mail each election administrator whose county includes any precincts that voted for the office, and a recount must be conducted in those precincts.

(c) a question submitted to the vote of the people of a county, municipality, or district within a county is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the election administrator. This petition must be signed by not less than 10 electors of the jurisdiction and must be filed within 5 days after the official canvass.

(d) a question submitted to the vote of the people of the state is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the secretary of state. This petition must be signed by not less than 100 electors of the state, representing at least five counties of the state, and must be filed within 5 days after the official canvass.

(e) a question submitted to the vote of the people of a multicounty district is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the secretary of state. This petition must be signed by not less than 25 electors of the district, representing at least two counties, and must be filed within 5 days after the official canvass.

(f) if a canvassing board petitions for a recount as provided in 13-15-403.

(2) When a recount is required under subsection (1)(b), (1)(d), or (1)(e), the secretary of state shall immediately notify each election administrator by certified mail of the filing of the petition, and a recount must be conducted in all precincts in each affected county."

Section 65. Section 13-16-203, MCA, is amended to read:

"13-16-203. Recount for tie votes. When a tie has been certified to the election administrator, as provided in 13-15-405(4), or the secretary of state, ~~he~~ the administrator or the secretary of state shall proceed as if a petition for a recount has been filed. If a tie exists after the recount, the tie ~~shall~~ must be resolved as provided by law."

Section 66. Section 13-16-204, MCA, is amended to read:

"13-16-204. Meeting of recount board when recount requested. (1) Immediately upon receiving a petition for a recount or a notice from the secretary of state that a petition has been filed ~~with him~~, as provided in 13-16-201, the election administrator shall notify the members of the county recount board.

(2) The board shall convene at the usual meeting place of the governing body without undue delay but not later than 5 days after receiving notice from the election administrator."

Section 67. Section 13-16-211, MCA, is amended to read:

"13-16-211. Recounts allowed if bond posted to cover all costs. (1) If a candidate for a public office is defeated by a margin exceeding 1/4 of 1% but not exceeding 1/2 of 1% of the total votes cast for all candidates for the same position, ~~he~~ the candidate may, within 5 days after the official canvass, file with the officer with whom ~~his~~ the candidate's declaration or petition for nomination was filed a petition stating that ~~he~~ the candidate believes

a recount will change the result of the election.

(2) The unsuccessful candidate shall post a bond with the clerk and recorder of the county in which ~~he~~ the candidate resides. The bond must be in an amount set by the clerk and recorder sufficient to cover all costs of the recount incurred by each county in which a recount is sought, including loss of time of regular employees caused by absence from their regular duties.

(3) Upon the filing of a petition and posting of a bond under this section, the board of county canvassers in each county affected shall meet and recount the ballots specified in the petition."

Section 68. Section 13-16-301, MCA, is amended to read:

"13-16-301. Application and court order for recount. (1) (a) Within 5 days after the canvass of election returns, an unsuccessful candidate for any public office at an election may apply to the district court of the county where the election was held for an order directing the county recount board to make a recount of the votes cast in any or all of the precincts. If the election was held in more than one county, the application ~~shall~~ must be made to the district court of the county where the candidate resides.

(b) Within 5 days after the canvass of election returns, an elector who was eligible to vote on the issue and who believes that there are grounds for a recount of the votes cast for and against a ballot issue may apply to the district court of the county where ~~he~~ the elector resides for an order directing the appropriate county recount board to make a recount of the votes cast in any or all of the precincts.

(2) The application ~~shall~~ must specify the grounds for a recount, and it must be verified by the applicant that the matters contained in it are true to the best of the applicant's knowledge, information, and belief.

(3) Within 5 days after filing of the application, the judge shall hear the application and determine its sufficiency.

(4) If the judge finds there is probable cause to believe that the votes cast for the applicant or the ballot issue were not correctly counted, ~~he~~ the judge shall order the appropriate county recount board to assemble within 5 days after the order is issued at a time and place fixed by the order. The board shall meet and recount the ballots as specified in the order."

Section 69. Section 13-16-302, MCA, is amended to read:

"13-16-302. Service of copy of application -- hearing. The candidate found to be elected as a result of the original or first canvass ~~shall~~ must be served with a copy of the application for recount. ~~He shall~~ The candidate must be given an opportunity to be heard and ~~shall~~ must be permitted to be present and to be

represented at any recount ~~ordered~~."

Section 70. Section 13-16-307, MCA, is amended to read:

"13-16-307. Expenses of court-ordered recount. (1) The court shall in its order determine the probable expense of making the recount, and the applicant or applicants asking for the recount shall deposit with the board the amount determined, in cash.

(2) If the recount shows that an applicant has been elected to office, the deposit of the applicant ~~shall~~ must be returned to ~~him~~ the applicant.

(3) If the recount shows that an applicant has not been elected and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess; ~~but~~ however, if the expense is less than the cost, the difference ~~shall~~ must be refunded to the applicant.

(4) If the recount reverses the results of a ballot issue election, the deposit of the applicant ~~shall~~ must be returned to ~~him~~ the applicant.

(5) If the recount does not reverse the results of a ballot issue election and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess; ~~but~~ however, if the expense is less than the cost, the difference ~~shall~~ must be refunded to the applicant."

Section 71. Section 13-16-415, MCA, is amended to read:

"13-16-415. Recount totals. After a recount is completed, tally sheets ~~shall~~ must be compared and the correctness of all reports of votes cast must be ascertained. The totals for each candidate or on each issue ~~shall~~ must be compiled and checked for accuracy."

Section 72. Section 13-16-416, MCA, is amended to read:

"13-16-416. Report of recount. (1) If the recount shows the votes for any candidate or on any ballot issue are more or less than the number shown upon the official returns, the secretary of the recount board shall prepare a corrected report ~~which~~ that states the number of votes ascertained by the recount.

(2) The recount board shall direct the secretary to enter the result of the election as determined by the recount in the board records."

Section 73. Section 13-16-417, MCA, is amended to read:

"13-16-417. Sealing ballots and voting systems. (1) When a recount of paper ballots that was

conducted using a voting system ~~has been~~ is finished, each ballot must again be sealed in the same package or envelope in the presence of the election administrator and the county recount board and must be delivered to the election administrator for custody.

(2) All voting systems must be secured as provided in rules adopted under 13-17-211.

(3) All other materials used in the recount that are required to be sealed must be resealed in the same manner and delivered to the election administrator for custody."

Section 74. Section 13-16-418, MCA, is amended to read:

"13-16-418. Certification after recount. (1) Immediately after the recount, the county recount board shall certify the result.

(2) At least two members of the board shall sign the certificate, and it ~~shall~~ must be attested to under seal by the election administrator.

(3) The certificate ~~shall~~ must set forth in substance the proceedings of the board and the appearance of any candidates or representatives. The certificate ~~shall~~ must adequately designate:

(a) each precinct recounted;

(b) the vote of each precinct according to the official canvass previously made;

(c) the nomination, position, or question involved; and

(d) the correct vote of each precinct as determined by the recount.

(4) When the certificate relates to a recount for a congressional office, a state or district office voted on in more than one county, a legislative office, or an office of judge of the district court or a ballot issue voted on in more than one county, the certificate ~~shall~~ must be made in duplicate. One copy ~~shall~~ must be transmitted immediately to the secretary of state by certified mail.

(5) (a) If the recount relates to a county, municipal, or district office voted for in only one county, other than that of a legislator or a judge of the district court, or a precinct office or a ballot issue voted on in only one county, the county recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount and make a corrected abstract of the votes.

(b) If the corrected abstract shows no change in the result, no further action ~~need be taken~~ is needed.

(c) If there is a change in the result, a new certificate of election or nomination ~~shall~~ must be issued to each candidate found to be elected or nominated and the first certificate is void. The individual receiving the second certificate ~~shall~~ must be elected or nominated to the office."

Section 75. Section 13-16-419, MCA, is amended to read:

"13-16-419. Recount by board of state canvassers. (1) When the secretary of state receives certificates from all county recount boards, ~~he~~ the secretary of state shall file them, shall fix a time and place, as soon as possible, for reconvening the board of state canvassers, and shall notify the members.

(2) The board of state canvassers shall recanvass the official returns on the office, nomination, position, or question; as corrected by the certificates; and make a new and corrected abstract of the votes cast.

(3) (a) If the corrected abstract shows no change in the results, ~~no~~ further action ~~shall~~ may not be taken.

(b) If there is a change in the results, a new certificate of election or nomination ~~shall~~ must be issued in the same manner as the certificate of election or nomination was previously issued to each candidate elected or nominated."

Section 76. Section 13-19-101, MCA, is amended to read:

"13-19-101. Statement of purpose. The purpose of this chapter is to provide the option of and procedures for conducting certain specified elections ~~using a procedure called a "mail ballot election" and to provide the procedures therefor~~ as mail ballot elections. The provisions of this chapter recognize that sound public policy concerning the conduct of elections often requires the balancing of various elements of the public interest that are sometimes in conflict. Among these factors are the public's interest in fair and accurate elections, the election of those who will govern or represent, and cost-effective administration of all functions of government, including the conduct of elections. The provisions of this chapter further recognize that when these and other factors are balanced, the conduct of elections by mail ballot is potentially the most desirable of the available options in certain circumstances."

Section 77. Section 13-19-203, MCA, is amended to read:

"13-19-203. Initiation by election administrator. (1) Even if ~~no~~ a request has not been received from the governing body concerned, the election administrator may conduct any election authorized by 13-19-104 under this chapter if, ~~in his discretion,~~ the election administrator determines that would be a mail ballot election is the most economically and administratively feasible way of conducting the election in question.

(2) If ~~he~~ the election administrator decides to conduct an election pursuant to subsection (1), the election administrator shall prepare a written plan as provided in 13-19-205 and forward a copy to the governing body concerned, together with a written statement informing ~~it~~ the governing body of ~~his~~ the decision to conduct the election by mail ballot, ~~and the reasons therefor~~ for the decision, and the right of the governing body to object

under 13-19-204."

Section 78. Section 13-19-301, MCA, is amended to read:

"13-19-301. Voting mail ballots. (1) Upon receipt of ~~his~~ a ballot, the elector may vote by:

- (a) marking the ballot in the manner specified;
- (b) placing the marked ballot in the secrecy envelope, free of any identifying marks;
- (c) placing the secrecy envelope containing a single ballot in the return/verification envelope;
- (d) executing the affidavit printed on the return/verification envelope; and
- (e) returning the return/verification envelope with the secrecy envelope containing the ballot enclosed, as provided in 13-19-306.

(2) For the purpose of this chapter, an official ballot is voted when, after the requirements of 13-19-310 and 13-19-311 have been satisfied, the return/verification envelope has been opened by election officials and the secrecy envelope containing the ballot has been deposited in the official ballot box."

Section 79. Section 13-19-302, MCA, is amended to read:

"13-19-302. Proportional voting. The election administrator shall provide a method for proportional voting in ~~his~~ the administrator's written plan for an election conducted under this chapter that requires votes to be cast in proportion to ownership or any factor other than one vote per person."

Section 80. Section 13-19-304, MCA, is amended to read:

"13-19-304. Voting by nonregistered electors. (1) For any election being conducted under this chapter by a political subdivision that allows individuals to vote who are not registered electors, ~~such an~~ the individual may vote by appearing in person at the election administrator's office and demonstrating that ~~he~~ the individual possesses the qualifications ~~which that~~ entitle him the individual to vote.

(2) An individual complying with subsection (1) before official ballots are available may leave a card with the election administrator containing ~~his~~ the individual's signature and the address to which ~~his~~ a ballot is to be mailed. The signature provided must ~~then~~ be used for verification when the mail ballot is returned.

(3) An individual complying with subsection (1) after official ballots are available and before the close of the polls on election day must be permitted to vote at that time."

Section 81. Section 13-19-305, MCA, is amended to read:

"13-19-305. Replacement ballots -- procedures. (1) An elector may obtain a replacement ballot as provided in this section if ~~his~~ the original ballot is destroyed, spoiled, lost, or not received by the elector.

(2) An elector seeking or receiving a replacement ballot shall sign a sworn statement stating that the original ballot was either destroyed, spoiled, lost, or not received and shall present the statement to the election administrator no later than 8 p.m. on election day.

(3) Upon receiving the sworn statement, the election administrator shall issue a replacement ballot to the elector. Each spoiled ballot must be returned before ~~a new one~~ another ballot may be issued.

(4) The election administrator shall designate ~~his~~ the election administrator's office or a central location in the political subdivision in which the election is conducted as the single location for obtaining a replacement ballot.

(5) A replacement ballot may also be issued pursuant to 13-19-313.

(6) The election administrator shall keep a record of each replacement ballot issued. If ~~he~~ the election administrator later determines that any elector to whom a replacement ballot has been issued has attempted to vote more than once, ~~he~~ the election administrator shall immediately notify the county attorney and the secretary of state of each instance."

Section 82. Section 13-19-306, MCA, is amended to read:

"13-19-306. Returning marked ballots -- when -- where. (1) After complying with 13-19-301, an elector or ~~his~~ the elector's designee may return ~~his~~ the elector's ballot on or before election day by either:

(a) depositing the return/verification envelope in the United States mail, with sufficient postage affixed;

or

(b) returning it to any place of deposit designated by the election administrator pursuant to 13-19-307.

(2) In order to have ~~his~~ the ballot counted, each elector ~~must~~ shall return it ~~in such a manner~~ so that it is received prior to 8 p.m. on election day."

Section 83. Section 13-19-307, MCA, is amended to read:

"13-19-307. Places of deposit. (1) The election administrator shall designate ~~his~~ the administrator's office and may designate one or more places in the political subdivision in which the election is being conducted as places of deposit where ballots may be returned in person by the elector.

(2) Prior to election day, ballots may be returned to any designated place of deposit only during regular business hours.

(3) On election day, each location designated as a place of deposit must be open as provided in 13-1-106, and ballots may be returned during those hours.

(4) The election administrator may designate certain locations as election day places of deposit, and any designated location ~~so designated shall function~~ functions as a place of deposit only on election day.

(5) The election administrator shall provide each designated place of deposit with an official ballot transport box secured as provided by law."

Section 84. Section 13-19-308, MCA, is amended to read:

"13-19-308. Disposition of ballots returned in person. Ballots returned by the elector in person must be processed as follows:

(1) If returned to the election administrator's office directly, the ballot must be processed in the same manner provided for ballots returned by mail except that, while the elector is present, officials shall:

- (a) verify the signature pursuant to 13-19-310;
- (b) resolve any questions as to the validity of the ballot; and
- (c) deposit the unopened secrecy envelope containing the ballot in the official ballot box.

(2) If returned to a place of deposit other than the election administrator's office, the election official on location shall:

(a) keep a log of the names of all electors from whom ~~he~~ the official receives ballots and the names of the people who deliver the ballots;

(b) deposit the unopened return/verification envelope in the sealed ballot transport box provided for that purpose; and

(c) securely retain all ballots until they are transported to the election administrator's office. The transport boxes must then be opened and the ballots disposed of in the same manner provided for ballots returned by mail."

Section 85. Section 13-19-310, MCA, is amended to read:

"13-19-310. Signature verification -- procedures. (1) The election administrator shall verify the signature of each elector by comparing the affidavit printed on the return/verification envelope to the signature on that elector's registration card or signature card provided under 13-19-304.

(2) If the election administrator is convinced that the individual signing the affidavit is the same as the one whose name appears on the registration card, ~~he~~ the administrator shall proceed to validate the ballot.

(3) If the election administrator is not convinced that the individual signing the return/verification envelope is the same as the one whose name appears on the registration card, ~~he~~ the administrator may not validate the ballot but instead shall:

- (a) give notice to the elector as provided in 13-19-313; and
- (b) if the discrepancy is not rectified to the election administrator's satisfaction, present the unopened envelope and the registration card to the canvassing board for a determination."

Section 86. Section 13-27-305, MCA, is amended to read:

"13-27-305. Retention of copies by county official. The county official certifying the sheets or sections of a petition shall keep a copy of the sheets or sections certified in the official files of ~~his~~ the official's office. The copies may be destroyed 3 months after the date of the election specified in the petition unless a court action is pending on the sufficiency of the petition."

Section 87. Section 13-27-306, MCA, is amended to read:

"13-27-306. Challenge to signatures by elector of county. A registered elector of a county having reason to believe that signatures on a petition that were not among those actually compared with signatures in the registration records of the county are not genuine may file a sworn statement or affirmation of ~~his~~ the elector's belief and a request for comparison of those signatures ~~he~~ that the elector believes are not genuine with the county official certifying the sheet or section of the petition. If any of the challenged signatures are not genuine, the county official ~~must~~ shall compare all signatures on that sheet or section and issue an amended certificate to the secretary of state, giving the correct number of valid signatures, on or before the deadline, as provided for in 13-27-104, for filing in the office of the secretary of state."

Section 88. Section 13-27-308, MCA, is amended to read:

"13-27-308. Certification of petition to governor. When sheets or sections of a petition for referendum, initiative, constitutional convention, or constitutional amendment containing a sufficient number of signatures have been filed with the secretary of state within the time required by the constitution or by law, ~~he~~ the secretary of state shall immediately certify to the governor that the completed petition has been officially filed."

Section 89. Section 13-27-404, MCA, is amended to read:

"13-27-404. Committee chairman presiding officer. The appointee of the president of the senate is

the ~~chairman~~ presiding officer of any committee to which that officer makes an appointment. The appointing authority for other committees shall name a ~~chairman~~ presiding officer at the time the appointments are made."

Section 90. Section 13-27-405, MCA, is amended to read:

"13-27-405. Committee expenses. Each committee is entitled to receive funds for the preparation of arguments and expenses of members not to exceed \$100 for a three-member committee and \$200 for a five-member committee. Itemized claims for actual expenses incurred, approved by a majority of the committee, ~~shall~~ must be submitted to the secretary of state for payment from funds appropriated for that purpose."

Section 91. Section 13-27-503, MCA, is amended to read:

"13-27-503. Determination of result of election. The votes on ballot issues ~~shall~~ must be counted, canvassed, and returned by the regular boards of judges, clerks, and officers in the same manner as votes for candidates are counted, canvassed, and returned. The abstract of votes on ballot issues ~~shall~~ must be prepared and returned to the secretary of state in the manner provided by 13-15-501 for abstract of votes for state officers. The board of state canvassers shall proceed within 20 days after the election at which ~~such~~ ballot issues are voted upon and, at the same time as the votes for state officers are canvassed, canvass the votes given for each ballot issue. The secretary of state, as secretary of the board of state canvassers, shall prepare and file in ~~his~~ the secretary of state's office a statement of the canvass, giving the number and title of each issue, the whole number of votes cast in the state for and against each ballot issue, and the effective date of each ballot issue approved by a majority of those voting on the issue. The secretary of state shall transmit a certified copy of the statement of the canvass to the governor."

Section 92. Section 13-35-106, MCA, is amended to read:

"13-35-106. Ineligibility to hold office because of conviction. In addition to all other penalties prescribed by law:

(1) a candidate who is convicted of violating any provision of this title, except 13-35-207(9), is ineligible to be a candidate for any public office in the state of Montana until ~~his~~ final discharge from state supervision;

(2) a campaign treasurer who is convicted of violating any provision of this title, except 13-35-207(9), is ineligible to be a candidate for any public office or to hold the position of campaign treasurer in any campaign in the state of Montana until ~~his~~ final discharge from state supervision;

(3) if an elected official or a candidate is adjudicated to have violated any provision of this title, except

13-35-207(9), ~~he shall~~ the individual must be removed from nomination or office, as the case may be, even though ~~he~~ the individual was regularly nominated or elected."

Section 93. Section 13-35-201, MCA, is amended to read:

"13-35-201. Electors and ballots. (1) An elector may not show the contents of ~~his~~ the elector's ballot to anyone after it is marked. ~~No~~ An elector may not place any mark upon the ballot by which it may be identified as the one voted by ~~him~~ the elector.

(2) An elector may not receive a ballot from any person other than an election judge and may not vote any ballot except one received from an election judge. ~~No~~ A person other than an election judge may not deliver a ballot to an elector.

(3) ~~No~~ A person may not solicit an elector to show ~~his~~ the elector's ballot after it is marked.

(4) An elector who does not vote a ballot delivered to ~~him~~ the elector shall, before leaving the polling place, return the ballot to an election judge."

Section 94. Section 13-35-204, MCA, is amended to read:

"13-35-204. Official misconduct. A person charged with performance of any duty under the provisions of the election laws of this state is guilty of official misconduct and is punishable as provided in 45-7-401 whenever the person:

(1) knowingly neglects or refuses to perform that duty; or

(2) knowingly and fraudulently acts, in ~~his~~ the person's official capacity, in contravention or violation of any provision of the election laws."

Section 95. Section 13-35-209, MCA, is amended to read:

"13-35-209. Fraudulent registration. (1) ~~No~~ A person may not knowingly cause, procure, or allow ~~himself~~ the person to be registered in the official register of any election district of any county knowing ~~himself~~ that the person is not ~~to be~~ entitled to ~~such~~ the registration.

(2) ~~No~~ A person may ~~falsely personate~~ not impersonate another and cause the impersonated person ~~so personated~~ to be registered.

(3) When, on the trial of the person charged with any offense under the provisions of this section, it appears in evidence that the accused stands registered in the register of any county without being qualified for ~~such~~ registration, the court shall order ~~such~~ the registration canceled."

Section 96. Section 13-35-214, MCA, is amended to read:

"13-35-214. Illegal influence of voters. ~~No~~ A person may not, directly or indirectly, ~~by himself~~ individually or ~~by through~~ any other person ~~on his behalf~~, for any election, ~~to or for any person on behalf of any elector or to or for any person~~, in order to induce any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue, ~~may~~:

(1) give, lend, agree to give or lend, offer, or promise any money, liquor, or valuable consideration or promise or endeavor to procure any money, liquor, or valuable consideration;

(2) promise to appoint another person or promise to secure or aid in securing the appointment, nomination, or election of another person to a public or private position or employment or to a position of honor, trust, or emolument; in order to aid or promote ~~his~~ the candidate's nomination or election, except that ~~he~~ the candidate may publicly announce or define ~~what is his~~ the candidate's choice or purpose in relation to an election in which ~~he~~ the candidate may be called to take part; if elected."

Section 97. Section 13-35-215, MCA, is amended to read:

"13-35-215. Illegal consideration for voting. ~~No~~ A person, directly or indirectly, ~~by himself~~ individually or ~~by through~~ any other person ~~in his behalf~~, may not:

(1) before or during any election, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at the election or for inducing another to do so:

(a) receive, agree, or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for ~~himself~~ the person or any other person; or

(b) approach any candidate or agent or person representing or acting on behalf of any candidate and ask for or offer to agree or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for ~~himself~~ the person or any other person;

(2) after an election, for having voted or refrained from voting or having induced any other person to vote or refrain from voting at the election:

(a) receive any money, gift, loan, valuable consideration, office, place, or employment; or

(b) approach any candidate or any agent or person representing or acting on behalf of any candidate and ask for or offer to receive any money, gift, loan, liquor, valuable consideration, office, place, or employment for ~~himself~~ the person or any other person."

Section 98. Section 13-35-217, MCA, is amended to read:

"13-35-217. Officers not to influence voter. ~~No~~ An officer, while acting in ~~his~~ an official capacity, may not, by menace, reward, or promise of reward, induce or attempt to induce any elector to cast a vote contrary to ~~his~~ the elector's original intention or desire."

Section 99. Section 13-35-218, MCA, is amended to read:

"13-35-218. Coercion or undue influence of voters. (1) ~~No~~ A person, directly or indirectly, ~~by himself~~ individually or through any other person ~~in his behalf~~, in order to induce or compel a person to vote or refrain from voting for any candidate, the ticket of any political party, or any ballot issue before the people, may not:

(a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any person;
or

(b) inflict or threaten to inflict, ~~by himself~~ individually or with any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person.

(2) ~~No~~ A person who is a minister, preacher, priest, or other church officer or who is an officer of any corporation or organization, religious or otherwise, may not, other than by public speech or print, urge, persuade, or command any voter to vote or refrain from voting for or against any candidate, political party ticket, or ballot issue submitted to the people because of ~~his~~ the person's religious duty or the interest of any corporation, church, or other organization.

(3) ~~No~~ A person may not, by abduction, duress, or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election or ~~thereby~~ compel, induce, or prevail upon any elector to give or to refrain from giving ~~his~~ the elector's vote at any election.

(4) ~~No~~ A person may not, in any manner, interfere with a voter lawfully exercising ~~his~~ the right to vote at an election ~~so as~~ in order to prevent the election from being fairly held and lawfully conducted.

(5) ~~No~~ A person on election day may not obstruct the doors or entries of any polling place or engage in any solicitation of a voter within the room where votes are being cast or elsewhere in any manner ~~which~~ that in any way interferes with the election process or obstructs the access of voters to or from the polling place."

Section 100. Section 13-35-221, MCA, is amended to read:

"13-35-221. Improper nominations. (1) ~~No~~ A person may not pay or promise valuable consideration to another, in any manner or form, for the purpose of inducing ~~him~~ the other person to be or to refrain from or to cease being a candidate, and ~~no~~ a person may not solicit or receive any payment or promise from another for ~~such~~ that purpose.

(2) ~~No~~ A person, in consideration of any gift, loan, offer, promise, or agreement, as mentioned in subsection (1), may not:

(a) ~~allow himself to~~ be nominated or refuse to ~~allow himself to~~ be nominated as a candidate at an election;

(b) become, ~~by himself~~ individually or in combination with any other person or persons, a candidate for the purpose of defeating the nomination or election of any other person, without a bona fide intent to obtain the office; or

(c) withdraw if ~~he~~ the person has been ~~so~~ nominated.

(3) Upon complaint made to any district court, the judge shall issue a writ of injunction restraining the officer whose duty it is to prepare official ballots for a nominating election from placing the name of a person ~~thereon~~ on the ballot as a candidate for nomination to any office if the judge is convinced that:

(a) the person has sought the nomination or seeks to have ~~his~~ the person's name presented to the voters as a candidate for nomination by any political party for any mercenary or venal consideration or motive; and

(b) ~~his~~ the person's candidacy for the nomination is not in good faith."

Section 101. Section 13-35-301, MCA, is amended to read:

"13-35-301. Adoption of code of fair campaign practices. The following code of fair campaign practices is adopted by Montana:

"There are basic principles of decency, honesty, and fair play that every candidate for public office in the United States has a moral obligation to observe and uphold, in order that, after vigorously contested but fairly conducted campaigns, our citizens may exercise their constitutional right to a free and untrammelled choice and the will of the people may be fully and clearly expressed on the issues before the country. Therefore:

I will conduct my campaign in the best American tradition, discussing the issues as I see them, presenting my record and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of my opponent and ~~his~~ my opponent's party ~~which that~~ merit such criticism.

I will defend and uphold the right of every qualified American voter to full and equal participation in the electoral process.

I will conduct my campaign without the use of personal vilification, character defamation, whispering campaigns, libel, slander, or scurrilous attacks on my opposition or ~~his~~ my opposition's personal or family life.

I will not use campaign material of any sort ~~which that~~ misrepresents, distorts, or otherwise falsifies the facts, nor will I use malicious or unfounded accusations ~~which that~~ aim at creating or exploiting doubts, without

justification, as to the loyalty and patriotism of my opposition.

I will not make any appeal to prejudice based on race, sex, creed, or national origin.

I will not undertake or condone any dishonest or unethical practice ~~which that~~ tends to corrupt or undermine our American system of free elections or ~~which that~~ hampers or prevents the full and free expression of the will of the voters.

Insofar as is possible, I will immediately and publicly repudiate support deriving from any individual or group ~~which that~~ resorts, on behalf of my candidacy or in opposition to that of my opponent, to the methods and tactics that I have pledged not to use or condone.""

Section 102. Section 13-36-101, MCA, is amended to read:

"13-36-101. Grounds for contest of nomination or election to public office. An elector may contest the right of any person to any nomination or election to public office for which the elector has the right to vote, ~~for any of the following causes~~ if the elector believes that:

(1) ~~on the ground of~~ a deliberate, serious, and material violation of any provision of the law relating to nominations or elections has occurred;

(2) ~~whenever the person whose right is contested~~ was not, at the time of the election, eligible to ~~such~~ be a candidate for the office;

(3) ~~on account of illegal votes were cast illegally or were counted or canvassed in an erroneous or fraudulent count or canvass of votes~~ manner."

Section 103. Section 13-36-102, MCA, is amended to read:

"13-36-102. Time for commencing contest. (1) Five days or less after a candidate has been certified as nominated, a person wishing to contest the nomination to any public office shall give notice in writing to the candidate whose nomination ~~he~~ the person intends to contest, briefly stating the cause for the contest. The contestant shall make application to the district court in the county where the contest is to be had. The judge shall then set the time for the hearing. The contestant shall serve notice 3 days before the hearing is scheduled. The notice ~~shall~~ must state the time and place of the hearing.

(2) Any action to contest the right of a candidate to be declared elected to an office or to annul and set aside ~~such~~ the election or to remove from or deprive any person of an office of which ~~he~~ the person is the incumbent for any offense mentioned in this title must, unless a different time is stated, be commenced within 1 year after the day of election at which ~~such~~ the offense was committed."

Section 104. Section 13-36-103, MCA, is amended to read:

"13-36-103. Court having jurisdiction of proceedings. An application for filing a statement, payment of a claim, or correction of an error or false recital in a filed statement or an action or proceeding to annul and set aside the election of any person declared elected to an office or to remove or deprive any person of ~~his~~ the person's office for an offense mentioned in this title or any petition to excuse any person or candidate in accordance with the power of the court to excuse, as provided in 13-36-209, must be made or filed in the district court of the county in which the certificate, declaration, or acceptance of ~~his~~ the person's nomination as a candidate for the office to which ~~he~~ the person is declared nominated or elected is filed or in which the incumbent resides."

Section 105. Section 13-36-104, MCA, is amended to read:

"13-36-104. Nomination contests. In the case of nomination contests, the judge of the district court shall hear and determine the case and make all necessary orders for the trial of the case and carrying ~~his~~ the judgment into effect. The order of the judge ~~shall~~ must express the will of a majority of the legal voters of the political party, as indicated by their votes, disregarding technicalities or errors in spelling. Each party is entitled to subpoenas. The registrar shall issue a certificate to the person declared nominated by the court. The certificate ~~shall be~~ is conclusive evidence of the right of the person to hold the nomination."

Section 106. Section 13-36-201, MCA, is amended to read:

"13-36-201. Contents of contest petition. Any petition contesting the right of any person to a nomination or election ~~shall~~ must set forth the name of every person whose election is contested and the grounds of the contest. The petition ~~shall~~ may not thereafter be amended, ~~except by leave of the~~ unless the amendment is authorized by a court."

Section 107. Section 13-36-202, MCA, is amended to read:

"13-36-202. Reception of illegal votes -- allegations and evidence. When the reception of illegal votes is alleged as a cause of contest, it ~~shall be~~ is sufficient to state generally that in one or more specified voting precincts illegal votes were given to the candidate whose nomination or election is contested ~~which that,~~ if taken from ~~him~~ the candidate, will reduce the number of ~~his~~ the candidate's legal votes below the number of legal votes given to some other candidate for the same office. ~~No testimony shall~~ Testimony may not be received of any illegal votes unless the party contesting ~~such~~ the election delivers to the opposite party, at least 3 days before

~~such~~ trial, a written list of the number of illegal votes (and by whom given) ~~which he~~ that the party intends to prove ~~on such~~ at trial. This provision ~~shall~~ may not prevent the contestant from offering evidence of illegal votes not included in ~~such~~ the statement if ~~he~~ the contestant did not know and by reasonable diligence was unable to learn of ~~such~~ the additional illegal votes (and by whom they were given) before delivering ~~such~~ the written list."

Section 108. Section 13-36-204, MCA, is amended to read:

"13-36-204. Bond required. Before any proceeding on the petition, the petitioner shall give bond to the state in ~~such~~ a sum ~~as~~ that the court may order, not exceeding \$2,000, with not less than two sureties, who shall justify in the manner required of sureties on bail bonds, conditioned to pay all costs, disbursements, and ~~attorney's~~ attorney fees that may be awarded against ~~him~~ the petitioner if ~~he~~ shall the petitioner does not prevail."

Section 109. Section 13-36-205, MCA, is amended to read:

"13-36-205. Recovery of costs. In any contest, the prevailing party may recover ~~his~~ the party's costs, disbursements, and reasonable ~~attorney's~~ attorney fees. Costs, disbursements, and ~~attorney's~~ attorney fees in all ~~such~~ cases ~~shall~~ must be in the discretion of the court. ~~In case~~ If judgment is rendered against the petitioner, it ~~shall~~ must also be rendered against the sureties on the bond."

Section 110. Section 13-36-206, MCA, is amended to read:

"13-36-206. Notice of filing -- prompt hearing. On the filing of ~~any such~~ a petition under this part, the clerk shall immediately notify the judge of the court and issue a citation to the person whose nomination or office is contested, citing ~~him~~ the person to appear and answer not less than 3 or more than 7 days after the date of filing the petition. The court shall hear ~~said~~ the cause, and ~~every such~~ the contest ~~shall~~ must take precedence over all other business on the court docket and ~~shall~~ must be tried and disposed of with all convenient dispatch. The court ~~shall~~ is always considered to be deemed in session for the trial of ~~such~~ contest cases."

Section 111. Section 13-36-207, MCA, is amended to read:

"13-36-207. Hearing of contest. The petitioner (contestant) and the contestee may appear and produce evidence at the hearing, but no person other than the petitioner and contestee may be made a party to the proceedings on ~~such~~ the petition and no person other than the parties and their attorneys may be heard ~~thereon~~ except by order of the court. If more than one petition is pending or the election of more than one person is contested, the court may in its discretion order the cases to be heard together and may apportion the costs,

disbursements, and ~~attorney's attorney~~ fees between ~~them~~ the parties and shall finally determine all questions of law and fact, except that the judge may ~~in his discretion~~ impanel a jury to decide on questions of fact. In the case of nominations or elections other than for federal congressional offices, the court shall immediately certify its decision to the governing body or official issuing certificates of nomination or election and the governing body or official shall ~~thereupon~~ issue certificates of nomination or election to the person or persons entitled ~~thereto~~ to the certificates by the court's decision. If judgment of ouster against a defendant is rendered, the nomination or office ~~shall must~~ be ~~by the judgment~~ declared vacant by the judgment, except as provided in 13-36-212, and ~~shall~~ thereupon must be filled by a new election or by appointment as may be provided by law regarding vacancies in ~~such~~ the nomination or office."

Section 112. Section 13-36-208, MCA, is amended to read:

"13-36-208. Advancement of cases -- dismissal -- privileges of witnesses. Proceedings under this title ~~shall must~~ be advanced on the docket upon request of either party for speedy trial, but the court may postpone or continue the trial if necessary, and in case of ~~such a~~ such a continuance or postponement, the court may impose costs in its discretion as a condition ~~thereof of the continuance or postponement.~~ thereof. ~~No~~ A petition may not be dismissed without the consent of the county attorney unless the ~~same~~ the petition is dismissed by the court. ~~No~~ A person may not be excused from testifying or producing papers or documents on the ground that ~~his~~ the person's testimony or the production of papers or documents will tend to ~~erminate him;~~ incriminate the person. However, an admission, evidence, or paper made or advanced or produced by ~~such the~~ such the person or any evidence that is the direct result of ~~such the~~ such the evidence or information that ~~he~~ the person may have ~~so~~ given may not be offered or used against ~~him~~ the person in any civil or criminal prosecution; except in a prosecution for perjury committed in ~~such the~~ such the testimony."

Section 113. Section 13-36-209, MCA, is amended to read:

"13-36-209. Forfeiture of nomination or office for violation of law -- when inappropriate. ~~If, upon~~ Upon the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared nominated or elected to any office or to annul or set aside ~~such a~~ such a nomination or election or to remove a person from ~~his~~ the office, the nomination or election of the candidate is not by reason of the offense or omission complained of void and the candidate may not be removed from or deprived of office if under the circumstances it seems to the court to be unjust that the candidate forfeit a nomination or office or be deprived of any office of which the candidate is the incumbent. The decision of the court must be based upon the following:

(1) it appears from the evidence that the offense complained of was not committed by the candidate or with ~~his~~ the candidate's knowledge or consent or was committed without ~~his~~ the candidate's sanction or connivance and that all reasonable means for preventing the commission of ~~such~~ the offense at ~~such~~ the election were taken by and on behalf of the candidate;

(2) ~~that~~ the offense or offenses complained of were trivial, unimportant, and limited in character and ~~that~~ in all other respects ~~his~~ the candidate's participation in the election was free from ~~such~~ offenses or illegal acts; or

(3) ~~that~~ any act or omission of the candidate arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature and in any case did not arise from any ~~want~~ lack of good faith; ~~and under the circumstances it seems to the court to be unjust that the candidate forfeit his nomination or office or be deprived of any office of which he is the incumbent, then the nomination or election of the candidate is not by reason of such offense or omission complained of void, nor may the candidate be removed from or deprived of his office."~~

Section 114. Section 13-36-210, MCA, is amended to read:

"13-36-210. Punishment. If, upon the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared to be nominated to an office or elected to an office or to annul and set aside ~~such~~ the election or to remove any person from ~~his~~ office, it appears that ~~such~~ the person was guilty of any corrupt practice, illegal act, or undue influence in or about ~~such~~ the nomination or election, ~~he shall~~ the person must be punished by being deprived of the nomination or office, ~~as the case may be~~, and the vacancy ~~therein shall~~ must be filled in the manner provided by law. The only exceptions to this judgment ~~shall be~~ are those provided in 13-36-209. ~~Such~~ The judgment does not prevent the candidate or officer from being proceeded against by indictment or criminal information for any ~~such~~ act or acts."

Section 115. Section 13-36-211, MCA, is amended to read:

"13-36-211. When nomination or election not to be vacated. ~~Nothing in the~~ The ground of contest specified in 13-36-101(3) ~~is to~~ may not be ~~so~~ construed ~~as~~ to authorize a nomination or election to be set aside on account of illegal votes; unless it ~~appear either~~ appears:

(1) that the candidate or nominee whose right is contested had knowledge of or connived ~~at such~~ in the illegal votes; or

(2) that the number of illegal votes given to the person whose right to the nomination or office is

contested, if taken from ~~him~~ the person, would reduce the number of ~~his~~ legal votes for the person below the number of votes given to some other person for the same nomination or office, after deducting ~~therefrom~~ the illegal votes ~~which~~ that may be shown to have been given to ~~such~~ the other person."

Section 116. Section 13-37-104, MCA, is amended to read:

"13-37-104. Vacancy. (1) If for any reason a vacancy occurs in the position of commissioner, a successor ~~shall~~ must be appointed within 30 days as provided in 13-37-102(1) to serve out the unexpired term. ~~Every~~ Each nomination ~~shall~~ must be confirmed by the senate, but a nomination made while the senate is not in session ~~shall be~~ is effective as an appointment until the end of the next session.

(2) An individual who is selected to serve out the unexpired term of a preceding commissioner and who has served 3 years or more of an unexpired term is not eligible for reappointment.

(3) An individual who is selected to serve out the unexpired term of a preceding commissioner and who has served less than 3 years may be reappointed for a 6-year term as provided in 13-37-102(1)."

Section 117. Section 13-37-105, MCA, is amended to read:

"13-37-105. Impeachment and prosecution of commissioner. The commissioner may be removed from office by impeachment as provided in Title 5, chapter 5, part 4. ~~He~~ The commissioner may also be prosecuted by the appropriate county attorney for official misconduct as specified in 45-7-401."

Section 118. Section 13-37-116, MCA, is amended to read:

"13-37-116. Exercise of powers. The commissioner may exercise all of the powers conferred upon ~~him~~ the commissioner by law in any jurisdiction or political subdivision of the state."

Section 119. Section 13-37-119, MCA, is amended to read:

"13-37-119. Availability of information. (1) The commissioner shall make statements and other information filed with ~~his~~ the commissioner's office available for public inspection and copying during regular office hours and make copying facilities available free of charge or at a charge not to exceed the actual cost.

(2) The commissioner shall preserve statements and other information filed with ~~his~~ the commissioner's office for a period of 10 years from the date of receipt.

(3) The commissioner shall prepare and publish summaries of the statements received and ~~such~~ other reports ~~as he~~ that the commissioner considers appropriate.

(4) The commissioner shall provide for wide public dissemination of summaries and reports."

Section 120. Section 13-37-122, MCA, is amended to read:

"13-37-122. Judicial review of orders of noncompliance. A candidate or political treasurer ~~aggrieved by the issuance~~ who is the subject of an order of noncompliance may seek judicial review in the district court of the county in which the candidate resides or the county in which the political committee has its headquarters. All petitions for judicial review filed pursuant to this section ~~shall~~ must be expeditiously reviewed by the appropriate district court."

Section 121. Section 13-37-125, MCA, is amended to read:

"13-37-125. Powers of county attorney to investigate. (1) Nothing in chapter 35 of this title or this chapter prevents a county attorney from inspecting any records, accounts, or books ~~which~~ that must be kept pursuant to the provisions of chapter 35 of this title or this chapter that are held by a political committee or candidate involved in an election to be held within the county. However, the inspections must be conducted during reasonable office hours.

(2) A county attorney may:

- (a) administer oaths and affirmations;
- (b) subpoena witnesses and compel their attendance;
- (c) take evidence; and
- (d) require the production of any books, correspondence, memoranda, bank account statements of a political committee or candidate, or other records ~~which~~ that are relevant or material for the purpose of conducting any investigation pursuant to the provisions of chapter 35 of this title or this chapter."

Section 122. Section 13-37-201, MCA, is amended to read:

"13-37-201. Campaign treasurer. Except as provided in 13-37-206, each candidate and each political committee shall appoint one campaign treasurer and certify the full name and complete address of the campaign treasurer pursuant to this section. A candidate shall file the certification within 5 days after becoming a candidate. A political committee shall file the certification, which ~~shall~~ must include an organizational statement and ~~set forth~~ the name and address of all ~~other~~ officers, if any, within 5 days after it makes an expenditure or authorizes another person to make an expenditure on its behalf, whichever occurs first. The certification of a candidate or political committee ~~shall~~ must be filed with the commissioner and the appropriate election administrator as

specified for the filing of reports in 13-37-225."

Section 123. Section 13-37-202, MCA, is amended to read:

"13-37-202. Deputy campaign treasurers. (1) A campaign treasurer may appoint deputy campaign treasurers, but not more than one in each county in which the campaign is conducted. Each candidate and political committee shall certify the full name and complete address of the campaign treasurer and all deputy campaign treasurers with the office with whom the candidate or the political committee is required to file reports.

(2) Deputy campaign treasurers may exercise any of the powers and duties of a campaign treasurer as set forth in this chapter when specifically authorized in writing to do so by the campaign treasurer and the candidate, in the case of a candidate, or the campaign treasurer and the ~~chairman~~ presiding officer of the political committee, in the case of a political committee. The written authorization ~~shall~~ must be maintained as a part of the records required to be kept by the treasurer, as specified in 13-37-208."

Section 124. Section 13-37-203, MCA, is amended to read:

"13-37-203. Qualifications of campaign and deputy campaign treasurers. Any campaign or deputy campaign treasurer appointed pursuant to 13-37-201 and 13-37-202 ~~shall~~ must be a registered voter in this state. An individual may be appointed and serve as a campaign treasurer of a candidate and a political committee or two or more candidates and political committees. A candidate may ~~appoint himself as his~~ serve as the candidate's own campaign or deputy campaign treasurer. ~~No~~ An individual may not serve as a campaign or deputy campaign treasurer or perform any duty required of a campaign or deputy campaign treasurer of a candidate or political committee until ~~he~~ the individual has been designated and ~~his~~ the individual's name certified by the candidate or political committee."

Section 125. Section 13-37-204, MCA, is amended to read:

"13-37-204. Removal of campaign and deputy campaign treasurers. A candidate or political committee may remove ~~his~~ the candidate's or ~~its~~ committee's campaign or deputy campaign treasurer. The removal of any treasurer or deputy treasurer ~~shall~~ must immediately be reported to the officer with whom the name of the campaign treasurer was originally filed. In case of death, resignation, or removal of ~~his~~ the candidate's or ~~its~~ committee's campaign treasurer before compliance with any obligation of a campaign treasurer under this chapter, the candidate or political committee shall appoint a successor and certify the name and address of the successor as specified in 13-37-201."

Section 126. Section 13-37-205, MCA, is amended to read:

"13-37-205. Campaign depositories. Except as provided in 13-37-206, each candidate and each political committee shall designate one primary campaign depository for the purpose of depositing all contributions received and disbursing all expenditures made by the candidate or political committee. The candidate or political committee may also designate one secondary depository in each county in which an election is held and in which the candidate or committee participates. Deputy campaign treasurers may make deposits in and expenditures from secondary depositories when authorized to do so as provided in 13-37-202(2). Only a bank, credit union, savings and loan association, or building and loan association authorized to transact business in Montana may be designated as a campaign depository. The candidate or political committee shall file the name and address of each designated primary and secondary depository ~~so designated~~ at the same time and with the same officer with whom the candidate or committee files the name of ~~his~~ the candidate's or ~~its~~ committee's campaign treasurer pursuant to 13-37-201. ~~Nothing in this~~ This section shall does not prevent a political committee or candidate from having more than one campaign account in the same depository, but a candidate may not utilize ~~his~~ the candidate's regular or personal account in the depository as a campaign account."

Section 127. Section 13-37-206, MCA, is amended to read:

"13-37-206. Exception for certain school districts and certain special districts. (1) The provisions of this part, except 13-37-217, do not apply to candidates for the office of trustee of a school district, their political campaigns, and political committees organized to support or oppose a school district issue when the school district is:

- (a) a first-class district located in a county having a population of less than 15,000;
- (b) a second- or third-class district; or
- (c) a county high school district having a student enrollment of less than 2,000.

(2) The provisions of this part, except 13-37-217, do not apply to candidates, their political campaigns, and political committees organized to support or oppose an issue if the candidate is running for or the committee's issue involves ~~for certain special district offices, their political campaigns, and political committees organized to support or oppose a special district issue.~~

~~—— (3) As used in this section, "special district" means a unit of local government authorized by law to perform a single function or a limited number of functions. The term includes including but is not limited to a conservation district, a weed management district, a fire district, a community college district, a hospital district, an irrigation district, a sewer district, a transportation district, or a water district. The term also includes or any~~

district or other entity formed by interlocal agreement."

Section 128. Section 13-37-207, MCA, is amended to read:

"13-37-207. Deposit of contributions -- statement of campaign treasurer. (1) All funds received by the campaign treasurer or any deputy campaign treasurer of any candidate or political committee ~~shall~~ must be deposited prior to the end of the fifth business day following their receipt, ~~(Sundays and holidays excluded),~~ in a checking account, share draft account, share checking account, or negotiable order of withdrawal account in a campaign depository designated pursuant to 13-37-205.

(2) A statement showing the amount received from or provided by each person and the account in which the funds are deposited ~~shall~~ must be prepared by the campaign treasurer at the time the deposit is made. This statement along with the receipt form for cash contributions deposited at the same time and a deposit slip for the deposit ~~shall~~ must be kept by the treasurer as a part of ~~his~~ the treasurer's records."

Section 129. Section 13-37-208, MCA, is amended to read:

"13-37-208. Treasurer to keep records. (1) (a) ~~The~~ Except as provided in subsection (1)(b), the campaign treasurer of each candidate and each political committee shall keep detailed accounts ~~(current within not more than 10 days after the date of receiving a contribution or making an expenditure, except that accounts shall be current as of the 5th day before the date of filing of a report as specified in 13-37-226)~~ of all contributions received and all expenditures made by or on behalf of the candidate or political committee that are required to be set forth in a report filed under this chapter. The accounts must be current within not more than 10 days after the date of receiving a contribution or making an expenditure.

(b) The accounts described in subsection (1)(a) must be current as of the 5th day before the date of filing of a report as specified in 13-37-226.

(2) Accounts of a deputy campaign treasurer ~~shall~~ must be transferred to the treasurer of a candidate or political committee before the candidate or political committee finally closes its books or when the position of a deputy campaign treasurer becomes vacant and no successor is appointed.

(3) Accounts kept by a campaign treasurer of a candidate or political committee ~~shall~~ must be preserved by the campaign treasurer for a period coinciding with the term of office for which the person was a candidate or for a period of 4 years, whichever is longer."

Section 130. Section 13-37-215, MCA, is amended to read:

"13-37-215. Petty cash funds allowed. (1) The campaign treasurer for each candidate or political committee is authorized to withdraw the following amount each week from the primary depository for the purpose of providing a petty cash fund for the candidate or political committee:

(a) for all statewide candidates and political committees filing reports pursuant to 13-37-226(1), \$100 per week; and

(b) for all other candidates and political committees, \$25 per week.

(2) The petty cash fund may be spent for office supplies, transportation expenses, postage stamps, and other necessities in an amount of less than \$25. Petty cash ~~shall~~ may not be used for the purchase of time, space, or services from any communications medium."

Section 131. Section 13-37-217, MCA, is amended to read:

"13-37-217. Contributions in name of undisclosed principal. ~~No~~ A person may not make a contribution of ~~his~~ the person's own money or of another person's money to any other person in connection with any election in any other name than that of the person who in truth supplies ~~such~~ the money. ~~No~~ A person may not knowingly receive ~~such~~ a contribution or enter or cause the ~~same~~ contribution to be entered in ~~his~~ the person's accounts or records in another name than that of the person by whom it was actually furnished."

Section 132. Section 13-37-225, MCA, is amended to read:

"13-37-225. Reports of contributions and expenditures required. (1) Except as provided in 13-37-206, each candidate and political committee shall file periodic reports of contributions and expenditures made by or on the behalf of a candidate or political committee. All reports required by this chapter ~~shall~~ must be filed with the commissioner and with the election administrator of the county in which a candidate is a resident or the political committee has its headquarters. However, where residency within a district, county, city, or town is not a prerequisite for being a candidate, copies of all reports ~~shall~~ must be filed with the election administrator of the county in which the election is to be held or, if the election is to be held in more than one county, with the election administrator in the county that the commissioner specifies.

(2) In lieu of all contribution and expenditure reports required by this chapter, the commissioner shall accept copies of the reports filed by candidates for congress and president of the United States and their political committees pursuant to the requirements of federal law."

Section 133. Section 13-37-228, MCA, is amended to read:

"13-37-228. Time periods covered by reports. Reports filed under 13-37-225 and 13-37-226 must be filed to cover the following time periods even though no contributions or expenditures may have been received or made during the period:

(1) The initial report must cover all contributions received or expenditures made by a candidate or political committee prior to the time that a person became a candidate or a political committee as defined in 13-1-101 until the fifth day before the date of filing of the appropriate initial report pursuant to ~~subsections (1) through (5)~~ of 13-37-226(1) through (5). Reports filed by political committees organized to support or oppose a statewide ballot issue must disclose all contributions received and expenditures made prior to the time an issue becomes a ballot issue by transmission of the petition to the proponent of the ballot issue or referral by the secretary of state, even if the issue subsequently fails to garner sufficient signatures to qualify for the ballot.

(2) Subsequent periodic reports must cover the period of time from the closing of the previous report to 5 days before the date of filing of a report pursuant to 13-37-226(1) through (5).

(3) Closing reports must cover the period of time from the last periodic report to the final closing of the books of the candidate or political committee. A candidate or political committee shall file a closing report following an election in which the candidate or political committee participates whenever all debts and obligations are ~~extinguished~~ satisfied and no further contributions or expenditures will not be received or made ~~which that~~ relate to the campaign; unless the election is a primary election and the candidate or political committee will participate in the general election."

Section 134. Section 13-37-231, MCA, is amended to read:

"13-37-231. Reports to be certified as true and correct. (1) A report required by this chapter to be filed by a candidate or political committee ~~shall~~ must be verified as true and correct by the oath or affirmation of the individual filing the report. The individual filing the report ~~shall~~ must be the candidate or an officer of a political committee who is on file as an officer of the committee with the commissioner.

(2) A copy of a report or statement filed by a candidate or political committee ~~shall~~ must be preserved by the individual filing it for a period coinciding with the term of office for which the person was a candidate or for a period of 4 years, whichever is longer."

Section 135. Section 13-38-101, MCA, is amended to read:

"13-38-101. Powers of parties. Each political party ~~shall have power to~~ may:

(1) make its own rules;

- (2) provide for and select its own offices;
- (3) call conventions and provide for the number and qualification of delegates;
- (4) adopt platforms;
- (5) provide for selection of delegates to national conventions;
- (6) provide for the nomination of presidential electors;
- (7) provide for the selection of national ~~committeemen and women~~ committee representatives;
- (8) make nominations to fill vacancies occurring among its candidates nominated for offices to be filled by the state at large or by any district consisting of more than one county where ~~such the~~ vacancies are caused by death, resignation, or removal from the electoral district;
- (9) perform all other functions inherent in ~~such an~~ a party organization."

Section 136. Section 13-38-201, MCA, is amended to read:

"13-38-201. Election of ~~committeemen~~ committee representatives at primary. (1) Except as provided in subsection (4), each political party shall elect at each primary election one person of each sex to serve as ~~committeemen~~ committee representatives for each election precinct. The ~~committeemen~~ committee representatives must be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for ~~committeeman~~ committee representative by a written statement, signed by the elector, notarized, and filed in the office of the registrar within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) Except as provided in subsection (4), the names of candidates for precinct ~~committeeman~~ committee representative of each political party must appear on the party ticket in the same manner as other candidates and are voted for in the same manner as other candidates.

(4) If only one person of each sex has been nominated to fill a precinct's positions, the election administrator may decline to include that precinct's election in the primary election. If a precinct's election is not held during the primary election pursuant to this subsection, the county governing body shall declare elected by acclamation the candidates nominated for that precinct's ~~committeemen~~ committee representative positions."

Section 137. Section 13-38-202, MCA, is amended to read:

"13-38-202. ~~Committeemen~~ Committee representatives as party representatives -- county and city central committees. (1) Each ~~committeeman~~ committee representative shall represent ~~his~~ the representative's political party for the precinct in all ward or subdivision committees formed.

(2) The ~~committeemen~~ committee representatives in each precinct ~~shall~~ constitute the county central committee of the respective political parties.

(3) ~~Committeemen~~ Committee representatives who reside within the limits of a city are ex officio the city central committee of their respective political parties and have the power to make their own rules not inconsistent with those of the county central committee. However, the county central committee has the power to fill vacancies in the city central committee.

(4) Each precinct ~~committeeman~~ committee representative ~~has~~ serves a term of 2 years from the date of ~~his~~ election.

(5) If a vacancy occurs, the remaining members of the county committee may select a precinct resident to fill the vacancy."

Section 138. Section 13-38-203, MCA, is amended to read:

"13-38-203. Powers of county and city central committees -- role of state central committee where no county central committee exists. (1) The county and city central committee may:

(a) make rules for the government of its political party in each county not inconsistent with any of the provisions of the election laws of this state or the rules of its state political party;

(b) elect two county members of the state central committee, one of ~~whom shall be a man and one of whom shall be a woman~~ each gender, elect the members of the congressional committee, and fill all vacancies and make rules in their jurisdiction.

(2) If there is no county central committee, the state central committee shall appoint a county central committee."

Section 139. Section 13-38-205, MCA, is amended to read:

"13-38-205. Organization and operation of committee. (1) The committee shall meet prior to the state convention of its political party and organize by electing a ~~chairman~~ presiding officer and one or more ~~vice-chairmen~~ vice presiding officers. The ~~chairman~~ gender of the presiding officer or first vice-chairman shall ~~and the vice presiding officer may not be a woman~~ the same. The committee shall elect a secretary and other officers as ~~are proper~~ necessary. It is not necessary for the officers to be precinct ~~committeemen~~ committee representatives.

(2) The committee may select managing or executive committees and authorize subcommittees to exercise all powers conferred upon the county, city, state, and congressional central committees by the election

laws of this state.

(3) The ~~chairman~~ presiding officer of the county central committee shall call the central committee meeting and not less than 4 days before the date of the central committee meeting shall publish the call in a newspaper published at the county seat and mail a copy of the call to each precinct ~~committeeman~~ committee representative. If party rules permit the use of a proxy, ~~no~~ a proxy may not be recognized unless it is held by an elector of the precinct of the ~~committeeman~~ committee representative executing it.

(4) The county ~~chairman~~ presiding officer of the party shall preside at the county convention. No person other than a duly elected or appointed ~~committeeman~~ committee representative or officer of the committee is entitled to participate in the proceedings of the committee.

(5) If a ~~committeeman~~ committee representative is absent, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent the precinct in the convention.

(6) The county convention shall elect delegates and alternate delegates to the state convention under rules of the state party. The ~~chairman~~ presiding officer and secretary of the county convention shall issue and sign certificates of election of the delegates."

Section 140. Section 15-1-104, MCA, is amended to read:

"15-1-104. Treasurers to destroy certain tax records. The treasurer of each county, city, or town in the state of Montana may destroy all tax records in ~~his~~ the treasurer's possession more than 30 years old."

Section 141. Section 15-1-204, MCA, is amended to read:

"15-1-204. Consultation with governor. The department shall consult and confer with the governor of the state upon the subject of taxation, the administration of the laws relating thereto, and the progress of the work of the department and furnish the governor ~~such~~ with assistance ~~as he~~ that the governor may require."

Section 142. Section 15-1-601, MCA, is amended to read:

"15-1-601. Compact adopted -- text. The Multistate Tax Compact is ~~hereby~~ enacted into law and entered into with all jurisdictions legally joining ~~therein~~ in the compact, in the form substantially as set forth ~~herein~~ below in this section. Article VIII of the Multistate Tax Compact relating to interstate audits is specifically adopted.

Article I. Purposes

The purposes of this compact are to:

(1) facilitate proper determination of state and local tax liability of multistate taxpayers, including the

equitable apportionment of tax bases and settlement of apportionment disputes;

(2) promote uniformity or compatibility in significant components of tax systems;

(3) facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration;

(4) avoid duplicative taxation.

Article II. Definitions

As used in this compact:

(1) "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(2) "subdivision" means any government unit or special district of a state;

(3) "taxpayer" means any corporation, partnership, firm, association, governmental unit or agency, or person acting as a business entity in more than one state;

(4) "income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions;

(5) "capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety;

(6) "gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax;

(7) "sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession, or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller or which is customarily separately stated from the sales price but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles;

(8) "use tax" means a nonrecurring tax, other than a sales tax, which:

(a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession, or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property; and

(b) is complementary to a sales tax;

(9) "tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV, and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

Article III. Elements Of Income Tax Laws

Taxpayer Option, State and Local Taxes

(1) Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his the taxpayer's income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this subsection, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

Taxpayer Option, Short Form

(2) Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of \$100,000 may elect to report and pay any tax due on the basis of a percentage of such volume and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in 5 years, may adjust the \$100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the \$100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this subsection.

Coverage

(3) Nothing in this article relates to the reporting or payment of any tax other than an income tax.

Article IV. Division Of Income

(1) As used in this article, unless the context otherwise requires:

(a) "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations;

(b) "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed;

(c) "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services;

(d) "financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company;

(e) "nonbusiness income" means all income other than business income;

(f) "public utility" means any business entity:

(i) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water, or steam; and

(ii) whose rates of charges for goods or services have been established or approved by a federal, state, or local government or governmental agency;

(g) "sales" means all gross receipts of the taxpayer not allocated under subsections of this article;

(h) "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof;

(i) "this state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

(2) Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion ~~his~~ the taxpayer's net income as provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of ~~his~~ the taxpayer's income from activities subject to this article, the taxpayer may elect to allocate and apportion ~~his~~ the taxpayer's entire net

income as provided in this article.

(3) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

(a) in that state ~~he~~ the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(b) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(4) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (5) through (8) of this article.

(5) (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state:

(i) if and to the extent that the property is utilized in this state; or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(6) (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) the property had a situs in this state at the time of the sale; or

(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(7) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(8) (a) Patent and copyright royalties are allocable to this state:

(i) if and to the extent that the patent or copyright is utilized by the payer in this state; or

(ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(9) All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is 3.

(10) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

(11) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(12) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(13) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

(14) Compensation is paid in this state if:

(a) the individual's service is performed entirely within the state;

(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and:

(i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(15) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(16) Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and:

(i) the purchaser is the United States government; or

(ii) the taxpayer is not taxable in the state of the purchaser.

(17) Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(18) If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

Article V. Elements Of Sales And Use Tax Laws Tax Credit

(1) Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by ~~him~~ the purchaser with respect to

the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates -- Vendors May Rely

(2) Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

Article VI. The Commission Organization and Management

(1) (a) The Multistate Tax Commission is hereby established. It shall be composed of one member from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency, the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate, but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or ~~his~~ the attorney general's designee or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under subsection (1)(e) of this article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings and shall provide for the giving of notice of annual, regular, and special meetings. Notice of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a ~~chairman~~ presiding officer, a ~~vice-chairman~~ vice presiding officer, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix ~~his~~ the executive director's duties and compensation. The executive

director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel, or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees

(2) (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the ~~chairman~~ presiding officer, ~~vice-chairman~~ vice presiding officer, treasurer, and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers

- (3) In addition to powers conferred elsewhere in this compact, the commission shall have power to:
- (a) study state and local tax systems and particular types of state and local taxes;
 - (b) develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration;
 - (c) compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws;
 - (d) do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance

(4) (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this subsection.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under subsection (1)(i) of this article, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under subsection (1)(i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified

or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any person authorized by the commission.

(f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VII. Uniform Regulations And Forms

(1) Whenever any two or more party states or subdivisions of party states have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

(2) Prior to the adoption of any regulation, the commission shall:

(a) as provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings;

(b) afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

(3) The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

Article VIII. Interstate Audits

(1) This article shall be in force only in those party states that specifically provide therefor by statute.

(2) Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records, or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs

incurred in making the audit.

(3) The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property, or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, ~~he~~ the person may be required to attend for such purpose at any time and place fixed by the commission within the state of which ~~he~~ the person is a resident, provided that such state has adopted this article.

(4) The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article, and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this subsection apply only to courts in a state that has adopted this article.

(5) The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

(6) Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions, or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

(7) Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.

(8) In no event shall the commission make any charge against a taxpayer for an audit.

(9) As used in this article, "tax", in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

Article IX. Arbitration

(1) Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of Article VII.

(2) The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

(3) Whenever a taxpayer who has elected to employ Article IV or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation if ~~he~~ the taxpayer is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject ~~him~~ the taxpayer to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein and agrees to be bound thereby.

(4) The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this subsection shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residents within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this subsection.

(5) The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence, or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

(6) The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

(7) The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue

commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoenas, and the court may punish failure to obey the order as a contempt. The provisions of this subsection apply only in states that have adopted this article.

(8) Unless the parties otherwise agree, the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless ~~he~~ the member is required on account of ~~his~~ the service to forego the regular compensation attaching to ~~his~~ the member's public employment, but any such board member shall be entitled to expenses.

(9) The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

(10) The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board, the board's written statement of its reasons therefor, the record of the board's proceedings, and any other documents required by the arbitration rules of the commission to be filed.

(11) The commission shall publish the determinations of boards, together with the statements of the reasons therefor.

(12) The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

(13) Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceedings.

Article X. Entry Into Force And Withdrawal

(1) This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(3) No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

Article XI. Effect On Other Laws And Jurisdiction

Nothing in this compact shall be construed to:

(1) affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III, subsection (2), of this compact;

(2) apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided that the definition of "tax" in Article VIII, subsection (9), may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to Article VI, subsection (3), may apply;

(3) withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation, or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body;

(4) supersede or limit the jurisdiction of any court of the United States.

Article XII. Construction And Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters."

Section 143. Section 15-1-603, MCA, is amended to read:

"15-1-603. Alternate. The member representing this state on the multistate tax commission may be represented ~~thereon~~ by an alternate designated by ~~him~~ the member."

Section 144. Section 15-1-702, MCA, is amended to read:

"15-1-702. Issuance of warrant. (1) If a tax administered and collected by the department is not paid within 30 days of the due date, the department may issue a notice to the taxpayer ~~notifying him~~ that unless payment is received within 30 days of the date of the notice a warrant for distraint may be issued. Thirty days after the date of the notice, the department may issue a warrant if payment is not received.

(2) Use of the procedure to issue a warrant under this section does not preclude use of the procedure under 15-1-703 if the department determines that it is appropriate to utilize 15-1-703."

Section 145. Section 15-1-705, MCA, is amended to read:

"15-1-705. Review. (1) Except as provided in 15-1-707, a taxpayer has the right to a review of the tax liability pursuant to 15-1-211 prior to execution on a filed warrant for distraint.

(2) The department must provide notice of the right to review to the taxpayer. This notice may be given prior to the notice referred to in 15-1-702. If the taxpayer notified the department that ~~he~~ the taxpayer disagrees with an assessment as provided in 15-1-211, the warrant may not be executed upon until after the review process and any appeals are completed."

Section 146. Section 15-1-707, MCA, is amended to read:

"15-1-707. Emergency execution upon warrant. (1) The department may execute upon a filed warrant for distraint without providing an opportunity for a hearing prior to execution if the department determines that the collection of the tax is jeopardized because of the delay imposed by the hearing requirement.

(2) When the provisions of this section are utilized, the department ~~must~~ shall notify the taxpayer and inform the taxpayer that ~~he~~ the taxpayer has a right to request a hearing to be held subsequent to execution. A hearing, if desired, must be requested in writing within 30 days of the date of the notice and, if requested, must be held as soon as possible. The commencement of a proceeding under 15-1-705 does not preclude the use of the provisions of this section if the department determines that ~~such~~ the action is appropriate."

Section 147. Section 15-2-101, MCA, is amended to read:

"15-2-101. State tax appeal board -- appointment of members -- term of office. ~~On July 1, 1973, there shall be created~~ There is a state tax appeal board ~~which shall be~~ composed of three members ~~to be~~ appointed by the governor for staggered terms ~~by and with the advice and consent of the senate;~~ provided, ~~however~~ However, a member ~~so~~ appointed may serve until the next regular session of the legislature without ~~such the~~ the advice and consent of the senate. Each ~~succeeding~~ member shall hold ~~his~~ office for a term of 6 years

and until ~~his~~ a successor shall be appointed and ~~shall have~~ qualified. ~~Any~~ A vacancy ~~shall~~ must be filled by the governor subject to confirmation by the senate during the next legislative session. Succeeding appointments, except when made to fill a vacancy, ~~shall~~ must be made on or before January 31 during the session of the legislature ~~next~~ preceding the commencement of the term for which the appointment is made."

Section 148. Section 15-2-103, MCA, is amended to read:

"15-2-103. Organization, quorum, sessions. The members of the state tax appeal board shall, without delay, meet at the state capital, and the governor shall designate one of their members as ~~chairman~~ presiding officer. A majority of ~~said the~~ board ~~shall constitute~~ constitutes a quorum. ~~It shall be~~ The board is in continuous session and must be open for the transaction of business every day except Saturdays, Sundays, and legal holidays; and the sessions of ~~said the~~ board ~~shall~~ must stand and be ~~deemed~~ considered to be adjourned from day to day without formal entry ~~thereof~~ upon its records. The board may hold sessions or conduct hearings and investigations at other places than the capital when ~~deemed~~ considered necessary to facilitate the performance of its duties or to accommodate parties in interest."

Section 149. Section 15-2-104, MCA, is amended to read:

"15-2-104. Employees -- expenses -- minutes -- rules. The state tax appeal board may appoint a secretary and employ ~~such~~ other persons as experts, assistants, clerks, and stenographers as may be necessary to perform the duties that may be required of it. The total expenses of ~~such the~~ board ~~shall~~ may not exceed, in the aggregate during any fiscal year, the amount appropriated for the board for all purposes by the legislature for ~~such that~~ year. The secretary shall keep full and correct minutes of the transactions and proceedings of ~~said the~~ board, ~~shall have authority to~~ and may administer oaths and perform ~~such~~ other duties as may be required ~~of him~~. The board may ~~make all needful~~ adopt rules for the orderly and methodical performance of its duties as a tax appeal board and for conducting hearings and other proceedings before it."

Section 150. Section 15-2-304, MCA, is amended to read:

"15-2-304. Petition for interlocutory adjudication. (1) (a) Either party, within 30 days of the filing of an answer to an appeal before the state tax appeal board, may file a petition for an interlocutory adjudication under 15-2-305. The petition may be filed with the district court:

- (i) in the first judicial district;
- (ii) in the county in which the taxable property is located; or

(iii) in cases not involving property taxes, in the county where the taxpayer resides or has ~~his~~ the taxpayer's principal place of business in the state.

(b) The petition may raise any question involving procedure, the admissibility of evidence, or a substantive question of law raised by the pleadings within 30 days of filing an answer to the appeal with the state tax appeal board.

(c) A nonpetitioning party shall respond to the petition within 30 days after service of the petition. The response may raise any question not raised in the petition involving procedure, the admissibility of evidence, or a substantive question of law.

(2) After the 30-day period specified in subsection (1)(b) but before arguments have been heard, the parties to the proceeding may jointly petition a district court to make an interlocutory adjudication as provided under 15-2-305. A petition for an adjudication must be signed by each party to the proceeding.

(3) In a petition under subsection (1) or (2), one party must be designated as the petitioner and every other party must be designated a respondent. The court may in its discretion grant a petition if it appears that the issues presented involve procedure, the admissibility of evidence, or a substantive question of law and do not require the determination of questions of fact and that the controversy would be more expeditiously resolved by an adjudication. If the court grants a petition, it shall rule on all issues presented in the petition and the response, regardless of whether a ruling on less than all of the issues is dispositive of the case."

Section 151. Section 15-6-225, MCA, is amended to read:

"15-6-225. Small electrical generation equipment exemption. (1) (a) Machinery and equipment used in a qualifying generation facility that has a nameplate capacity of less than 1 megawatt of electrical energy ~~is~~ are exempt from taxation for 5 years after the generation of electricity begins.

(b) To qualify for the exemption under this section, the generation facility must be powered by an alternative renewable energy source.

(2) For the purposes of this section:

(a) "alternative renewable energy source" means a form of energy or matter that is capable of being converted into forms of energy useful to ~~markind~~ humanity, including electricity, and the technology necessary to make this conversion when the source is not exhaustible in terms of this planet and when the source or technology is not in general commercial use. The term includes but is not limited to:

(i) solar energy;

(ii) wind energy;

- (iii) geothermal energy;
- (iv) conversion of biomass;
- (v) fuel cells that do not require hydrocarbon fuel;
- (vi) small hydroelectric generators producing less than 1 megawatt; or
- (vii) methane from solid waste.

(b) "generation facility" includes any combination of a generator or generators, associated prime movers, and other associated machinery and equipment that are normally operated together to produce electric power, but does not include the owner's business improvements and personal property."

Section 152. Section 15-8-501, MCA, is amended to read:

"15-8-501. Assessment of unknown or absent owners. (1) If the owner or claimant of any property not listed by another person is absent or unknown, the department ~~must~~ shall make an estimate of the value of ~~such~~ the property.

(2) If the name of the absent owner is known to the department, the property must be assessed in ~~his~~ the owner's name; ~~and,~~ if unknown, the property must be assessed to unknown owners."

Section 153. Section 15-8-502, MCA, is amended to read:

"15-8-502. Representative status to be designated. When a person is assessed as agent, trustee, bailee, guardian, executor, or administrator, ~~his~~ the person's representative designation must be added to ~~his~~ the person's name and the assessment entered on a separate line from ~~his~~ the person's individual assessment."

Section 154. Section 15-16-503, MCA, is amended to read:

"15-16-503. Collection by suit of personal property taxes when taxpayer moves to another county. If any person ~~removes~~ moves from one county to another after being assessed on personal property, the treasurer of the county in which ~~he~~ the person was assessed may sue for and collect the ~~same~~ the taxes in the name of the county where the assessment was made."

Section 155. Section 15-17-318, MCA, is amended to read:

"15-17-318. Assignment of municipality's interest. (1) At any time after a parcel of land has been acquired by a municipality, as provided in 15-17-317, and has not been redeemed, the treasurer of the municipality shall assign all the rights of the municipality in the property to any person who pays:

- (a) the purchase price paid by the municipality;
- (b) the delinquent assessments;
- (c) interest on the purchase price and delinquent assessments at the rate of 5/6 of 1% a month; and
- (d) penalties and costs as provided by law.

(2) The treasurer of the municipality shall execute to ~~such~~ the person a certificate of sale for the parcel, which may be in substantially the form provided in 15-17-212 for the assignment of the interests of the county. If the certificate of sale becomes lost or accidentally destroyed by the assignee, the treasurer of the municipality shall issue a duplicate certificate to the assignee after the assignee delivers to the treasurer evidence satisfactory to ~~him~~ the treasurer, including an affidavit of the assignee, that the certificate has been lost or destroyed.

(3) An assignment by a municipality under this section discharges the trust created under 15-17-317. The municipality may also discharge the trust created under 15-17-317 by paying into the improvement fund the amount of the delinquent assessments and interest accrued ~~thereon~~ on the assessments."

Section 156. Section 15-24-1101, MCA, is amended to read:

"15-24-1101. Federal property held under contract by private person subject to taxation. Real ~~and/or~~ or personal property of the United States or any department or agency ~~thereof~~ of the United States held under contract of sale, lease, or other interest or estate ~~therein~~ in the property by any person for ~~his~~ the person's exclusive use ~~shall be~~ is subject to assessment for ad valorem property taxation as provided in this part; ~~provided that~~ However, this part ~~shall~~ does not apply to real property held and in immediate use and occupation by this state or any county, municipal corporation, or political subdivision ~~therein~~ in this state."

Section 157. Section 15-24-1201, MCA, is amended to read:

"15-24-1201. State and other exempt property held under contract -- when taxable. Property of the state of Montana or any department, agency, or subdivision ~~thereof~~ of the state or any other property not subject to ad valorem tax to the owner ~~thereof~~ of the property by reason of the legal status of the owner, held under contract of sale or lease with option to purchase with lease ~~moneys~~ money applicable to the purchase price by any person for ~~his~~ the person's exclusive use, ~~shall be~~ is subject to assessment to the purchaser or lessee for ad valorem property taxation."

Section 158. Section 15-24-1206, MCA, is amended to read:

"15-24-1206. County suit for delinquent privilege tax. A tax due and unpaid under 15-24-1203

through 15-24-1205 ~~shall constitute~~ constitutes a debt due the county for and on behalf of the various taxing units concerned in the tax. If the tax imposed by 15-24-1203 through 15-24-1205 or any portion ~~thereof~~ of the tax is not paid at the time the ~~same tax~~ becomes delinquent, the county auditor may issue a warrant in the name of the county directed to the clerk of the district court in ~~his~~ the clerk's county, and ~~thereupon~~ the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent taxpayer mentioned in the warrant and, in the appropriate columns, the amount of tax, penalties, interest, and other costs for which the warrant is issued and the date when ~~such the~~ warrant is filed; ~~and thereupon the~~ The docketed warrant ~~so docketed shall have~~ has the force and effect of a judgment ~~duly~~ rendered by a district court and docketed in the office of the clerk ~~thereof~~, and the county ~~shall have~~ has the same remedies against the possessor user as any other judgment docket."

Section 159. Section 15-24-2403, MCA, is amended to read:

"15-24-2403. Expanding industry taxable value decrease -- application -- approval -- reports. (1)

~~After December 31, 1991, an~~ An existing industry with qualifying property that represents an expansion of the industry is entitled to receive a decrease in the tax rate for class eight property if the property results in the hiring of full-time qualifying employees for each year in which the taxable value decrease is in effect.

(2) A person, firm, or other group seeking to qualify its property for the taxable value decrease under subsection (1) shall apply to the department ~~of revenue~~ on a form provided by the department. The application must include:

- (a) the description of the personal property that may qualify for the taxable value decrease;
- (b) the date on which the qualifying property is intended to be operational;
- (c) the rate of pay and number of existing employees and new employees to be used in the operation of the qualifying property;
- (d) a statement that the new employees are in addition to the existing workforce of the industry and the specific responsibilities of each new employee; and
- (e) a statement that all the applicant's taxes are paid in full.

(3) The department shall make an initial determination as to whether the industry qualifies for the taxable value decrease.

(4) (a) If the department determines that the property qualifies for a taxable value decrease, the governing body of the affected county, consolidated government, incorporated city or town, or school district shall give due notice as defined in 76-15-103 and hold a public hearing. Each governing body may either approve or

disapprove the grant of taxable value decrease. A governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) The resolution provided for in subsection (4)(a) must include the document that grants approval of the application that was submitted to the department by the taxpayer seeking the taxable value decrease.

(5) The tax reduction described in subsection (1) applies to:

(a) the number of mills levied and assessed by each governing body approving the benefit over which the governing body has sole discretion; and

(b) statewide levies if the governing body approving the tax reduction is a county, consolidated government, or incorporated city or town.

(6) The number of new employees used by the department to calculate the taxable value decrease in subsection (7) must be determined by the wages paid to qualifying employees. A qualifying employee paid the amount of the average wage as determined by the quarterly statistical report published by the department of labor and industry is considered one new employee. Qualifying employees are considered equivalent new employees if they are paid three-quarters of the average wage or more. The qualifying employee is the equivalent of a new employee in the same fraction that his the qualifying employee's wages are to the average wage, but a qualifying employee may not be considered more than two new employees.

(7) (a) Qualifying property is entitled to a decrease in the taxable rate of class eight property based upon a percentage difference between a possible low rate of 3% and a high rate of the existing class eight property tax rate. The reduced taxable value rate is determined by calculating the inverse of the number of equivalent new employees divided by the number of existing employees and multiplying the product of that calculation by the decimal equivalent of the tax rate for class eight property.

(b) For each year that the taxable value decrease is in effect, the taxpayer shall report by March 1 to the department, on forms prescribed by the department, the wages of and the number of qualifying employees that are used in the operation of the qualifying property for which the taxable value decrease was granted."

Section 160. Section 15-30-113, MCA, is amended to read:

"15-30-113. General definition of dependent. (1) For purposes of 15-30-112, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the ~~taxable tax~~ year of the taxpayer begins, was received from the taxpayer:

(a) a son or daughter of the taxpayer or a descendant of either;

(b) a stepson or stepdaughter of the taxpayer;

- (c) a brother, sister, stepbrother, or stepsister of the taxpayer;
- (d) the father or mother of the taxpayer or an ancestor of either;
- (e) a stepfather or stepmother of the taxpayer;
- (f) a son or daughter of a brother or sister of the taxpayer;
- (g) a brother or sister of the father or mother of the taxpayer;
- (h) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer;
- (i) an individual who, for the ~~taxable tax~~ year of the taxpayer, has as ~~his~~ the individual's principal place of abode the home of the taxpayer and is a member of the taxpayer's household; or
- (j) an individual who:
 - (i) is a descendant of a brother or sister of the father or mother of the taxpayer;
 - (ii) for the ~~taxable tax~~ year of the taxpayer received institutional care required by reason of a physical or mental disability; and
 - (iii) before receiving ~~such~~ the institutional care, was a member of the same household as the taxpayer.
- (2) For purposes of 15-30-112 and this section:
 - (a) the terms "brother" and "sister" include a brother or sister by the half blood;
 - (b) in determining whether any of the relationships specified in this section exist, a legally adopted child of an individual ~~shall~~ must be treated as a child of ~~such~~ the individual by blood."

Section 161. Section 15-30-129, MCA, is amended to read:

"15-30-129. Tax credit for providing disability insurance for employees. There is a credit against the taxes otherwise due under this chapter allowable to an employer for the amount of premiums for disability insurance paid by the employer for ~~his~~ the employer's employees. The tax credit must be computed in accordance with the provisions of 15-31-132."

Section 162. Section 15-30-132, MCA, is amended to read:

"15-30-132. Change from nonresident to resident or vice versa. If a taxpayer changes ~~his~~ status from that of resident to that of nonresident or from that of nonresident to that of resident during the ~~taxable tax~~ year, ~~he~~ the taxpayer shall file a return. If a resident obtains employment outside the state, income from ~~such~~ the employment is taxable in Montana."

Section 163. Section 15-30-134, MCA, is amended to read:

"15-30-134. Determination of marital status. For purposes of this chapter:

- (1) the determination of whether an individual is married ~~shall~~ must be made as of the close of ~~his taxable~~ the individual's tax year, except that if ~~his~~ the individual's spouse dies during ~~his taxable~~ the individual's tax year, ~~such~~ the determination ~~shall~~ must be made as of the time of ~~such~~ death; and
- (2) an individual legally separated from ~~his~~ the individual's spouse under a decree of divorce or of separate maintenance ~~shall~~ may not be considered as married."

Section 164. Section 15-30-135, MCA, is amended to read:

"15-30-135. Tax on beneficiaries or fiduciaries of estates or trusts. (1) A tax ~~shall~~ must be imposed upon either the fiduciaries or the beneficiaries of estates and trusts as ~~hereinafter~~ provided in this section, except to the extent ~~such that~~ estates and trusts ~~shall~~ must be held for educational, charitable, or religious purposes; ~~which~~ The tax ~~shall~~ must be levied, collected, and paid annually with respect to the income of estates or of any kind of property held in trust, including:

- (a) income received by estates of deceased persons during the period of administration or settlement of the estate;
- (b) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;
- (c) income held for future distribution under the terms of the will or trust; and
- (d) income ~~which that~~ is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of a minor, to be held or distributed as the court may direct.

(2) The fiduciary ~~shall be~~ is responsible for making the return of income for the estate or trust for which ~~he~~ the fiduciary acts, whether the fiduciary or the beneficiaries are taxable with reference to the income of ~~such~~ the estate or trust. In cases under subsections ~~(a) and (d) of subsection~~ (1)(a) and (1)(d), the fiduciary shall include in the return a statement of each beneficiary's distributive share of net income, whether or not distributed before the close of the ~~taxable~~ tax year for which the return is made.

(3) In cases under subsections ~~(a), (b), and (c) of subsection (1)~~ (1)(a), (1)(b), and (1)(c), the tax ~~shall~~ must be imposed upon the fiduciary of the estate or trust with respect to the net income of the estate or trust and ~~shall~~ must be paid by the fiduciary. If the taxpayer's net income for the ~~taxable~~ tax year of the estate or trust is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then ~~his~~ the taxpayer's distributive share of the net income of the estate or trust for any

accounting period of ~~such the~~ estate or trust ending within the fiscal or calendar year ~~shall~~ must be computed upon the basis on which ~~such the~~ beneficiary's net income is computed. In ~~such those~~ cases, a beneficiary who is not a resident ~~shall~~ must be taxable with respect to ~~his the beneficiary's~~ income derived through ~~such the~~ estate or trust only to the extent provided in 15-30-131 for individuals other than residents.

(4) The fiduciary of a trust created by an employer as a part of a stock bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of ~~his the employer's~~ employees, to which contributions are made by ~~such the~~ employer or employees, or both, for the purpose of distributing to ~~such the~~ employees the earnings and principal of the fund accumulated by the trust in accordance with ~~such the~~ plan, ~~shall are~~ not be taxable under this section, but any amount contributed to ~~such the~~ fund by the employer and all earnings of ~~such the~~ fund ~~shall~~ must be included in computing the income of the distributee in the year in which distributed or made available to ~~him the distributee~~.

(5) Where any part of the income of a trust other than a testamentary trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor, ~~(except policies of insurance irrevocably payable for the purposes and in the manner specified relating to the so-called "charitable contribution" deduction),~~ or to the payment of premiums upon policies of life insurance under which the grantor is the beneficiary, ~~such the~~ part of the income of the trust ~~shall~~ must be included in computing the net income of the grantor."

Section 165. Section 15-30-143, MCA, is amended to read:

"15-30-143. Return of fiduciary. Every fiduciary, ~~(except receivers appointed by authority of law in possession of only part of the property of a taxpayer),~~ shall make a return for the individual or estate or trust from whom ~~he the fiduciary~~ acts. Fiduciaries required to make returns under this section ~~shall be~~ are subject to all the provisions of this chapter ~~which that~~ apply to taxpayers."

Section 166. Section 15-30-156, MCA, is amended to read:

"15-30-156. Deduction for contributions to child abuse and neglect prevention program. A taxpayer filing an individual income tax return who does not elect to take the standard deduction provided for in 15-30-122 may, in computing net income, claim a deduction for the payment of a contribution to the child abuse and neglect prevention program as follows:

(1) If the taxpayer paid a contribution in the ~~taxable tax~~ year for which the return is filed, ~~he the taxpayer~~ may deduct the amount of the contribution paid during that year, unless the amount was deducted as provided

in subsection (2).

(2) If the taxpayer encloses a check or other order to pay money as a contribution with the timely filing of a tax return, in accordance with 15-30-144, ~~he~~ the taxpayer may elect to take a deduction for the amount of the contribution and apply the deduction in the ~~taxable~~ tax year for which ~~he~~ the taxpayer is filing the return."

Section 167. Section 15-30-173, MCA, is amended to read:

"15-30-173. Residential property tax credit for elderly -- disallowance or adjustment of certain claims. (1) A claim is disallowed if the department finds that the claimant received title to ~~his~~ the individual's homestead primarily for the purpose of receiving benefits under 15-30-171 through 15-30-179.

(2) When the landlord and tenant have not dealt at arm's length and the department judges the gross rent charged to be excessive, the department may adjust the gross rent to a reasonable amount."

Section 168. Section 15-30-205, MCA, is amended to read:

"15-30-205. Amount withheld considered as tax collected. All amounts deducted and withheld ~~shall~~ must be considered as a tax collected under the provisions of 15-30-201 through 15-30-209, and ~~no~~ an employee ~~shall~~ does not have any right of action against ~~his~~ the employer in respect to any ~~moneys~~ money deducted and withheld from ~~his~~ the employee's wages and paid to the state in compliance or intended compliance with 15-30-201 through 15-30-209."

Section 169. Section 15-30-206, MCA, is amended to read:

"15-30-206. Annual withholding statement. Every employer shall, prior to January 31 in each year, furnish to each employee a written statement showing the total wages paid by the employer to the employee during the preceding calendar year and showing the amount of the federal income tax deducted and withheld from ~~such~~ the wages and the amount of the tax deducted and withheld ~~therefrom~~ under the provisions of 15-30-201 through 15-30-209. ~~Said~~ The statement ~~shall~~ must contain ~~such~~ additional information and ~~shall~~ must be in ~~such~~ the form ~~as~~ that the department ~~shall~~ prescribes, and a duplicate ~~thereof~~ of the statement must be filed by the employee with ~~his~~ the employee's state income tax return."

Section 170. Section 15-30-302, MCA, is amended to read:

"15-30-302. Oaths administered by director of revenue and designated employees. The director and each employee designated by ~~him~~ the director may administer an oath to any person or take the

acknowledgment of any person in respect to any report or return required by or pursuant to this chapter or by the rules of the department."

Section 171. Section 15-30-307, MCA, is amended to read:

"15-30-307. Closing agreements. (1) The director of revenue or any person authorized in writing by ~~him~~ the director is authorized to enter into an agreement with any person relating to the liability of ~~such~~ the person in respect to the tax imposed by this chapter for any ~~taxable~~ tax period.

(2) ~~Any such~~ An agreement ~~shall be~~ described in subsection (1) is final and conclusive and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under ~~such~~ the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance ~~therewith~~ with the agreement, the agreement may not be annulled, modified, set aside, or disregarded."

Section 172. Section 15-30-314, MCA, is amended to read:

"15-30-314. Stay of enforcement against military personnel. (1) ~~Any such~~ A person described in 15-30-313 may, during ~~his~~ the person's period of military service or within 6 months thereafter, apply to a court for relief in respect of any tax obligation or any tax liability incurred by ~~such~~ the person prior to ~~his~~ the person's period of military service or in respect of any ~~such~~ tax obligation or liability, whether falling due prior to or during ~~his~~ the person's period of military service. Any district court of the state after appropriate notice and hearing, unless in its opinion the ability of the applicant to comply with the terms of ~~such~~ the obligation or liability or to pay ~~such~~ the tax or assessment has not been materially affected by reason of ~~his~~ the person's military service, may grant a stay of ~~the~~ enforcement ~~thereof~~ during the applicant's period of military service and from the date of termination of ~~such~~ the period of military service or from the date of application, if made after ~~such~~ the service, for a period of time equal to the period of military service of the applicant or any part of ~~such~~ that period; The stay is subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of ~~such~~ the period of military service or from the date of application, as the case may be, in equal periodic installments during ~~such~~ the extended period at ~~such~~ the rate of interest ~~as~~ that may be prescribed for ~~such~~ the tax obligation or tax liability or assessment if paid when due and subject to ~~such~~ other terms ~~as~~ that may be just.

(2) When ~~any a~~ court has granted a stay as provided in this section, ~~no a~~ fine or penalty ~~shall may not~~ accrue during the period the terms and conditions of ~~such the~~ stay are complied with by reason of the failure to comply with the terms or conditions of the tax obligation, tax liability, or assessment in respect of which ~~such the~~ stay was granted."

Section 173. Section 15-30-331, MCA, is amended to read:

"15-30-331. Certified copies of tax returns to taxpayer -- fee. (1) Certified copies of returns filed for income tax under 15-30-144 may be furnished by the department of revenue to the taxpayer or ~~his~~ the taxpayer's duly authorized representative upon payment of 50 cents for each page.

(2) All ~~moneys~~ money collected under this section ~~shall must~~ be required to reimburse the department for costs involved in the preparation of the copies. All ~~such moneys~~ money collected ~~shall go into~~ must be deposited in the general fund.

(3) The provisions of this section ~~shall~~ apply to all returns on file and all returns to be filed ~~hereafter~~."

Section 174. Section 15-31-521, MCA, is amended to read:

"15-31-521. Closing agreements. (1) The director of revenue or any person authorized in writing by ~~him~~ the director is authorized to enter into an agreement with any taxpayer relating to the liability of ~~such the~~ taxpayer in respect to the tax imposed by this chapter for any taxable period.

(2) Any ~~such~~ agreement is final and conclusive, and except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under ~~such the~~ agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance ~~therewith~~ with the agreement, the agreement may not be annulled, modified, set aside, or disregarded."

Section 175. Section 15-31-523, MCA, is amended to read:

"15-31-523. Suspension or forfeiture on delinquency. (1) If a tax computed and levied ~~hereunder~~ under this chapter is not paid or if a return is not filed before 5 p.m. on the last day of the 11th month after the date of delinquency, the corporate powers, rights, and privileges of the delinquent taxpayer, if it ~~be is~~ is a domestic corporation, ~~shall must~~ be suspended, and if the delinquent taxpayer ~~be is~~ is a foreign corporation, it shall ~~thereupon~~

forfeit its rights to do intrastate business in this state. ~~Provided that if any~~ If a domestic corporation ~~shall fail~~ fails for a period of 5 consecutive years ~~to~~ to either to file a return or to pay the corporation license tax, the department of revenue shall notify ~~such~~ the corporation by mail addressed to the latest address on file in its office that ~~such~~ the corporation will become dissolved if it fails to file all delinquent reports and pay all delinquent corporation license taxes within a period of 60 days ~~from and~~ after the mailing of ~~such~~ the notice. If ~~such~~ the delinquent reports are not made and all delinquent corporation licenses are not paid before the expiration of ~~said~~ the 60-day period, the department shall certify this fact to the secretary of state, and upon receipt of ~~such~~ the certificate, the corporation ~~shall~~ must be dissolved and the secretary of state shall indicate, by ~~his~~ the secretary of state's records, ~~such~~ the dissolution.

(2) The department shall transmit the name of each ~~such~~ corporation described in subsection (1) to the secretary of state, who shall immediately record the ~~same~~ transmission in ~~such a~~ such a manner that it ~~may be~~ is available to the public. The suspension, forfeiture, or dissolution ~~herein~~ provided for ~~shall in this section become~~ becomes effective immediately when ~~such~~ the record is made, and the certificate of the secretary of state ~~shall be~~ is conclusive evidence of ~~such~~ the suspension, forfeiture, or dissolution."

Section 176. Section 15-31-524, MCA, is amended to read:

"15-31-524. Reviver of corporation after suspension or forfeiture. ~~Any A~~ corporation ~~which that~~ has suffered the suspension or forfeiture referred to in ~~the preceding section~~ 15-31-523 may be relieved therefrom upon making application ~~therefor~~ in writing supported by a certificate from the department of revenue showing that the required return has been made and filed ~~and/or and~~ and that the tax and interest and penalties have been paid, for which the suspension or forfeiture occurred. Application for reviver may be made by any stockholder or creditor of the corporation or by a majority of the surviving trustees or directors; ~~and the same shall~~ The application must be filed with the secretary of state, ~~for which he shall receive~~ and must be accompanied by a filing and recording fee of \$15. ~~In case~~ If the application is made more than 1 year ~~from~~ after the date the suspension or forfeiture occurred, the applicant shall pay twice the amount of the tax and penalties due the state for the ~~taxable~~ tax year with respect to which the suspension or forfeiture occurred. Upon ~~such~~ payment, the secretary of state shall issue a certificate of reviver for which ~~he~~ the secretary of state shall collect a fee of \$15, and ~~thereupon~~ upon issuance of the certificate, the applicant ~~shall be~~ is revived. The reviver ~~shall be~~ is without prejudice to any action, defense, or right ~~which that~~ has accrued by reason of the original suspension or forfeiture. The certificate of reviver ~~shall be~~ is prima facie evidence of the reviver. ~~Any A~~ certificate of reviver provided for in this section may be recorded in the office of the county clerk and recorder in any county of this state."

Section 177. Section 15-31-551, MCA, is amended to read:

"15-31-551. Certified copies of corporation license tax returns to taxpayer -- fee. Certified copies of returns filed for corporation license tax under 15-31-111 may be furnished by the department of revenue to the taxpayer or his the taxpayer's duly authorized representative upon payment of 50 cents for each page."

Section 178. Section 15-32-101, MCA, is amended to read:

"15-32-101. Purpose. The purpose of this part is to encourage the use of alternative energy sources and the conservation of energy through incentive programs. ~~Such~~ The incentives are to be made available to the energy user on a basis ~~which~~ that requires him the energy user to take the initiative in obtaining a particular incentive. This part allows but does not require a public utility to extend credit for energy conservation investments."

Section 179. Section 15-32-103, MCA, is amended to read:

"15-32-103. Deduction for energy-conserving investments. (1) In addition to all other deductions from gross corporate income allowed in computing net income under chapter 31, part 1, a taxpayer may deduct a portion of his the taxpayer's expenditure for a capital investment in a building for an energy conservation purpose, in accordance with the following schedule:

If the installation or investment is made in a residential building: 100% of first \$1,000 expended 50% of next \$1,000 expended 20% of next \$1,000 expended 10% of next \$1,000 expended	If the installation or investment is made in a building not used as a residence: 100% of first \$2,000 expended 50% of next \$2,000 expended 20% of next \$2,000 expended 10% of next \$2,000 expended
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(2) This tax treatment is subject to approval of the department, as provided in 15-32-106, and may not be claimed for so much of the expenditure and capital investment as is financed by a state, federal, or private grant for energy conservation."

Section 180. Section 15-33-104, MCA, is amended to read:

"15-33-104. Reporting -- recordkeeping by the department. The ~~chairman~~ presiding officer or president of each small business investment company shall report on a form established by the department on a monthly basis the name of each investor, the amount of the investment made, and the date of investment."

Section 181. Section 15-35-104, MCA, is amended to read:

"15-35-104. Quarterly statement and payment of tax. Each coal mine operator shall compute the severance tax due on each quarter-year's worth of production on forms prescribed by the department. The statement ~~shall~~ must indicate the tonnage produced, the average Btu value of the production, the contract sales price received for the production, and ~~such~~ other information ~~as~~ that the department may require. Each coal mine operator shall provide a statement of the tons of coal sold to each purchaser for the quarter. The completed form in duplicate, with the tax payment, ~~shall~~ must be delivered to the department not later than 30 days following the close of the quarter. The form ~~shall~~ must be signed by the operator if the operator is an individual or by an officer of the coal mine operator if the operator is a business entity. A person operating more than one coal mine in this state may include all of ~~his~~ the person's mines in one statement. The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown ~~therefor.~~"

Section 182. Section 15-44-102, MCA, is amended to read:

"15-44-102. Definitions. For the purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Culmination of mean annual increment" means the point of optimum net wood production on an acre of forest land.

(2) "Cultivated Christmas trees" means Christmas trees that are grown on land prepared by intensive cultivation and tilling, such as by plowing or turning over the soil, and on which all unwanted plant growth is controlled for the exclusive purpose of raising Christmas trees.

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

(4) "Forest" means forest land and the timber on the land.

(5) "Forest land" means contiguous land of 15 acres or more in one ownership that is capable of producing timber that can be harvested in commercial quantity and is producing timber unless the trees have been removed ~~by man~~ through harvest, including clearcuts, or by natural disaster, including but not limited to fire. Forest land includes land:

(a) that has not been converted to another use; and

(b) on which the annual net wood production equals or exceeds 25 cubic feet an acre at the culmination of mean annual increment.

(6) "Forest productivity value" means the value of forest land for assessment purposes, which value is determined only on the basis of its potential to produce timber, other forest products, and associated agricultural

products through an income approach provided for in 15-44-103.

(7) "Harvest" means an activity related to the cutting or removal of timber for use or sale as a forest product.

(8) "Landowner" means an individual, corporation, association, company, firm, joint venture, syndicate, or trust.

(9) "Mean annual net wood production" means the average net usable volume of wood that 1 acre of forest land will grow in 1 year under average current and actual forest conditions and under current and reasonable management practices for each forest valuation zone established under 15-44-103.

(10) "Stumpage value" means the amount that timber would sell for under an arm's-length transaction made in the ordinary course of business, expressed in terms of dollars per unit of measure.

(11) (a) "Timber" means all wood growth on privately owned land, mature or immature, alive or dead, standing or down, that is capable of furnishing raw material used in the manufacture of lumber or other forest products.

(b) The term does not include cultivated Christmas trees."

Section 183. Section 15-59-105, MCA, is amended to read:

"15-59-105. Quarterly statement and payment of tax. (1) Each person ~~must~~ shall, within 30 days after the end of each quarter, make out on forms prescribed by the department of revenue; and deliver to the department a statement showing the total number of tons of cement or gypsum produced by ~~such the~~ person or used by ~~him the person~~ in the manufacture of the respective articles or products enumerated in 15-59-101(2) and 15-59-102 or imported by ~~such the~~ person into the state of Montana for sale or use during each month of ~~such the~~ quarter and during the whole quarter and ~~such~~ other information ~~as that~~ the department may require, together with the total amount due to the state as license taxes for ~~such the~~ quarter.

(2) ~~Such The~~ annual license tax as imposed by 15-59-102 ~~shall~~ must be paid in quarterly installments for the quarters ending, ~~respectively,~~ March 31, June 30, September 30, and December 31 of each year, and the amount of ~~such the~~ license tax due for each ~~such~~ quarter ~~shall~~ must be paid to the department within 30 days after the end of each ~~such~~ quarter and at the same time ~~such the~~ statement is delivered to the department.

(3) Any ~~such~~ person engaged in carrying on ~~such a cement production~~ business at more than one place or operating more than one factory or plant in this state may include all ~~thereof~~ locations in one statement.

(4) The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown ~~therefor.~~"

Section 184. Section 15-60-207, MCA, is amended to read:

"15-60-207. (Temporary) Closing agreements. (1) The director of the department or any person authorized in writing by ~~him~~ the director is authorized to enter into an agreement with any facility relating to the liability of the facility in respect to the fees imposed by this chapter for any period.

(2) An agreement under this section is final and conclusive, and except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded. (Void on occurrence of contingency--sec. 18, Ch. 746, L. 1991--see chapter compiler's comment.)"

Section 185. Section 15-70-232, MCA, is amended to read:

"15-70-232. Penalties. Any distributor or other person who fails, neglects, or refuses to make and file the statements required by this part in the manner or within the time provided or who ~~shall be~~ is delinquent in the payment of any license tax imposed by this part or who ~~shall make~~ makes any false statement with reference to ~~his~~ the distributor's or person's business or who ~~shall make~~ makes any false statement on any claim for refund or who violates any provision of the part ~~shall is~~, in addition to any other penalties imposed, ~~be deemed~~ guilty of a misdemeanor and upon conviction shall be fined in any amount not exceeding \$1,000 or be imprisoned in the county jail for not to exceed 6 months, ~~or shall be punished by the imposition of both such fine and imprisonment."~~

Section 186. Section 16-1-203, MCA, is amended to read:

"16-1-203. Health professions exemption. A physician, dentist, veterinarian, or pharmacist, acting within the scope of ~~his~~ the individual's professional responsibility and license to practice, who prescribes, prepares, or administers alcohol or substances containing alcohol and sells or charges a fee does not violate the prohibitions of this code."

Section 187. Section 16-1-204, MCA, is amended to read:

"16-1-204. Licensed hospital or health care facility. Any person in charge of an institution regularly conducted as a licensed hospital or health care facility may administer alcoholic beverages purchased by ~~him~~

the person to any patient or inmate of the institution and may charge for the alcoholic beverages ~~so administered.~~"

Section 188. Section 16-3-105, MCA, is amended to read:

"16-3-105. Restrictions on alcoholic beverages in hotels. Except in the case of alcoholic beverages kept or consumed in premises for which a license has been granted under the law and ~~which that~~ which that form a part of a hotel, ~~no a person shall~~ may not:

- (1) keep or consume alcoholic beverages in any part of a hotel other than a private guest room;
- (2) keep or have any alcoholic beverage in any room in a hotel unless ~~he~~ the person is a bona fide guest of the hotel and is ~~duty~~ registered in the office of the hotel as an occupant of that room."

Section 189. Section 16-3-212, MCA, is amended to read:

"16-3-212. Brewers' or beer importers' sales to wholesalers lawful. ~~It shall be lawful for any A~~ licensed brewer ~~to may~~ sell or deliver beer manufactured by ~~him~~ the brewer to any licensed wholesaler. ~~It shall be lawful for any A~~ licensed beer importer ~~to may~~ sell or deliver beer imported by ~~him~~ the importer to any licensed wholesaler."

Section 190. Section 16-3-223, MCA, is amended to read:

"16-3-223. Transfer of wholesaler's interest in business. A wholesaler ~~shall have the right to may~~ sell or transfer ~~his~~ the business or an interest in ~~his~~ the business to any person or to one or more members of ~~his~~ the wholesaler's family or heirs or legatees, whether the wholesaler operates as an individual, a partnership, or corporation. ~~Provided, however~~ However, the consent of the brewer or beer importer in writing is required for ~~such~~ the transferee to continue as a wholesaler of ~~said~~ the brewer or beer importer, ~~which~~ The consent ~~shall~~ must consider the personal, financial, and managerial responsibilities and capabilities of ~~such~~ the transferee, ~~and~~ which the consent ~~shall~~ may not unreasonably be withheld."

Section 191. Section 16-3-231, MCA, is amended to read:

"16-3-231. Monthly report of wholesaler. Every wholesaler licensed to do business in this state shall, on or before the 15th day of each month, in the manner and form ~~as shall be~~ prescribed by the department, make an exact return to the department of the amount of beer manufactured in this state sold and delivered by ~~him~~ the wholesaler and also of the amount of beer manufactured in places outside of the state sold and delivered by ~~him~~ the wholesaler during the previous month and of ~~his~~ the wholesaler's inventory. The department ~~shall have the~~

right ~~may~~ at any time ~~to~~ make an examination of the wholesaler's books and ~~of his~~ premises and otherwise check the accuracy of ~~such the~~ return or ~~to~~ check the alcoholic content of beer ~~which he may have~~ on hand."

Section 192. Section 16-3-232, MCA, is amended to read:

"16-3-232. Beer sales by wholesaler. ~~It shall be lawful for any A wholesaler to~~ may sell and deliver beer purchased or acquired by ~~him the wholesaler~~ to a wholesaler, retailer, or ~~to a common carrier, holding and having a license licensed~~ under this code."

Section 193. Section 16-3-233, MCA, is amended to read:

"16-3-233. Sales to public by wholesaler unlawful. ~~It shall be unlawful for any A wholesaler to~~ may ~~not~~ give, sell, deliver, or distribute any beer purchased or acquired by ~~him the wholesaler~~ to the public."

Section 194. Section 16-3-242, MCA, is amended to read:

"16-3-242. Financial interest in retailers prohibited. ~~No A~~ brewer, beer importer, or wholesaler ~~shall~~ may not advance or loan money to or furnish money for or pay for or on behalf of any retailer any license or tax ~~which that~~ that may be required to be paid for any retailer; ~~and no A~~ brewer, beer importer, or wholesaler ~~shall~~ may not be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer. A brewer, beer importer, or wholesaler ~~shall be deemed~~ is considered to have ~~such~~ a financial interest within the meaning of this section if:

- (1) ~~such the~~ brewer, beer importer, or wholesaler owns or holds any interest in or a lien or mortgage against the retailer or ~~his the~~ retailer's premises;
- (2) ~~such the~~ brewer, beer importer, or wholesaler is under any contract with a retailer concerning future purchases ~~and/or~~ or the sale of merchandise by one from or to the other; or
- (3) any retailer holds an interest, as a stockholder or otherwise, in the business of the wholesaler."

Section 195. Section 16-3-302, MCA, is amended to read:

"16-3-302. Sale by retailer for consumption on premises. (1) It is lawful for a licensed retailer to sell and serve beer, either on draught or in containers, to the public to be consumed on the premises of the retailer.

(2) It is lawful for a licensee who has an all-beverages license that ~~he the~~ licensee uses at a golf course to sell alcoholic beverages and for a licensee who has a golf course beer and wine license issued under 16-4-109 to sell beer and wine:

(a) in the building or other structural premises constituting the clubhouse or primary indoor recreational quarters of the golf course; and

(b) at any place within the boundaries of the golf course, from a portable satellite vehicle or other movable satellite device that is moved from place to place, whether inside or outside of a building or other structure.

(3) It is lawful to consume alcoholic beverages sold as provided in subsection (2) at any place within the boundaries of the golf course, whether inside or outside of a building or other structure."

Section 196. Section 16-3-306, MCA, is amended to read:

"16-3-306. Proximity to churches and schools restricted. (1) Except as provided in subsections (2) through (4), ~~no~~ a retail license may not be issued pursuant to this code to any business or enterprise whose premises are within 600 feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship or as a school other than a commercially operated or postsecondary school. This distance ~~shall~~ must be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises. This section is a limitation upon the department's licensing authority.

(2) However, the department may renew a license for any establishment located in violation of this section if the licensee does not relocate ~~his entrances~~ an entrance any closer than the existing entrances and if the establishment:

(a) was located on the site before the place of worship or school opened; or

(b) was located in a bona fide hotel, restaurant, or fraternal organization building at the site since January 1, 1937.

(3) Subsection (1) does not apply to licenses for the sale of beer, table wine, or both in the original package for off-premises consumption.

(4) Subsection (1) does not apply within the applicable jurisdiction of a local government that has supplanted the provisions of subsection (1) as provided in 16-3-309."

Section 197. Section 16-3-406, MCA, is amended to read:

"16-3-406. Financial interest in retailers prohibited. (1) ~~No~~ A winery or table wine distributor ~~shall~~ may not advance or loan money to, or furnish money for, or pay for or on behalf of any retailer; any license or tax ~~which~~ that may be required to be paid by any retailer, and ~~no~~ a winery or table wine distributor ~~shall~~ may not be

financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer.

(2) A winery or table wine distributor ~~shall be deemed~~ is considered to have ~~such~~ a financial interest if:

(a) ~~such~~ the winery or table wine distributor owns or holds any interest in or a lien or mortgage against the retailer or ~~his~~ the retailer's premises; or

(b) ~~such~~ the winery or table wine distributor is under any contract with a retailer concerning future purchases ~~and/or~~ or the sale of merchandise by one from or to the other; or

(c) ~~such~~ the table wine distributor extends more than 7 days' credit to a retail licensee or furnishes to any retail licensee any furniture, fixtures, or equipment to be used in the dispensation or sale of table wine; or

(d) any retailer holds an interest as a stockholder, or otherwise, in the business of the table wine distributor."

Section 198. Section 16-4-104, MCA, is amended to read:

"16-4-104. Beer retailer's license -- application and issuance -- check of alcoholic content by department. (1) Any person desiring to possess and have beer for the purpose of retail sale under the provisions of this code ~~for the purpose of selling it at retail~~ shall first apply to the department for a permit to do so and ~~tender~~ submit with ~~such~~ the application the license fee ~~provided for~~.

(2) Upon being satisfied, from ~~such~~ the application or otherwise, that the applicant is qualified ~~as provided~~, the department shall issue a license to ~~such~~ the person; ~~which~~ The license shall ~~must~~ at all times be prominently displayed in the place of business of the ~~applicant person~~.

(3) If the department ~~shall find~~ finds that the applicant is not qualified, ~~no a~~ license shall ~~may not~~ be granted and the license fee ~~tendered~~ shall ~~must~~ be returned by the department.

(4) The department ~~shall have the right and is hereby given authority to make~~ may, at any time, an ~~examination of~~ examine the books of account and the premises of any ~~such~~ licensed retailer ~~and of his premises~~ and otherwise check ~~his~~ the retailer's methods of conducting business and the alcoholic content of the beer kept ~~by him~~ for sale.

(5) A person may not sell beer at retail without a valid license issued under this code."

Section 199. Section 16-4-108, MCA, is amended to read:

"16-4-108. Table wine distributor's license. (1) Any person desiring to sell and distribute table wine at wholesale to retailers under the provisions of this code shall apply to the department of revenue for a license to do so and shall ~~tender~~ submit with ~~his~~ the application the annual license fee of \$400; ~~and the~~ The department

may issue licenses to qualified applicants in accordance with the provisions of this code.

(2) All table wine distributors' licenses issued in any year expire on June 30 of that year at midnight ~~of such year~~.

(3) ~~No~~ A license fee may not be imposed upon table wine distributors by a municipality or any other political subdivision of the state.

(4) The license ~~shall~~ must be at all times prominently displayed in the place of business of ~~such~~ the table wine distributor.

(5) An applicant ~~shall~~ must have a fixed place of business, sufficient capital, the facilities, storehouse, and receiving house or warehouse for the receiving, storage, handling, and moving of table wine in large and jobbing quantities for distribution and sale in original packages to other licensed table wine distributors or licensed retailers. Each table wine distributor is entitled to only one wholesale table wine license, which ~~license shall~~ must be issued for ~~his~~ the distributor's principal place of business in Montana. A duplicate license may be issued for one subwarehouse only in Montana for each table wine distributor's license. The duplicate license ~~shall~~ must at all times be prominently displayed at ~~said~~ the subwarehouse. A table wine distributor may also hold a license to sell beer at wholesale but ~~shall~~ may not hold or have any interest, direct or indirect, in any license to sell beer, table wine, or liquor at retail.

(6) If the applicant is a foreign corporation, the corporation must be authorized to do business in Montana.

(7) As used in subsection (1), "distribute" has the meaning ~~given to it~~ provided in 16-3-218."

Section 200. Section 16-4-110, MCA, is amended to read:

"16-4-110. Beer license for tribal alcoholic beverages licensee or enlisted men's personnel, noncommissioned officers', or officers' club. (1) Upon application and qualification, the department shall issue a license to sell beer for consumption on the premises to:

(a) a tribal alcoholic beverages licensee who operates ~~such~~ the business within the exterior boundaries of a Montana Indian reservation under a tribal license issued prior to January 1, 1985;

(b) an enlisted men's personnel, noncommissioned officers', or officers' club located on a state or federal military reservation in Montana on May 13, 1985.

(2) A license issued under the provisions of subsection (1) is not subject to the quota limitations of 16-4-105.

(3) Upon application and approval by the department, a license issued under subsection (1)(a) may be

transferred to another qualified applicant, but only to a location within the quota area and the exterior boundaries of the Montana Indian reservation for which the license was originally issued.

(4) A license issued under this section is subject to all statutes and rules governing licenses to sell beer at retail for on-premises consumption."

Section 201. Section 16-4-201, MCA, is amended to read:

"16-4-201. All-beverages license quota. (1) Except as otherwise provided by law, a license to sell liquor, beer, and table wine at retail, an all-beverages license, in accordance with the provisions of this code and the rules of the department, may be issued to any person who is approved by the department as a fit and proper person to sell alcoholic beverages, except that the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of those cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(a) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of the towns, not more than two retail licenses;

(b) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 3,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities and towns, three retail licenses for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

(c) in incorporated cities of over 3,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500 inhabitants.

(2) The number of the inhabitants in cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns, governs the number of retail licenses that may be issued for use within the cities and towns and within a distance of 5 miles from the corporate limits of the cities or towns. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail licenses that may be issued for use in both of the municipalities and within a distance of 5 miles from their respective corporate limits must be determined on the basis of the combined populations of both of the municipalities and may not exceed the limitations in subsection (1) or this subsection. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

(3) Retail all-beverages licenses of issue on March 7, 1947, and all-beverages licenses issued under 16-4-209, ~~which that~~ are in excess of the limitations in subsections (1) and (2) ~~must be~~ are renewable, but new licenses may not be issued in violation of the limitations.

(4) The limitations in subsections (1) and (2) do not prevent the issuance of a nontransferable and nonassignable, (as to ownership only), retail license to an enlisted ~~men's~~ personnel, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

(5) The number of retail all-beverages licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits of a city or town may not be more than one license for each 750 population of the county after excluding the population of incorporated cities and incorporated towns in the county.

(6) An all-beverages license issued under subsection (5) that becomes located within 5 miles of an incorporated city or town because of annexation after April 15, 2005, may not be transferred to another location within the city quota area for 5 years from the date of annexation."

Section 202. Section 16-4-209, MCA, is amended to read:

"16-4-209. All-beverages license for tribal alcoholic beverages licensee or enlisted ~~men's~~ personnel, noncommissioned officers', or officers' club. (1) Upon application and qualification, the department shall issue an all-beverages license to:

(a) a tribal alcoholic beverages licensee who operates ~~such the~~ business within the exterior boundaries of a Montana Indian reservation under a tribal license issued prior to January 1, 1985;

(b) an enlisted ~~men's~~ personnel, noncommissioned officers', or officers' club located on a state or federal military reservation in Montana on May 13, 1985.

(2) A license issued under the provisions of subsection (1) is not subject to the quota limitations of 16-4-201.

(3) Upon application and approval by the department, a license issued under subsection (1)(a) may be transferred to another qualified applicant, but ~~such the~~ license may ~~only~~ be transferred only to a location within the quota area and the exterior boundaries of the Montana Indian reservation for which the license was originally issued.

(4) A license issued under this section is subject to all statutes and rules governing all-beverages

licenses."

Section 203. Section 16-6-105, MCA, is amended to read:

"16-6-105. Seizure and forfeiture of alcoholic beverage and conveyance. Whenever an investigator or any peace officer in making or attempting to make a search under and in pursuance of authority of law ~~shall find~~ finds in any motor vehicle, vessel, boat, canoe, or conveyance of any description an alcoholic beverage ~~which that~~ is unlawfully kept or had or kept or held for unlawful purposes contrary to the provisions of this code, ~~he the~~ investigator or peace officer may ~~forthwith~~ seize the alcoholic beverage and packages in which the ~~same is~~ alcoholic beverage is contained and the motor vehicle, vessel, boat, canoe, or conveyance in which the alcoholic beverage is found. Upon the conviction of the occupant or person in charge of the motor vehicle, vessel, boat, canoe, or conveyance, or of any other person, for having or keeping ~~such the~~ alcoholic beverages contrary to any of the provisions of this code in any ~~such~~ vehicle, vessel, boat, canoe, or conveyance, the court in which the ~~conviction of any such person is had~~ convicted may, in addition to the sentence imposed under authority of law, declare the alcoholic beverage or any part ~~thereof so~~ seized and the package in which the ~~same~~ alcoholic beverage is contained to be forfeited to the state of Montana. The court may in and by decree further declare the motor vehicle, vessel, boat, canoe, or conveyance seized to be forfeited to the state of Montana."

Section 204. Section 16-6-205, MCA, is amended to read:

"16-6-205. Sufficiency of evidence. In any prosecution under this code for the sale or keeping for sale or other disposal of alcoholic beverages or the having, keeping, giving, purchasing, or consuming of alcoholic beverages, it ~~shall is~~ is not be necessary that any witness ~~should depose~~ testify to the precise description or quantity of the alcoholic beverages sold, disposed of, kept, had, given, purchased, or consumed or the precise consideration, ~~(if any), received therefor~~ for the alcoholic beverages. ~~or to~~ It is also unnecessary to testify to the fact of the sale or other disposal having taken place with his the witness's participation or to his the witness's own personal or certain knowledge; ~~but~~ However, a conviction may be based upon circumstantial evidence reasonably tending to establish the guilt of the accused beyond a reasonable doubt."

Section 205. Section 16-6-207, MCA, is amended to read:

"16-6-207. Analyst's report as prima facie evidence of contents. In any prosecution under this code or the rules ~~made thereunder~~ adopted to implement this code, production by a police officer, ~~policeman,~~ constable, inspector, or peace officer of a certificate or report signed or purporting to be signed by a United States

or state analyst as to the analysis or ingredients of any alcoholic beverage or other fluid or any preparation, compound, or substance, ~~such the~~ certificate or report ~~shall be~~ is prima facie evidence of the facts stated in ~~such the~~ certificate or report and of the authority of the person giving or making the ~~same certificate or report~~ without any proof of appointment or signature."

Section 206. Section 16-6-209, MCA, is amended to read:

"16-6-209. Inferences of fact from evidence found. Upon the hearing of any charge of selling or purchasing an alcoholic beverage or of unlawfully having or keeping an alcoholic beverage contrary to any of the provisions of this code, the court trying the case ~~shall have the right to~~ may draw inferences of fact from the kind and quantity of alcoholic beverage found in the possession of the person accused or in any building, premises, vehicle, motorcar, automobile, vessel, boat, canoe, conveyance, or place occupied or controlled by ~~him~~ the accused and from the frequency with which the alcoholic beverage is received ~~thereat at~~ or therein in or is removed ~~therefrom~~ from the location and from the circumstances under which ~~it is~~ the alcoholic beverage is kept or dealt with."

Section 207. Section 16-6-309, MCA, is amended to read:

"16-6-309. Alcoholic beverages administered to institution inmates. ~~No~~ An alcoholic beverage ~~shall~~ may not be administered by any person under 16-1-204 except to bona fide patients or inmates of the institution of which ~~he~~ the person is in charge, and every person in charge of an institution who administers alcoholic beverages in evasion or violation of this code ~~shall be~~ is guilty of an offense against this code."

Section 208. Section 16-6-313, MCA, is amended to read:

"16-6-313. Injunction actions. An action to enjoin any nuisance defined in this code may be brought in the name of the state of Montana by the attorney general of the state or by any county attorney. ~~Such~~ The action ~~shall~~ must be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it ~~is made to appear~~ appears, by affidavits or otherwise, to the satisfaction of the ~~court or judge in vacation~~ that ~~such the~~ nuisance exists, a temporary writ of injunction ~~shall forthwith issue~~ must be issued restraining the defendant from conducting or permitting the continuance of ~~such the~~ nuisance until the conclusion of the trial. If a temporary injunction is ~~prayed for~~ sought, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the fixtures or other things used in connection with the violation of this code constituting ~~such the~~ nuisance. ~~No~~ A bond ~~shall~~ may not be required

in instituting ~~such the~~ proceedings. ~~It shall not be necessary for the~~ The court is not required to find that the property involved was being unlawfully used at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that ~~no~~ alcoholic beverages ~~shall may not~~ be manufactured, sold, or bartered in ~~such the~~ room, house, building, boat, vehicle, structure, or place or any part ~~thereof of those locations~~. Upon judgment of the court ordering ~~such the~~ nuisance to be abated, the court may order that the room, house, building, ~~structure~~, boat, vehicle, structure, or place ~~shall may~~ not be occupied or used for 1 year ~~thereafter~~. The court may, ~~in its discretion~~, permit it the location to be occupied or used if the owner, lessee, tenant, or occupant ~~thereof shall give~~ gives a bond with sufficient surety, to be approved by the court making the order, in the ~~penal and liquidated~~ sum of not less than \$500 or more than \$1,000, payable to the state of Montana and conditioned that alcoholic beverages will not ~~thereafter~~ be manufactured, sold, or bartered ~~therein or thereon~~ at the location and that ~~he~~ the person will pay all fines, costs, and damages that may be assessed for any violations of this code upon ~~said the~~ property."

Section 209. Section 16-10-203, MCA, is amended to read:

"16-10-203. Sales to meet competition permitted. (1) (a) Any A retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to ~~him~~ the competitor as a retailer as prescribed in this chapter.

(b) Any wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to ~~him~~ the competitor as a wholesaler as prescribed in this chapter.

(c) The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in 16-10-304 ~~shall may~~ not be considered the price of a competitor and ~~shall may~~ not be used as a basis for establishing prices below cost, ~~nor shall and~~ the price established at a ~~bankrupt~~ bankruptcy sale may not be considered the price of a competitor within the purview of this section.

(2) In the absence of proof of the "price of a competitor" under this section, the "lowest cost to the retailer" or the "lowest cost to the wholesaler", ~~as the case may be~~, determined by any "cost survey" made pursuant to 16-10-303, may be considered to be the "price of a competitor" within the meaning of this section."

Section 210. Section 16-11-134, MCA, is amended to read:

"16-11-134. Forged license stamp or insignia. Every A person who ~~shall make, alter, forge, or counterfeit~~ makes, alters, forges, or counterfeits any license stamp or insignia provided for in this law, ~~or who shall~~

~~assist or be~~ assists or is concerned ~~therein in the creation of the stamp or insignia,~~ or who ~~shall have~~ has in his the person's possession any altered, forged, counterfeit, or spurious stamp, license, or insignia with intent to defraud the state is guilty of forgery."

Section 211. Section 17-1-103, MCA, is amended to read:

"17-1-103. Assistance to legislature. (1) The department shall make all reports and submit all information and data the legislature requests and, when requested, attend all meetings of the appropriations committee of the house of representatives and of the finance and claims committee of the senate.

(2) The department shall, during the consideration of appropriation measures by the house and senate, devote ~~so~~ as much of its time as may be required by the ~~above-named~~ committees, under the direction of the ~~respective chairmen~~ presiding officers of the committees."

Section 212. Section 17-1-112, MCA, is amended to read:

"17-1-112. Access to offices. The state treasurer ~~shall have~~ has full access to all offices of the state for inspection of ~~such~~ books, papers, and accounts ~~thereof as that~~ concern his the state treasurer's duties."

Section 213. Section 17-1-131, MCA, is amended to read:

"17-1-131. General duties of budget director. (1) The budget director in addition to the duties set forth in Title 17, chapter 7, ~~of this title~~ shall perform ~~such~~ other duties ~~as that~~ the governor as chief budget officer of the state may direct.

(2) ~~He~~ The budget director shall, as often as requested by the governor, prepare and furnish reports to the governor concerning appropriations made by the legislature and the receipts and disbursements made by any department, office, or institution of the state.

(3) The budget director ~~shall~~ must be available to all standing committees of the house of representatives and the senate concerned with appropriations, revenue, finance, and claims and shall furnish to ~~such~~ the committees any information required while ~~said~~ the committees are considering the budget."

Section 214. Section 17-5-715, MCA, is amended to read:

"17-5-715. Signatures of board members. ~~In case~~ If any member of the board of examiners whose signature appears on bonds, notes, or coupons issued under this part ceases to be a member before the delivery of the bonds or notes, his the member's signature is ~~nevertheless~~ valid and sufficient for all purposes, the same

as if the member had remained in office until delivery."

Section 215. Section 17-5-927, MCA, is amended to read:

"17-5-927. Signatures of board members. ~~In case~~ If any member of the board whose signature appears on bonds or coupons issued under this part ceases to be a member before the delivery of the bonds, ~~his~~ the member's signature is ~~nevertheless~~ valid and sufficient for all purposes as if the member had remained in office until delivery."

Section 216. Section 17-5-1516, MCA, is amended to read:

"17-5-1516. Maintenance of capital reserve account. (1) In order to ~~assure~~ ensure the maintenance of the capital reserve account, the ~~chairman~~ presiding officer of the board shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the minimum capital reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the capital reserve account to the sum of minimum capital reserve requirement. All sums appropriated by the legislature ~~shall~~ must be deposited in the capital reserve account.

(2) All amounts appropriated to the board under this section constitute advances to the board and, subject to the rights of the holders of any bonds or notes of the board, must be repaid to the state general fund without interest from available operating ~~revenues~~ revenue of the board in excess of amounts required for the payment of bonds, notes, or other obligations of the board, for maintenance of the capital reserve account, and for operating expenses."

Section 217. Section 17-6-204, MCA, is amended to read:

"17-6-204. Investment of local government funds. (1) The governing body of any city, county, school district, or other local government unit or political subdivision ~~having~~ that has funds ~~which~~ that are available for investment and are not required by law or by any covenant or agreement with bondholders or others to be segregated and invested in a different manner may direct its treasurer to remit ~~such~~ the funds to the state treasurer for investment under the direction of the board of investments as part of the pooled investment fund.

(2) A separate account, designated by name and number for each ~~such~~ participant in the fund, ~~shall~~ must be kept to record individual transactions and totals of all investments belonging to each participant. A monthly report ~~shall~~ must be furnished to each participant having a beneficial interest in the pooled investment fund,

showing the changes in investments made during the preceding month. Details of any investment transaction ~~shall~~ must be furnished to any participant upon request.

(3) The principal and accrued income, and any part ~~thereof of that amount~~, of each ~~and every~~ account maintained for a participant in the pooled investment fund ~~shall be~~ is subject to payment at any time from the fund upon request. Accumulated income ~~shall~~ must be remitted to each participant at least annually.

(4) ~~No~~ An order or warrant ~~shall~~ may not be issued upon any account for a larger amount than the principal and accrued income of the account to which it applies, ~~and if~~. If any ~~such~~ order or warrant is issued, the participant receiving it shall reimburse the excess amount to the fund from any funds not otherwise appropriated; ~~and the~~. The state treasurer ~~shall be~~ is liable under his ~~the treasurer's~~ official bond for any amount not ~~so~~ reimbursed."

Section 218. Section 17-6-213, MCA, is amended to read:

"17-6-213. Redemption of bonds before maturity. (1) The board of investments shall permit any school district, town, city, or county to pay and redeem one or more of its bonds held by the state for the credit of any fund under the investment administration of the board of investments at any time before maturity.

(2) In calculating the unpaid interest accrued on any bond or bonds at the time of payment and redemption, interest for a fractional month ~~shall~~ must be calculated and collected for a full month.

(3) Payment and redemption of bonds ~~shall~~ must be made at the office of the state treasurer unless the bonds by their own terms and provisions are made payable at some other place and payment at ~~his~~ that office would be disadvantageous to the redemptioner. When bonds have been ~~so~~ paid and redeemed, the state treasurer shall effectually cancel the bonds and the attached coupons by perforation or otherwise and mail them to the proper treasurer together with ~~his~~ the state treasurer's receipt.

(4) This section does not authorize or permit any school district, town, city, or county to issue refunding bonds for the purpose of paying and redeeming any bond or bonds held by the state before the optional or redeemable date ~~therein stated~~ of the bonds or to grant the right to pay any ~~bond~~ or bonds held by the state before the optional or redeemable date from the proceeds of refunding bonds."

Section 219. Section 17-7-113, MCA, is amended to read:

"17-7-113. Inquiries and investigations by budget director. The budget director or ~~his~~ the budget director's designated representative shall make ~~such~~ further inquiries and investigations ~~as he~~ that the budget director considers necessary as to any item included in the report and estimates furnished by any department,

agency, or institution. In making ~~such the~~ investigations, ~~he shall the budget director be is~~ allowed his travel expenses, as provided for in 2-18-501 through 2-18-503, ~~as amended~~, in visiting any institution or department in the state."

Section 220. Section 17-8-104, MCA, is amended to read:

"17-8-104. Civil penalties and remedies for violation. (1) (a) Any authority or member of a board of trustees or any person, officer, or employee violating the provisions of 17-8-103(1) is personally liable and the surety or sureties on ~~his~~ that individual's bond ~~shall is also be~~ liable to the state for the amount of the excess ~~thus~~ unlawfully expended. An action under this subsection (1)(a) may be brought upon complaint of the attorney general, of the legislature by joint resolution, of the legislative finance committee, or of any taxpayer, filed in a district court of this state.

(b) Any authority or member of a board of trustees or any person, officer, or employee violating the provisions of 17-8-103(1) is guilty of misfeasance in office and ~~shall be~~ guilty of wrongdoing and ~~shall be is~~ subject to removal from office or from ~~such~~ employment. An action under this subsection (1)(b) may be brought upon complaint of the attorney general, the legislature by joint resolution, or any taxpayer, filed in a district court of this state.

(2) Complaints under subsections (1)(a) and (1)(b) may be combined in a single action.

(3) Remedies and penalties provided by this section may be pursued singly or in any combination."

Section 221. Section 17-8-308, MCA, is amended to read:

"17-8-308. Payment of interest -- land grant warrants. The interest on all land grant warrants ~~shall be is~~ payable on July 1 ~~next succeeding following~~ the date of issue and annually ~~thereafter~~ after that date. Whenever there is sufficient money in any of the land grant funds to pay outstanding warrants or interest ~~thereon on the warrants~~, the treasurer shall cause to be published a brief notice that ~~said the~~ warrants or the interest on particular warrants on which interest would be payable on July 1, describing them by numbers and names of funds, will be ~~forthwith~~ payable; ~~and on~~ Upon the presentation of any ~~such~~ warrants on or at any time after July 1, the treasurer shall pay the interest ~~thereon on the warrants~~, endorsing the date of payment and amount paid of each warrant, and returning the ~~same warrant~~ to the holder, ~~and he~~. The treasurer shall keep a register showing the dates and amounts of each interest payment on each warrant in each fund. If any warrants are called for payment, interest ~~thereon shall cease~~ on the warrants ceases on the date fixed in ~~said the~~ notice."

Section 222. Section 18-1-402, MCA, is amended to read:

"18-1-402. Administrative procedures -- exhaustion -- time limitations. Whenever any contracting agency of the state of Montana provides a procedure for the settlement of any question or dispute arising between the contractor and ~~said the~~ agency, the contractor, before proceeding to bring an action in court under the provisions of this part, ~~must shall~~ resort to ~~such the~~ procedure within the time specified in ~~his the~~ contract or, if ~~no a~~ time is ~~not~~ specified, within 90 days after the question or dispute has arisen, provided:

(1) in ~~the a~~ case ~~where in which~~ a settlement procedure is provided by ~~said the~~ contracting agency, all actions authorized ~~hereunder under this section~~ must be commenced within 1 year after a final decision has been rendered pursuant to ~~such the~~ settlement procedure; and

(2) in ~~the a~~ case ~~where no in which~~ a settlement procedure is ~~not~~ provided by ~~said the~~ contracting agency, the action must be commenced by the contractor within 1 year after the cause of action has arisen."

Section 223. Section 18-1-403, MCA, is amended to read:

"18-1-403. Stipulations restricting enforcement void. Every stipulation or condition in a contract by which any party ~~thereto~~ is restricted from enforcing ~~his the party's~~ rights under the provisions of this part is void."

Section 224. Section 18-2-204, MCA, is amended to read:

"18-2-204. Right of action on security -- notice. (1) All persons mentioned in 18-2-201 have a right of action in their own name or names on any security furnished under the terms of this part for work done by the laborers or mechanics and for ~~proverder~~ food, materials, supplies, provisions, or goods supplied and furnished in the work or the making of the improvements. The persons do not have any right of action on the security unless within 90 days after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county, or municipality or other public body, city, town, or district, the laborer, mechanic or subcontractor, or ~~materialman~~ material supplier or person claiming to have supplied ~~proverder~~ food, materials, provisions, or goods for the ~~prosecution~~ performance of the work or the making of the improvement presents to and files with the board, council, commission, trustees, or body acting for the state, county, or municipality or other public body, city, town, or district a notice in writing in substance as follows:

"TO (here insert the name of the state, county, or municipality or other public body, city, town, or district):

NOTICE IS HEREBY GIVEN that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or ~~materialman~~ material supplier or person claiming to have furnished labor, materials, or

provisions for the contract or work) has a claim in the sum of dollars (here insert the amount) against the security taken from (here insert the name of the principal and name of the person providing the security) for the work of (here insert a brief mention or description of the work concerning which the security was taken). (Here to be signed)"

(2) The notice must be signed by the person or corporation making the claim or giving the notice. After being presented and filed, the notice is a public record open to inspection by any person."

Section 225. Section 18-2-424, MCA, is amended to read:

"18-2-424. Enforcement. If a contractor or a subcontractor refuses to submit payroll records requested by the department pursuant to 18-2-423, the commissioner or ~~his~~ the commissioner's authorized representative may issue subpoenas compelling the production of those records."

Section 226. Section 18-5-204, MCA, is amended to read:

"18-5-204. Department director -- delegating powers. The director of the department may delegate to any employees of the state agency for surplus property ~~such~~ the power and authority as he deems that the director considers reasonable and proper for the effective administration of this part."

Section 227. Section 18-5-411, MCA, is amended to read:

"18-5-411. Administration of vending facilities -- state properties. (1) The department of administration or any other department of state government that administers state property subject to this part shall transfer to the department the management and control of any vending facility that the department has determined is an appropriate facility for the purposes of this part and that the department has determined is needed for the purposes of this part.

~~(2) A lease or contract for the operation of a vending facility entered into prior to October 1, 1981, is not subject to this part while the lease or contract remains in effect. In addition, this part may not be interpreted to require or authorize the failure to renew any contract for a vending facility on state property in effect on October 1, 1981, if the contract contains a provision permitting the renewal of the contract for a specific term at the option of the vendor or the state or both. In any case where the department determines that a private vendor operating a vending facility on state property on October 1, 1981, who but for this part could reasonably be expected to renew his contract for the vending facility, would be subjected to economic hardship should the contract be allowed to expire at the end of its term, the department may agree to a one-time renewal of that vendor's contract~~

for the vending facility for a period not to exceed 4 years:

(3)(2) The department of administration or any other department of state government that administers state property subject to this part shall give reasonable notice to the department of the expiration or termination of any lease or contract in effect for a vending facility.

(4)(3) Upon receipt of the notice, the department shall give reasonable notice to the department of administration or other department of state government that sent the notice required in subsection (3) (2) stating that the department has determined that the vending facility is either appropriate and needed for the purposes of this part or that it is not.

(5)(4) A state agency administering state property shall consult with the department when planning for a new state building, planning for remodeling of or addition to an existing state building, or negotiating the lease of a building for state use; to determine what vending facilities might be appropriate for the site and plan for ~~such~~ the vending facilities.

(6)(5) The department shall administer those vending facilities ~~which~~ that are determined to be appropriate and necessary."

Section 228. Section 18-11-105, MCA, is amended to read:

"18-11-105. Submission of agreement to attorney general. (1) As a condition precedent to an agreement made under this chapter becoming effective, it must have the approval of the attorney general of Montana.

(2) The attorney general shall approve an agreement submitted to ~~him~~ under this chapter unless ~~he~~ the attorney general finds it ~~that the agreement~~ is not in proper form, ~~or~~ does not meet the requirements set forth in this chapter, ~~or~~ otherwise does not conform to the laws of Montana. If ~~he~~ the attorney general disapproves an agreement, ~~he~~ the attorney general shall provide a detailed, written statement to the governing bodies of the public agency and tribal government concerned, specifying the reasons for ~~his~~ disapproval.

(3) If the attorney general does not disapprove the agreement within 30 days after its submission to ~~him~~, it ~~shall~~ must be considered approved ~~by him~~."

Section 229. Section 19-1-301, MCA, is amended to read:

"19-1-301. Authorization of referendum by governor. With respect to members of the public employees', highway patrol officers', judges', and game wardens' and peace officers' retirement systems, the governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision,

he the governor shall authorize a referendum upon the request of the governing body of the subdivision."

Section 230. Section 19-1-702, MCA, is amended to read:

"19-1-702. Contributions by state employees. (1) Every employee of the state whose services are covered by an agreement entered into under 19-1-401 and 19-1-402 ~~shall~~ must be required to pay, for the period of ~~such~~ coverage, contributions with respect to wages (~~as defined in 19-1-102~~) equal to the amount of employee tax ~~which that~~ would be imposed by the Federal Insurance Contributions Act if ~~such the~~ services constituted employment within the meaning of that act. ~~Such The liability shall arise~~ arises in consideration of the employee's retention in the service of the state; or his entry ~~upon such into~~ service, ~~after February 20, 1953.~~

(2) The contribution imposed by this section ~~shall~~ must be collected by deducting the amount of the contribution from wages ~~as and when~~ paid, but failure to make ~~such the~~ deduction ~~shall~~ does not relieve the employee from liability for ~~such the~~ contribution.

(3) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments or a refund if adjustment is impracticable ~~shall~~ must be made, without interest, in ~~such the~~ manner and at ~~such times as that~~ the state agency ~~shall prescribe~~ prescribes."

Section 231. Section 19-1-705, MCA, is amended to read:

"19-1-705. Deduction of employee contribution by political subdivision. (1) Each political subdivision required to make payment under 19-1-704 shall, in consideration of the employee's retention in or entry ~~upon into~~ employment ~~after February 20, 1953~~, impose upon each of its employees, as to services ~~which that~~ are covered by an approved plan, a contribution with respect to his wages (~~as defined in 19-1-102~~), not exceeding the amount of the employee tax ~~which that~~ would be imposed by the Federal Insurance Contributions Act if ~~such the~~ services constituted employment within the meaning of that act and shall deduct the amount of ~~such the~~ contributions from his wages ~~as and when~~ paid.

(2) Contributions ~~so~~ collected partially discharge the liability of the political subdivision or instrumentality under 19-1-704. Failure to deduct the contribution does not relieve the employee or employer of liability ~~therefor~~ for the contributions."

Section 232. Section 19-2-904, MCA, is amended to read:

"19-2-904. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan ~~which that~~ permits participation in the group plan following

retirement may elect to have the monthly premium for ~~such~~ group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of ~~his~~ the former employer. ~~No withholding~~ Withholding may not be made for any retiree covered by an individual insurance policy."

Section 233. Section 19-3-202, MCA, is amended to read:

"19-3-202. Request by individual employee for employer to participate. Any employee who has ~~continuously been~~, for a continuous period of at least 2 years, been an employee of a municipal corporation, county, or other public agency of this state ~~which~~ that is not a contracting employer may advise the legislative body of ~~his~~ the employer, in writing, that ~~he~~ the employee wishes to participate in the retirement system. Within 30 days after receipt of ~~such~~ the written request, the legislative body shall ~~thereupon~~ adopt the resolution of intention and take ~~such~~ action as provided for in 19-3-201."

Section 234. Section 19-9-302, MCA, is amended to read:

"19-9-302. Ineligibility for other retirement plans. ~~No~~ An active member is not eligible to be covered under any other mandatory retirement plan for police service to which an employer is required to contribute on ~~his~~ the member's behalf, except the Social Security Act, while ~~he~~ the member is eligible to be covered by this plan."

Section 235. Section 19-17-406, MCA, is amended to read:

"19-17-406. Termination of pension when no surviving spouse or child. If a deceased volunteer firefighter leaves neither a surviving spouse nor a child under ~~the age of 18~~ years of age, ~~his~~ the firefighter's pension ~~shall~~ must terminate at the end of the month prior to the month in which ~~his~~ the death occurs."

Section 236. Section 19-18-106, MCA, is amended to read:

"19-18-106. Transfer of money into fund by city treasurer. Whenever a fire department relief association has been formed and the treasurer of the association has furnished the bond required by 19-18-202, the city treasurer shall pay to the treasurer of the association all money held by the city treasurer to the credit of the disability and pension fund, taking a proper receipt ~~therefor~~ for the payment. ~~Thereafter, the~~ The city treasurer shall, as ~~moneys are~~ money is received by him for the credit of the fund or association, turn the ~~same~~ money over to the treasurer of the association, taking proper receipts ~~therefor~~ for the payments."

Section 237. Section 19-18-202, MCA, is amended to read:

"19-18-202. Treasurer's bond. ~~No~~ The treasurer of an association may not enter upon ~~his~~ the duties of office until ~~he~~ the treasurer has given the association a sufficient bond of not less than 50% of the amount of the cash funds and securities of the association for the faithful performance of ~~his~~ the treasurer's duties according to law. The amount of the bond ~~shall~~ must be approved by the association and may not exceed \$25,000. The bond ~~shall~~ must be paid for by the association. If the city or town treasurer has been elected ex officio treasurer of the association, ~~his~~ the official bond will cover the faithful discharge of ~~his~~ duties as ~~such~~ the treasurer of the association."

Section 238. Section 19-18-502, MCA, is amended to read:

"19-18-502. Refund of firefighter's contribution. A firefighter is entitled to a refund, in a lump sum and without interest, of all ~~his~~ monthly contributions to the fund, within 60 days after ~~his~~ permanent separation from service in the fire department, except for separation by reason of retirement, death, or disability ~~which~~ that would otherwise qualify ~~him~~ the firefighter or ~~his~~ the firefighter's surviving spouse or children to receive benefits or an allowance from the association. A firefighter who is eligible to receive a partial service pension under 19-18-603 may either elect to take the refund provided for in this section or elect to receive the partial pension."

Section 239. Section 19-18-511, MCA, is amended to read:

"19-18-511. Annual report of clerks of cities having fire departments. On or before April 1 annually, the clerk of every city having an organized fire department or a partly paid or volunteer department shall file with the commissioner of insurance of this state ~~his~~ a certificate stating ~~such~~ that fact, ~~the~~ The certificate must include the system of water supply in use in ~~such~~ the fire department, the number of its organized companies, steam, hand, or other engines, hook-and-ladder trucks, hose-carts, and feet of hose in actual use, and ~~such~~ other facts ~~as~~ that the commissioner may require."

Section 240. Section 19-18-514, MCA, is amended to read:

"19-18-514. State treasurer to pay warrants. The state treasurer ~~is hereby authorized and directed~~ shall, upon the presentation ~~to him~~ of a warrant drawn pursuant to this chapter, ~~to~~ pay to the treasurer of the city or town, out of ~~moneys~~ money in the state special revenue fund dedicated for ~~such~~ that purpose, the amount of ~~such~~ the warrant ~~specified~~, which amount ~~shall~~ must be paid by ~~said~~ the city treasurer to ~~said~~ the fire department relief association."

Section 241. Section 19-18-603, MCA, is amended to read:

"19-18-603. Partial service pension. (1) A member of a fire department relief association is eligible to receive a partial service pension if ~~he~~ the member:

(a) has completed at least 10 years of active duty as a fully paid member of a fire department but has not both completed 20 years of service and ~~attained age 50~~ reached 50 years of age as an active firefighter;

(b) is permanently separated from service ~~on or after July 1, 1977~~;

(c) does not qualify for a disability pension under 19-18-604; and

(d) does not receive a refund of ~~his~~ the member's contributions under 19-18-502.

(2) The right to receive the pension vests upon the firefighter's permanent separation from service, but the payments may not commence until the date ~~he~~ the firefighter would have both reached ~~his 50th birthday~~ 50 years of age and completed 20 years of service as a member of a fire department had ~~his~~ the member's active duty not been terminated.

(3) The pension ~~shall~~ must be paid out of the disability and pension fund and ~~shall~~ must consist of monthly payments in an amount equal to the number of years of the firefighter's service divided by the number of years of service the firefighter would have had if ~~he~~ the firefighter had remained in active duty as a member of a fire department until the date ~~he~~ the firefighter would have both ~~attained age 50~~ reached 50 years of age and completed 20 years of service, multiplied by one-half of the sum last received by the firefighter as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for ~~his~~ services as an active member of the fire department.

(4) If the firefighter dies after ~~he~~ the firefighter is permanently separated from service and before ~~he~~ the firefighter both reaches ~~the age of 50 years of age~~ and would have completed 20 years of service as an active member of a fire department, the payments prescribed in subsection (3) ~~shall~~ must be made to the surviving spouse commencing on the date the firefighter would have both reached ~~his 50th birthday~~ 50 years of age and completed 20 years of service as an active member of a fire department and terminating upon the surviving spouse's death or remarriage. If there is no surviving spouse or the surviving spouse dies or remarries and if the firefighter leaves one or more children who have not reached ~~the age of 18 years of age~~, the children ~~shall~~ must receive the payments until the youngest reaches ~~the age of 18 years of age~~.

(5) If the firefighter dies after ~~he~~ both reaches ~~the age of~~ reaching 50 years of age and ~~the date the firefighter~~ would have completed 20 years of service as an active member of a fire department, the payments ~~shall~~ must be made to the surviving spouse or children as provided in subsection (4).

(6) The pension escalation provisions of 19-18-602 do not apply to pensions received under this section."

Section 242. Section 19-18-604, MCA, is amended to read:

"19-18-604. Disability pension. (1) Each association shall pay a disability pension, out of its disability and pension fund, to each of its members who has become disabled by reason of sickness or injury. The pension ~~shall~~ must be equal to one-half of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for ~~his~~ the member's services to the fire department of the city or town in which the association was formed.

(2) ~~Effective July 1, 1974, a~~ A member who completes 20 years of service and elects to serve additional years ~~shall~~ must receive the pension provided for in subsection (1) increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for ~~his~~ services as an active member of the fire department.

(3) The monthly pension paid to members ~~retiring on or after July 1, 1973;~~ must be at least one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to a member retiring prior to July 1, 1974, must be at least \$200. In the case of volunteer firefighters, the disability pension may not exceed \$125 a month."

Section 243. Section 19-18-605, MCA, is amended to read:

"19-18-605. Pensions to surviving spouses and children. (1) Each association shall pay, out of its disability and pension fund, a monthly pension to the surviving spouse or children of a deceased member of the association who on the date of ~~his~~ death was an active member of the fire department in the city or town in which the association was formed, who had elected to retire from active service in the fire department and receive a service pension as provided for by 19-18-602, or who, prior to death, had suffered a sickness or injury and was receiving or was qualified to receive a disability pension as provided by 19-18-604. The pension ~~shall~~ must be equal to one-half of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for services rendered as an active member of the fire department in the city or town in which the association was formed.

(2) ~~Effective July 1, 1974, if~~ If the deceased member ~~had~~ completed 20 years of service and ~~had~~ elected to serve additional years, the pension provided for in subsection (1) ~~shall~~ must be increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for ~~his~~ services as an active member of the fire department.

(3) The monthly pension paid to the surviving spouse or children of an active member ~~who dies after July 1, 1973~~, or an active member who elects to retire ~~after July 1, 1973~~, must be at least one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to the surviving spouse or children of an active member who died prior to July 1, 1974, or who elected to retire before July 1, 1974, must be at least \$200. In the case of a volunteer firefighter, the pension paid to a surviving spouse or children may not exceed the amount provided for a service pension for a volunteer firefighter under 19-18-602(3).

(4) A pension may be paid to the surviving spouse only ~~so~~ as long as ~~such~~ the spouse remains unmarried. A surviving spouse is not entitled to a pension under this section if the marriage was entered into after the firefighter ~~had~~ elected to retire from active service and ~~had begun~~ began to receive a service pension as provided for by 19-18-602 or if the marriage was entered into after the firefighter ~~had~~ qualified for and had begun to receive a disability pension as provided for by 19-18-604. The pension provided for in this section may not be paid to the children of deceased firefighters after they have attained ~~the age of 18 years of age~~ the age of 18 years of age."

Section 244. Section 19-18-607, MCA, is amended to read:

"19-18-607. Payment of death benefits in absence of spouse or child. If a firefighter dies without leaving a surviving spouse or child, the association shall compute the total contributions made to the fund by the deceased member, and if the deceased member ~~had~~ designated a beneficiary in writing to the association, the association shall issue a warrant for the amount of the total contributions payable to that beneficiary. If the deceased member ~~had~~ did not ~~nominated~~ nominate a beneficiary, the contributions ~~shall~~ must be paid to ~~his~~ the member's estate."

Section 245. Section 19-19-302, MCA, is amended to read:

"19-19-302. Officer's contribution deducted from salary. The treasurer of an incorporated city ~~which~~ that has a police retirement fund shall retain from the monthly salary of each police officer on the active list a sum equal to 6% of ~~his~~ the officer's monthly compensation for ~~his~~ services as a police officer, exclusive of overtime and payments made in lieu of sick leave and annual leave. The monthly deduction from the salaries of police officers must be paid into the city's police retirement fund for the purpose of paying the salaries of police officers on the retired list."

Section 246. Section 19-19-303, MCA, is amended to read:

"19-19-303. Refund of officer's contribution. A police officer whose service with the city has been discontinued by other than death or placement upon the retired list ~~shall~~ must be entitled to the return ~~to him~~ of the amounts paid to the fund through deductions from ~~his~~ the officer's salary. If ~~he~~ the officer has 10 years or more of service, the amount paid ~~shall~~ must include regular interest on ~~such~~ the amounts. If ~~he~~ the officer has less than 10 years of service, ~~he shall~~ the officer must receive only the amount paid through ~~such~~ salary deductions, without interest."

Section 247. Section 19-19-401, MCA, is amended to read:

"19-19-401. Eligibility for service retirement. The following persons are eligible for the police retired list of a city and ~~shall~~ may retire as provided in this section:

(1) A person who is employed by any city as a police officer on July 1, 1975, is eligible for the police retired list when ~~he~~ the person has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer of the police department, in any capacity or rank.

(2) A person who is first employed by a city as a police officer after July 1, 1975, is eligible for the police retired list when ~~he~~ the person has reached the age of 50 and has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer of the police department, in any capacity or rank."

Section 248. Section 19-19-402, MCA, is amended to read:

"19-19-402. Eligibility for disability retirement. When a police officer receives injuries or disabilities in the active discharge of ~~his~~ duties as a police officer, ~~which~~ and ~~the~~ injuries or disabilities are, in the opinion of the board of police commissioners or city council of the city or town, of ~~such a~~ character ~~as to impair his~~ that impairs the officer's ability to discharge ~~his~~ the duties ~~as~~ of an active police officer, ~~he shall~~ the officer must be placed on the retired list of the city or town."

Section 249. Section 19-19-403, MCA, is amended to read:

"19-19-403. Option of officer to remain on active list. (1) A police officer who is eligible for the retired list under ~~subsection (1) or (2) of 19-19-401~~ (1) or (2) may transfer, as of the time ~~he~~ the officer becomes eligible, to the retired list or may elect to serve an additional 1 to 10 years as an active police officer.

(2) A police officer whose eligibility depends on 19-19-401(2) and who completes 20 years of service before reaching ~~the age of 50 years of age~~ is considered to have elected to serve an additional year for each year between the completion of ~~his~~ the officer's 20th year of service and ~~his~~ 50th birthday, and ~~he shall~~ the officer must

be paid the additional 1% for each ~~such year~~ of those years."

Section 250. Section 19-19-404, MCA, is amended to read:

"19-19-404. Reinstatement to retired list. An applicant for reinstatement under the provisions of 7-32-4110 may be reinstated and ~~passed into the~~ added to the retired list of police officers ~~so as to~~ and may enjoy all the benefits, pensions, and rights ~~which that~~ which accrue to police officers placed on the retired list in ~~said the~~ the city or town. The pension benefits to be allowed to ~~such a~~ such a reinstated officer ~~shall must~~ shall be computed upon the basis of ~~his the officer's~~ the officer's last full year of active service on ~~said the~~ the police force."

Section 251. Section 19-19-405, MCA, is amended to read:

"19-19-405. Credit for military service. A police officer serving in the United States military in time of war or national emergency ~~shall must~~ shall be given credit in ~~his the officer's~~ the officer's police record for ~~such the military~~ such the military service in the same manner as though ~~he the officer~~ he the officer were on active police duty."

Section 252. Section 19-19-406, MCA, is amended to read:

"19-19-406. Election to qualify previous military service. (1) A member with 15 years or more of service as a police officer may, at any time prior to ~~his~~ his retirement, make a written election with the board to qualify all or any portion of ~~his the member's~~ the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if ~~he the member~~ he the member is not otherwise eligible to receive credit. To qualify this service, ~~he must the member shall~~ he must the member shall contribute to the account the actuarial cost of granting the service to be determined by the board based on ~~his the member's~~ the member's compensation and normal contribution rate as of ~~his the member's~~ the member's 16th year and as many succeeding years as are required to qualify this service, with interest from the date ~~he becomes eligible of eligibility~~ he becomes eligible of eligibility for this benefit to the date ~~he contributes of contribution~~ he contributes of contribution. ~~He The member~~ The member may not qualify more of ~~his~~ his military service than ~~he has the~~ he has the service as a police officer in excess of 15 years. Military service purchased under this section may not be used in the determination of eligibility for a service retirement requiring a minimum of 20 years service.

(2) If a member has retired from active duty in the armed forces of the United States with normal service retirement benefits, ~~he the member~~ he the member may not qualify ~~his~~ his military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify ~~his the member's~~ the member's active military service under subsection (1) if ~~his the~~ the active duty in the armed forces of the United States is not more than 25% of the total of all ~~his~~ his years of military service, including reserve and

active duty time."

Section 253. Section 19-19-501, MCA, is amended to read:

"19-19-501. Service retirement allowance. When a police officer is transferred from the active list to the retired list of a city, ~~he shall thereafter~~ the officer must receive monthly payments from the city's police retirement fund, as follows:

(1) A police officer who is eligible under 19-19-401(1) or (2) and does not elect to serve any additional years as an active police officer ~~shall~~ must receive a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, ~~he~~ that the officer was receiving as an active officer computed on the highest salary received in any ~~one~~ 1 month during ~~his~~ the last year of active service.

(2) A police officer who is eligible after 20 years of service and who elects to serve additional years ~~shall~~ must receive the payment provided for in subsection (1) plus an additional 1% of ~~such~~ the payment per for each year of additional service, up to a maximum of 60% of the base salary, excluding overtime and payments in lieu of sick leave and annual leave, ~~he~~ that the officer was receiving as an active officer computed on the highest salary received in any ~~one~~ 1 month during ~~his~~ the last year of active service."

Section 254. Section 19-19-502, MCA, is amended to read:

"19-19-502. Disability retirement allowance. When a police officer is transferred from the active list to the retired list of a city, ~~he shall thereafter~~ the officer must receive monthly payments from the city's police retirement fund, as follows:

(1) A police officer who is eligible under 19-19-402 before completing 20 years of service ~~shall~~ must receive a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, ~~he~~ that the officer was receiving as an active officer computed on the highest salary received in any ~~one~~ 1 month during ~~his~~ the last year of active service.

(2) A police officer who is placed on the retired list under 19-19-402 and who, at the time of ~~his~~ injury or disability, was eligible at ~~his~~ the officer's option to be placed on the retired list under 19-19-401(1) or (2) but had elected to serve additional years and was then serving ~~such~~ the additional years ~~shall~~ must be paid for the additional years over ~~his~~ the officer's original eligibility at the rate prescribed in 19-19-501(2)."

Section 255. Section 19-19-503, MCA, is amended to read:

"19-19-503. Death benefits. (1) Upon the death of a police officer on the active list or retired list of a

city, ~~his~~ the officer's surviving spouse, if there is one, ~~shall~~ must, as long as ~~such~~ the spouse remains the surviving spouse, be paid from the city's police retirement fund a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, ~~he~~ that the officer was receiving as an active officer computed on the highest salary received in any ~~one~~ 1 month during ~~his~~ the last year of active service.

(2) If the officer leaves one or more dependent minor children, upon ~~his~~ the officer's death if ~~he leaves~~ there is no surviving spouse or upon the death or remarriage of the surviving spouse, ~~his~~ the surviving dependent minor children, collectively if there is more than one, ~~shall~~ must receive the same monthly payments as a surviving spouse would receive, until they reach ~~the age of~~ 18 years of age or are married. The payments ~~shall~~ must be made to their duly appointed, qualified, and acting guardian for their use. If there is more than one ~~such~~ child, upon each child reaching ~~the age of~~ 18 years of age or marrying, the pro rata payments to that child ~~shall~~ must cease and ~~shall~~ must be made to the remaining children; until all the children have either reached ~~the age~~ of 18 years of age or are married."

Section 256. Section 19-19-505, MCA, is amended to read:

"19-19-505. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan ~~which~~ that permits participation in the group plan following retirement may elect to have the monthly premium for ~~such~~ group insurance withheld by the department of administration and paid directly by the department to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of ~~his~~ the former employer. ~~No withholding~~ Withholding may not be made for any retiree covered by an individual insurance policy."

Section 257. Section 19-20-103, MCA, is amended to read:

"19-20-103. Implied consent of employee. A person who accepts employment for which membership is required is considered to have consented to membership and to the withholding of contributions from ~~his~~ the person's compensation."

Section 258. Section 19-20-301, MCA, is amended to read:

"19-20-301. Membership application. Whenever a person becomes a member of the retirement system as required by 19-20-302, ~~he~~ the person shall complete an application form prescribed by the retirement board."

Section 259. Section 19-20-303, MCA, is amended to read:

"19-20-303. Inactive membership. Any person's active membership in the retirement system ~~shall terminate~~ terminates, but ~~he shall be~~ the person is an inactive member, when the person:

(1) ~~he~~ ceases to be employed in a capacity that allows ~~his~~ membership and ~~he~~ the person has 5 or more years of creditable service in the retirement system;

(2) ~~he~~ ceases to be employed in a capacity that allows ~~his~~ membership and ~~he~~ the person has less than 5 years of creditable service in the retirement system, but ~~his~~ the loss of capacity to be a member was caused by a personal illness determined by the retirement board to be a disability or was caused by service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or by service in the American red cross or merchant marine during time of war; or

(3) ~~he~~ has 5 or more years of creditable service and ~~he~~ becomes a member of any other retirement or pension system supported wholly or in part by ~~moneys~~ the money of another government agency, except the federal social security retirement system, and the membership in the other retirement system would allow credit for the same employment service in two retirement systems. However, ~~no a person shall~~ may not be excluded from active membership solely because ~~he~~ the person is receiving or is eligible to receive retirement benefits from another retirement system."

Section 260. Section 19-20-304, MCA, is amended to read:

"19-20-304. Membership termination. The active or inactive membership in the retirement system of any person terminates when the person:

(1) ~~he~~ retires on a retirement allowance of the retirement system;

(2) ~~he~~ dies;

(3) ~~he~~ withdraws ~~his~~ the person's accumulated contributions to the retirement system under the provisions of 19-20-603; or

(4) ~~he~~ ceases to be employed in a capacity that allows ~~his~~ membership, ~~he~~ has less than 5 years of creditable service in the retirement system, and ~~he~~ cannot qualify under the provisions of 19-20-303(2)."

Section 261. Section 19-20-406, MCA, is amended to read:

"19-20-406. Creditable service for prior service. A member who is retiring with at least 5 years of creditable service and who has been an active member for at least 5 consecutive school fiscal years may request creditable service for any employment service ~~he~~ rendered prior to September 1, 1937, for which ~~he~~ the member has not received a prior service certificate. In order to receive the creditable service, ~~he must~~ the member shall

apply for it and provide certification of the prior service. The retirement board shall determine the amount of creditable service to be awarded, if any, and issue a prior service certificate."

Section 262. Section 19-21-211, MCA, is amended to read:

"19-21-211. Payment of benefits. ~~No~~ A retirement, death, or other benefit may not be paid by the state or the board of regents under the optional retirement program. Benefits are payable to a participant and ~~his~~ the participant's beneficiaries only by the designated company or companies in accordance with the terms of the contracts."

Section 263. Section 20-1-201, MCA, is amended to read:

"20-1-201. School officers not to act as agents. The superintendent of public instruction or members of ~~his~~ the superintendent's staff, county superintendent or members of ~~his~~ the superintendent's staff, trustee, or district employee ~~shall~~ may not act as an agent or solicitor in the sale or supply of goods or services to a district. ~~No such~~ An enumerated person ~~shall~~ may not assist or receive a reward from an agent or solicitor of goods or services for a district. Any ~~such~~ person violating this section ~~shall be deemed~~ is guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than \$50 or more than \$200 and shall be liable to removal from ~~his~~ the person's position. The penalties provided by this section ~~shall~~ may not be applicable if the charge and conviction are made under the provisions of 20-7-608."

Section 264. Section 20-1-202, MCA, is amended to read:

"20-1-202. Oath of office. Any person elected or appointed to any public office authorized by this title shall take the oath of office before qualifying for and assuming the office. ~~In case~~ If an officer has a written appointment or commission, ~~his~~ the officer's oath ~~shall~~ must be endorsed ~~thereon~~ on the appointment or commission, otherwise ~~it~~ the oath may be taken orally, and, in either case, it may, without charge or fee, be sworn to before an officer authorized to administer oaths for ~~such~~ the public office."

Section 265. Section 20-1-203, MCA, is amended to read:

"20-1-203. Delivering items to successor. Whenever any member of the trustees, superintendent, principal, or clerk of the district is replaced by election or otherwise, ~~he~~ the person shall immediately deliver all books, papers, and ~~moneys~~ money pertaining to the position to ~~his~~ the person's successor. Any ~~such~~ person who ~~shall refuse~~ refuses to do so or who ~~shall willfully destroy~~ knowingly destroys any ~~such~~ material or ~~misappropriate~~

~~misappropriates~~ any ~~moneys~~ money entrusted to him ~~the person~~ shall be is guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not more than \$100."

Section 266. Section 20-1-211, MCA, is amended to read:

"20-1-211. Expenses of officers or employees attending conventions -- educational associations.

(1) ~~After July 1, 1921, no~~ A school district officer or employee of any school district ~~shall~~ may not receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance ~~upon~~ at any convention, meeting, or other gathering of public officers except for attendance ~~upon such~~ at a convention, meeting, or other gatherings ~~as said~~ that the officer or employee may by virtue of his ~~his~~ the office or employment find it necessary to attend.

(2) The board of trustees of any county or district high school or of any school district may by resolution adopted by a majority of the entire board make their district a member of any state association of school districts or school district trustees or any other strictly educational association and authorize the payment of dues to ~~such~~ the association and the necessary traveling expenses of employees or members of ~~said~~ the board to attend meetings of ~~such~~ the association or other meetings called for the express purpose of considering educational matters."

Section 267. Section 20-2-111, MCA, is amended to read:

"20-2-111. Officers of boards -- quorum. (1) The board of public education and the board of regents may each select a ~~chairman~~ presiding officer from among their appointed members.

(2) The executive secretary shall serve as secretary to the board of public education, and the commissioner of higher education serves as secretary to the board of regents.

(3) A majority of the appointed members of each board constitutes a quorum for the transaction of business.

(4) The executive secretary shall serve as a liaison between the board of public education and the superintendent of public instruction and shall carry out other ~~such~~ duties as assigned by the board of public education."

Section 268. Section 20-2-112, MCA, is amended to read:

"20-2-112. Quarterly meetings of boards -- called meetings -- notice of meetings. (1) The board of public education and the board of regents shall meet at least quarterly.

(2) Other meetings of either board may be called by the governor, by the ~~chairman~~ presiding officer, by the secretary, or by four appointed members.

(3) The secretary to each board shall mail notice to each member at least 7 days in advance of all meetings of the respective board."

Section 269. Section 20-2-131, MCA, is amended to read:

"20-2-131. Commissioner of higher education -- duties -- compensation -- staff. (1) The board of regents shall prescribe the duties of the commissioner of higher education and shall set ~~his~~ the commissioner's compensation.

(2) The board of regents shall provide sufficient staff and office space to the commissioner for ~~him to~~ carry carrying out his the commissioner's duties."

Section 270. Section 20-3-101, MCA, is amended to read:

"20-3-101. Election and qualifications. (1) A superintendent of public instruction for the state of Montana ~~shall~~ must be elected by the qualified electors of the state at the general election preceding the expiration of the term of office of the incumbent.

(2) ~~Any A~~ person ~~shall be~~ is qualified to assume the office of superintendent of public instruction who:

- (a) is 25 years of age or older at the time of ~~his~~ election;
- (b) has resided within the state for the 2 years ~~next~~ preceding ~~his~~ the election;
- (c) holds at least a bachelor's degree from any unit of the Montana university system or from an institution recognized as equivalent by the board of public education for teacher certification purposes; and
- (d) otherwise possesses the qualifications for ~~such~~ office ~~which~~ that are required by The Constitution of the State of Montana."

Section 271. Section 20-3-102, MCA, is amended to read:

"20-3-102. Term, oath, and vacancy. (1) The superintendent of public instruction shall hold office at the seat of government for ~~the~~ a term of 4 years. ~~He~~ The superintendent shall assume office on the first Monday of January following ~~his~~ election and shall hold the office until ~~his~~ a successor has been elected and qualified. Any person elected as the superintendent of public instruction shall take the oath of a civil officer.

(2) If the office of superintendent of public instruction becomes vacant, it ~~shall~~ must be filled in the manner prescribed by The Constitution of the State of Montana."

Section 272. Section 20-3-105, MCA, is amended to read:

"20-3-105. Administrative powers and duties. In administering the affairs of ~~his~~ the office, the superintendent of public instruction ~~shall have~~ has the power and it ~~shall be his~~ is the superintendent's duty to:

(1) keep a record of ~~his~~ official acts and all documents applicable to the administration of the office, preserve all official reports submitted to ~~him~~ the superintendent for the period required by law, and surrender them to ~~his~~ the superintendent's successor at the expiration of ~~his~~ the term;

(2) preserve all books, educational media, instructional equipment, and any other articles of educational interest and value ~~which~~ that come into ~~his~~ the superintendent's possession and surrender them to ~~his~~ the superintendent's successor at the expiration of ~~his~~ the term;

(3) cause the printing and distribution of all reports and forms necessary for the proper conduct of business by a district or school in the manner prescribed by the provisions of this title;

(4) provide and keep an official seal of the superintendent of public instruction by which ~~his~~ official acts ~~shall~~ must be authenticated;

(5) if ~~he deems~~ considered necessary, cause the printing of a complete and updated volume of the school laws of the state, which ~~shall~~ must be offered and sold at cost of the printing and shipping to any school official or other person;

(6) whenever a replacement volume is not printed under the provisions of subsection (5), cause the printing of a cumulative supplement to the most recent volume of school laws immediately after the conclusion of any session of the legislature at which new school laws or amendments to the school laws were adopted. It ~~shall~~ must be offered and sold at cost of the printing and shipping to any school official or other person.

(7) if ~~deemed~~ considered necessary, publish a biennial report of the superintendent of public instruction;

(8) counsel with and advise county superintendents on matters involving the welfare of the schools and, when requested, give a county superintendent a written answer to any question concerning school law;

(9) call an annual meeting of the county superintendents when ~~he deems it~~ considered advisable;

(10) as far as ~~he shall find it~~ practicable, address public assemblies on subjects pertaining to education in Montana; and

(11) faithfully work in all practical and possible ways for the welfare of the public schools of the state."

Section 273. Section 20-3-202, MCA, is amended to read:

"20-3-202. Term, oath, and vacancy. (1) The county superintendent shall hold office for a term of 4 years. ~~He~~ The county superintendent shall assume office on the first Monday of January following ~~his~~ election

and shall hold the office until ~~his~~ a successor has been elected and qualified.

(2) Any person elected as the county superintendent shall take the oath or affirmation of office and shall give an official bond, as required by law.

(3) If the office of county superintendent becomes vacant, the board of county commissioners shall appoint a replacement to fill the vacancy. ~~Such~~ The replacement shall serve until the next regular general election, when a person ~~shall~~ must be elected to serve the remainder of the initial term, if there ~~be~~ is any remaining term."

Section 274. Section 20-3-203, MCA, is amended to read:

"20-3-203. Office costs and staff. (1) The board of county commissioners shall supply the county superintendent with suitable office space and office supplies. The county superintendent ~~shall~~ must be paid from the county general fund all necessary traveling expenses ~~that he~~ actually incurs incurred in discharging his duties, after ~~such~~ the expenses have been audited by the board of county commissioners.

(2) Upon the county superintendent's recommendation of a candidate, the board of county commissioners may appoint ~~such~~ the candidate to the position of chief deputy county superintendent. The commissioners also may appoint deputies and assistants for the county superintendent. The commissioners shall fix the salaries of the personnel prescribed by this section at 90% or less of the salary of the county superintendent."

Section 275. Section 20-3-206, MCA, is amended to read:

"20-3-206. Additional positions. In the capacity as county superintendent, the county superintendent shall also serve as:

- (1) the ~~chairman~~ presiding officer of the county transportation committee, as prescribed by 20-10-131;
- (2) an attendance officer for a district under the conditions prescribed by 20-5-104; and
- (3) the clerk of a joint board of trustees under the conditions prescribed by 20-3-361."

Section 276. Section 20-3-208, MCA, is amended to read:

"20-3-208. Authority to request, accept, and disburse money. (1) A county superintendent may, with the advice and consent of the appropriate school boards, request and accept money made available from federal, state, or private sources for purposes of public education.

(2) Subject to applicable federal and state guidelines and, in the case of money received from private

sources, subject to any guidelines fixed by the donor, a county superintendent may, ~~in his discretion~~, disburse money received under this section to one or more public elementary or high school districts according to their needs. The county superintendent shall supervise the ~~utilization~~ use of ~~such~~ the money with the approval of the appropriate school boards.

(3) The county superintendent may establish a fund, for which the county treasurer shall maintain a separate accounting, for the deposit of money received under this section."

Section 277. Section 20-3-211, MCA, is amended to read:

"20-3-211. Disqualification of county superintendent. A county superintendent may not hear or decide matters of controversy pursuant to 20-3-210 when:

- (1) ~~he~~ the county superintendent is a party to or has an interest in the controversy;
- (2) ~~he~~ the county superintendent is related to either party in the controversy by consanguinity or affinity within the sixth degree, computed according to the rules of law;
- (3) either party to the controversy makes and files with the county superintendent of schools an affidavit that ~~he~~ the party has reason to believe and does believe that ~~he~~ the party cannot have a fair and impartial hearing before the county superintendent by reason of the bias or prejudice of the county superintendent; or
- (4) the controversy involves the education or possible identification of a child with a disability."

Section 278. Section 20-3-308, MCA, is amended to read:

"20-3-308. Vacancy of trustee position. (1) ~~Any~~ An elected trustee position ~~shall be~~ is vacant whenever the incumbent:

- (a) dies;
 - (b) resigns;
 - (c) moves ~~his~~ the trustee's residence from the applicable district or from the nominating district in the case of an additional trustee in a high school district;
 - (d) is no longer a registered elector of the district under the provisions of 20-20-301;
 - (e) is absent from the district for 60 consecutive days;
 - (f) fails to attend three consecutive meetings of the trustees without a good excuse;
 - (g) has been removed under the provisions of 20-3-310; or
 - (h) ceases to have the capacity to hold office under any other provision of law.
- (2) A trustee position is also ~~shall be~~ vacant when an elected candidate fails to qualify under the

provisions of 20-3-307."

Section 279. Section 20-3-309, MCA, is amended to read:

"20-3-309. Filling vacated trustee position -- appointee qualification and term of office. (1)

Whenever a trustee position becomes vacant in any district, the remaining members of the trustees shall declare ~~such the~~ position vacant and they shall appoint, in writing within 60 days, a competent person as a successor. The trustees shall notify the appointee and the county superintendent of ~~such the~~ appointment. If the trustees do not make the appointment within ~~such the~~ 60-day period, the county superintendent shall appoint, in writing, a competent person as a successor and notify ~~such the~~ person of ~~his the~~ appointment.

(2) ~~Any A~~ person who has been appointed to a trustee position shall qualify by completing and filing an oath of office with the county superintendent within 15 days after receiving notice of ~~his~~ appointment. Failure to file the oath of office ~~shall constitute~~ constitutes a continuation of the trustee position vacancy ~~which shall that~~ must be filled under the provisions of this section.

(3) ~~Any A~~ person assuming a trustee position under the provisions of this section shall serve until the next regular school election and ~~his~~ until a successor has qualified."

Section 280. Section 20-3-310, MCA, is amended to read:

"20-3-310. Trustee removal. Any trustee may be removed from ~~his the~~ trustee position by a court of competent jurisdiction under the law providing for the removal of elected civil officials. When charges are ~~preferred brought~~ against a trustee and good cause is shown, the board of county commissioners may suspend ~~such the~~ trustee from ~~his the~~ trustee position until the charges can be heard in the court of competent jurisdiction."

Section 281. Section 20-3-311, MCA, is amended to read:

"20-3-311. Trustee travel reimbursement and compensation of secretary for joint board. The members of the trustees of any district ~~shall may~~ not receive compensation for their services as trustees, except that the secretary of the trustees of a high school district operating a county high school or the secretary of a joint board of trustees may be compensated for ~~his~~ services as the secretary. The members of the trustees who reside over 3 miles from the trustees' meeting place ~~shall must~~ be reimbursed at the rate as provided in 2-18-503; for every mile necessarily traveled between their residence and the meeting place and return in attending the regular and special meetings of the trustees, and all trustees ~~shall must~~ be similarly reimbursed for meetings called by the county superintendent. The travel reimbursement may be accumulated during the school fiscal year and paid

at the end of the fiscal year, at the discretion of each trustee."

Section 282. Section 20-3-344, MCA, is amended to read:

"20-3-344. Nomination of candidates by petition in first-class elementary district. Except as provided in 20-3-338, any 20 electors, qualified under the provisions of 20-20-301, of any first-class elementary district may nominate by petition as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy ~~shall~~ must be submitted to the clerk of the district not less than 40 days before the regular school election day at which ~~he~~ the person is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated ~~shall~~ must also be indicated. The election ~~shall~~ must be conducted with the ballot as specified in 20-3-306."

Section 283. Section 20-3-353, MCA, is amended to read:

"20-3-353. Establishment and purpose of trustee nominating districts. (1) After the county superintendent has determined the number of additional trustee positions, ~~he~~ the county superintendent shall establish trustee nominating districts in that portion of the high school district without representation on the high school trustees. There ~~shall~~ must be one trustee nominating district for each additional trustee position, except the additional trustee-at-large. Unless it is impossible, the trustee nominating district boundaries ~~shall~~ must be coterminous with elementary district boundaries.

(2) The purpose of the trustee nominating district ~~shall be~~ is to establish a representative district for the nomination and election of a resident of ~~such~~ the district to be an additional member of the trustees of a high school district. The electors qualified to vote in the high school district under the provisions of 20-20-301 and who reside in the trustee nominating district ~~shall be~~ are the only electors who may vote for the additional trustee representing ~~such~~ the district. They must also ~~shall~~ be permitted to vote for a trustee position at large, if there is one, but not for ~~no~~ any other high school trustee position.

(3) Any additional trustee position established under the provisions of this section ~~shall~~ must be filled in a manner prescribed under the provisions of 20-3-309. Each additional trustee position filled by appointment under this section ~~shall be~~ is subject to election at the next regular school election."

Section 284. Section 20-3-354, MCA, is amended to read:

"20-3-354. Redetermination of additional trustee positions and subsequent adjustments. Whenever there is a revision of the taxable valuation of the high school district or the elementary districts within

if ~~the high school district~~ or there is a reclassification of the elementary district ~~which that~~ has its trustees placed on the high school district board of trustees, the county superintendent shall redetermine the number of additional trustee positions for the high school district in accordance with 20-3-352. If there is a change in the allowable number of additional trustee positions, the county superintendent shall reestablish the trustee nominating districts in accordance with 20-3-353. If the number of additional trustee positions is less than the previous number of positions, the county superintendent shall designate which present additional positions are to terminate upon ~~his~~ the order reestablishing the trustee nominating districts. If the number of additional trustee positions is more than the previous number of positions, ~~such the~~ additional trustee positions ~~shall~~ must be filled in the manner prescribed under the provisions of 20-3-309. Each additional trustee position filled by appointment under this section ~~shall be is~~ subject to election at the next regular school election."

Section 285. Section 20-3-361, MCA, is amended to read:

"20-3-361. Joint board of trustees organization and voting membership. (1) The board of trustees of two or more school districts may form a joint board of trustees for the purpose of coordinating any educational program or support service of the districts. A joint board of trustees may coordinate only those programs and services agreed to by the participating boards of trustees.

(2) When a joint board of trustees is formed, all of the members of the districts' trustees ~~shall~~ must be members of the joint board of trustees and each member ~~shall~~ must have the right to participate in the meetings, but voting on matters considered by the joint board ~~shall be is~~ limited by the provisions of this section.

(3) At the first meeting of the joint board of trustees, ~~there shall be a chairman~~ presiding officer of the joint board of trustees must be selected from among the membership. A secretary of the joint board ~~shall~~ must be selected from the membership. The ~~chairman~~ presiding officer, when selected as a voting member, ~~shall~~ may not be disqualified from voting because of ~~his the~~ position of ~~chairman of the board~~. The secretary ~~shall~~ may not be a voting member except that ~~he the~~ secretary shall cast the deciding vote when three successive ballots have resulted in a tie vote of the joint board of trustees.

(4) The voting membership of the joint board of trustees ~~shall~~ must be equalized among the trustee membership of the participating districts. After the selection of the ~~chairman~~ presiding officer and the secretary, if necessary, the voting membership ~~shall be is~~:

(a) all of the membership of the board of trustees of the smallest class of district, according to 20-6-201 or 20-6-301, unless one of its members is selected as secretary, in which case ~~such that~~ member ~~shall~~ may not be a voting member; and

(b) the members of the board of trustees of the other district or districts who are selected by ~~such the~~ the trustees as voting members of the joint board in a number equal to the number of voting members of the district as established under subsection (4)(a) ~~above~~. The names of the voting membership selected by the trustees ~~shall~~ must be submitted in writing to the secretary of the board and ~~shall be~~ are the only members of ~~such the~~ the district's trustees eligible to vote on joint board matters unless ~~such the~~ the list is revised in writing by the trustees.

(5) Each voting member ~~shall be~~ is entitled to cast one vote, individually, upon every matter submitted to the joint board for a vote.

(6) A joint board ~~must~~ shall remain in existence for at least 1 school year and may not be dissolved until the end of a school year."

Section 286. Section 20-4-101, MCA, is amended to read:

"20-4-101. System and definitions of teacher and specialist certification -- student teacher exception. (1) In order to establish a uniform system of quality education and to ensure the maintenance of professional standards, a system of teacher and specialist certification ~~shall~~ must be established and maintained under the provisions of this title and ~~no a person shall~~ may not be permitted to teach in the public schools of the state until ~~he~~ the person has obtained a teacher ~~certificate~~ or specialist certificate or the district has obtained an emergency authorization of employment from the state.

(2) As used in this part, "teacher or specialist certificate" means a certificate issued or applied for under 20-4-106. The term "teacher or specialist" refers to a person certified under 20-4-106.

(3) The ~~above~~ certification requirement ~~shall~~ does not apply to a student teacher who is ~~hereby defined~~ as a student enrolled in an institution of higher learning approved by the board of regents of higher education for teacher training and who is jointly assigned by ~~such the~~ the institution of higher learning and the governing board of a district or a public institution to perform practice teaching in a nonsalaried status under the direction of a regularly employed and certificated teacher.

(4) A student teacher, while serving ~~such a~~ nonsalaried internship under the supervision of a certificated teacher, ~~shall~~ must be accorded the same protection of the laws as that accorded a certificated teacher and shall, while acting as ~~such a~~ student teacher, comply with all rules of the governing board of the district or public institution and the applicable provisions of 20-4-301 relating to the duties of teachers."

Section 287. Section 20-4-104, MCA, is amended to read:

"20-4-104. Qualifications. (1) A person may be certified as a teacher when ~~he~~ the person satisfies the

following qualifications. The person:

(a) ~~He~~ is 18 years of age or older; ~~;~~

(b) ~~He~~ is of good moral and professional character; ~~;~~

(c) ~~He~~ has completed the teacher education program of a unit of the Montana university system or an essentially equivalent program at an accredited institution of equal rank and standing as that of any unit of the Montana university system, and ~~his~~ the training is evidenced by at least a bachelor's degree and a certification of the completion of the teacher education program, except as provided for in 20-4-106(1)(d); ~~;~~ and

(d) ~~He~~ has subscribed to the following oath or affirmation before an officer authorized by law to administer oaths:

"I solemnly swear (or affirm) that I will support The Constitution of the United States of America and The Constitution of the State of Montana."

(2) Any person may be certified as a specialist when ~~he~~ the person satisfies the requirements of subsections (1)(a) and (1)(b) and the requirement for a specialist certificate provided in 20-4-106(2)."

Section 288. Section 20-4-106, MCA, is amended to read:

"20-4-106. Classifications of teacher and specialist certificates. (1) The superintendent of public instruction shall issue teacher certificates and the board of public education shall adopt teacher certification policies on the basis of the following classifications of teacher certificates:

(a) The class 1 professional certificate may be issued to an otherwise qualified applicant who has completed a teacher education program ~~which~~ that includes a bachelor's degree and a minimum of 1 year of study beyond ~~such~~ the degree in a unit of the Montana university system or an equivalent institution. The professional certificate may be endorsed for elementary instruction, for secondary instruction, or both, and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher certification endorsement.

(b) The class 2 standard certificate may be issued to an otherwise qualified applicant who has completed a 4-year teacher education program and who has been awarded a bachelor's degree by a unit of the Montana university system or an equivalent institution. The standard certificate may be endorsed for elementary instruction, for secondary instruction, or both, and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher certification endorsement.

(c) The class 3 administrative and supervisory certificate may be issued to an otherwise qualified applicant who is eligible for a teacher certificate endorsed for teaching in the school or schools in which ~~he~~ the

applicant would be an administrator or ~~he~~ would supervise. The applicant ~~also shall~~ must also possess the training and experience required by the policies of the board of public education for an endorsement as superintendent, principal, or supervisor.

(d) The class 4 vocational, recreational, or adult education certificate may be issued to an otherwise qualified applicant who has the qualifications of training and experience required by the United States office of education or the qualifications required by the special needs of the several vocational, recreational, or adult education fields and who can qualify under the policy of the board of public education for the issuance of this classification of teacher certification.

(e) The class 5 provisional certificate may be issued to an otherwise qualified applicant who can provide satisfactory evidence of ~~his~~ the intent to qualify in the future for a class 1 or a class 2 certificate and who has completed a 4-year college program or its equivalent and holds a bachelor's degree from a unit of the Montana university system or its equivalent. The provisional certificate may be endorsed for elementary instruction, for secondary instruction, or both, and for special subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher or specialist certification endorsement.

(2) The superintendent of public instruction shall issue specialist certificates, and the board of public education shall adopt specialist certification policies. The specialist certificate may be issued to an otherwise qualified applicant who has the training, experience, and license required under the standards of the board of public education for the certification of a profession other than the teaching profession.

(3) For purposes of evaluating the qualifications of applicants for either teacher or specialist certificates, a year means the instructional period consisting of three quarters or two semesters or other terms ~~which~~ that are recognized as an academic year by any unit of the Montana university system or equivalent institution."

Section 289. Section 20-4-121, MCA, is amended to read:

"20-4-121. Interstate agreement on qualification of educational personnel. The interstate agreement on qualification of educational personnel is enacted into law and entered into with all jurisdictions legally joining therein in the form substantially as follows:

Article I. Purpose -- Findings -- Policy

(1) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and

experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it and to authorize specific interstate educational personnel contracts to achieve that end.

(2) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators are lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of origin, can increase the available educational resources. Participation in this compact can increase the availability of educational ~~manpower~~ personnel.

Article II. Definitions

As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise, the following definitions apply:

(1) "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

(2) "Designated state official" means the educational official of a state selected by that state to negotiate and enter into, on behalf of ~~his~~ the official's state, contracts pursuant to this agreement.

(3) "Accept" or any variant thereof means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

(4) "State" means a state, territory, or possession of the United States, the District of Columbia, or the commonwealth of Puerto Rico.

(5) "Originating state" means a state (and the subdivisions thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

(6) "Receiving state" means a state (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

Article III. Interstate Educational Personnel Contracts

(1) The designated state official of a party state may make one or more contracts on behalf of ~~his~~ the designated state official's state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it and the subdivisions of those states with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this article only with states in which ~~he~~ the designated state official finds that there are programs of education, certification standards, or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable even though not identical to that prevailing in ~~his~~ the designated state official's own state.

(2) Any such contract shall provide for:

(a) its duration;

(b) the criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state;

(c) such waivers, substitutions, and conditional acceptance as shall aid the practical effectuation of the contract without sacrifice of basic educational standards; and

(d) any other necessary matters.

(3) No contract made pursuant to this agreement shall be for a term longer than 5 years, but any such contract may be renewed for like or lesser periods.

(4) Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

(5) The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

(6) A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report not less than once a year to the heads of the appropriate education agencies of the contracting states.

Article IV. Approved and Accepted Programs

(1) Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

(2) To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

Article V. Interstate Cooperation

The party states agree that:

(1) they will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this agreement; and

(2) they will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

Article VI. Agreement Evaluation

The designated state officials of any party states may meet from time to time as a group to evaluate progress under the agreement and to formulate recommendations for changes.

Article VII. Other Arrangements

Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel.

Article VIII. Effect -- Withdrawal

(1) This agreement shall become effective when enacted into law by two states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

(2) Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until 1 year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

(3) No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

Article IX. Construction -- Severability

This agreement shall be liberally construed so as to effectuate the purpose thereof. The provisions of this

agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement is held to be contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters."

Section 290. Section 20-4-132, MCA, is amended to read:

"20-4-132. Meetings -- assistance. (1) The council shall meet quarterly and at other times as may be required for the proper conduct of the business of the council at the call of the ~~chairman~~ presiding officer.

(2) The council may adopt rules for the conduct of its business.

(3) The council shall keep a record of its proceedings.

(4) The council may request research, administrative, and clerical staff assistance from the board of public education.

(5) The council shall select a ~~chairman~~ presiding officer and a ~~vice-chairman~~ vice presiding officer from its appointed members.

(6) A quorum for a meeting is not less than four council members.

(7) Council members are entitled to travel expenses incurred for each day of attendance at council meetings or in the performance of any duty or service as a council member in accordance with 2-18-501 through 2-18-503."

Section 291. Section 20-4-202, MCA, is amended to read:

"20-4-202. Teacher and specialist certification registration. (1) Any person employed as a teacher, specialist, principal, or district superintendent shall register ~~his~~ the person's certificate or the district shall register its emergency authorization of employment for a teacher with the county superintendent of the county ~~wherein he~~ in which the person is employed in order to validate ~~his~~ the person's employment status and permit payment under ~~his~~ the employment contract. If a teacher or specialist does not register ~~his~~ the person's certificate with the county superintendent within 60 calendar days after ~~he~~ the person begins to perform ~~his~~ services, ~~he shall~~ the person is not be eligible to receive any further compensation under ~~his~~ the contract of employment until ~~he~~ the person has registered ~~his~~ the certificate. After the schools of a district have been open for 60 calendar days in the current school fiscal year, the county superintendent shall notify each district of the county of each teacher

or specialist who has registered ~~his~~ a current valid certificate, and the district ~~shall~~ may not pay any teacher who has not registered ~~his~~ the person's certificate until the county superintendent does notify the district of ~~such~~ the registration.

(2) A teacher or specialist employed by a joint district shall register ~~his~~ the person's certificate with the county superintendent of the county in which ~~he~~ the person is working. A teacher or specialist employed by a special education cooperative shall register ~~his~~ the person's certificate with the county superintendent of the county in which the special education cooperative is based."

Section 292. Section 20-4-304, MCA, is amended to read:

"20-4-304. Attendance at instructional and professional development meetings. The trustees of a school district shall close the schools of the district for the annual instructional and professional development meetings of teachers' organizations. A teacher may attend instructional and professional development meetings without loss of salary or attend other appropriate inservice training, ~~as that~~ as that may be prescribed by the trustees; without loss of salary. If a teacher does ~~neither~~ not attend, ~~he must~~ the teacher may not be paid."

Section 293. Section 20-5-102, MCA, is amended to read:

"20-5-102. Compulsory enrollment and excuses. (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to be instructed in the program prescribed by the board of public education pursuant to 20-7-111 until the later of the following dates:

- (a) the child's 16th birthday; or
- (b) the date of completion of the work of the 8th grade.

(2) A parent, guardian, or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when ~~he~~ the parent, guardian, or person establishes residence in the district unless the child is:

- (a) enrolled in a school of another district or state under any of the tuition provisions of this title;
- (b) provided with supervised correspondence study or supervised home study under the transportation provisions of this title;
- (c) excused from compulsory school attendance upon a determination by a district judge that attendance is not in the best interest of the child;
- (d) excused by the board of trustees upon a determination that attendance by a child who has attained

the age of 16 is not in the best interest of the child and the school; or

(e) enrolled in a nonpublic or home school that complies with the provisions of 20-5-109. For the purposes of this subsection (2)(e), a home school is the instruction by a parent of ~~his~~ the parent's child, stepchild, or ward in ~~his~~ the parent's residence and a nonpublic school includes a parochial, church, religious, or private school."

Section 294. Section 20-5-103, MCA, is amended to read:

"20-5-103. Compulsory attendance and excuses. (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to attend the school in which ~~he~~ the child is enrolled for the school term and each school day ~~therein~~ in the term prescribed by the trustees of the district until the later of the following dates:

(a) the child's 16th birthday; or

(b) the date of completion of the work of the 8th grade.

(2) The provisions of subsection (1) do not apply in the following cases:

(a) The child has been excused under one of the conditions specified in 20-5-102.

(b) The child is absent because of illness, bereavement, or other reason prescribed by the policies of the trustees.

(c) The child has been suspended or expelled under the provisions of 20-5-202."

Section 295. Section 20-5-105, MCA, is amended to read:

"20-5-105. Attendance officer -- powers and duties. The attendance officer of ~~any a~~ any district ~~shall~~:

(1) must be vested with police powers, the authority to serve warrants, and the authority to enter places of employment of children in order to enforce the compulsory attendance provisions of this title;

(2) shall take into custody any child subject to compulsory attendance who is not excused under the provisions of this title and conduct ~~him~~ the child to the school in which ~~he~~ the child is or should be enrolled;

(3) shall do whatever else is required to investigate and enforce the compulsory attendance provisions of this title and the pupil attendance policies of the trustees;

(4) shall institute proceedings against any parent, guardian, or other person violating the compulsory attendance provisions of this title;

(5) shall keep a record of ~~his~~ transactions for the inspection and information of the trustees and make

reports in the manner and to whomever the trustees designate; and

(6) shall perform any other duties prescribed by the trustees to preserve the morals and secure good conduct of the pupils of the district."

Section 296. Section 20-5-106, MCA, is amended to read:

"20-5-106. Truancy. (1) Whenever the attendance officer discovers a child truant from school or a child subject to compulsory attendance who is not enrolled in a school providing the required instruction and has not been excused under the provisions of this title, ~~he~~ the officer shall notify in writing the parent, guardian, or other person responsible for the care of the child that the continued truancy or nonenrollment of ~~his~~ the child ~~shall~~ will result in ~~his~~ the person's prosecution under the provisions of this section. If the child is not enrolled and in attendance at a school or excused from school within 2 days after the receipt of the notice, the attendance officer shall file a complaint against ~~such~~ the person in a court of competent jurisdiction.

(2) If convicted, ~~such~~ the person shall be fined not less than \$5 or more than \$20. In the alternative, ~~he~~ the person may be required to give bond in the penal sum of \$100, with sureties, conditioned upon ~~his~~ the person's agreement to cause the enrollment of ~~his~~ the child within 2 days ~~thereafter~~ in a school providing the courses of instruction required by this title and to cause the child to attend that school for the remainder of the current school term. If a person refuses to pay a fine and costs or to give a bond as ordered by the court, ~~he~~ the person shall be imprisoned in the county jail for a term of not less than 10 days or more than 30 days."

Section 297. Section 20-5-107, MCA, is amended to read:

"20-5-107. Incapacitated and indigent child attendance. In lieu of the provisions of 20-5-106 and when an attendance officer is satisfied that a pupil or a child subject to compulsory attendance is not able to attend school because ~~he~~ the child does not have the physical capacity or ~~he~~ the child is absolutely required to work at home or elsewhere in order to provide support himself for the child or his the child's family, the attendance officer shall report the case to the authorities charged with the relief of the poor. ~~It shall be the duty of such~~ The welfare authorities ~~to~~ shall offer ~~such~~ relief ~~as~~ that will enable the child to attend school. If the parent, guardian, or other person who is responsible for the care of the child denies or neglects the assistance offered to enable the child to attend school, the child ~~shall~~ must be committed to a state institution, at the discretion of the court."

Section 298. Section 20-5-111, MCA, is amended to read:

"20-5-111. Responsibilities and rights of parent who provides home school. Subject to the

provisions of 20-5-109, a parent has the authority to instruct ~~his~~ the parent's child, stepchild, or ward in a home school and is solely responsible for:

- (1) the educational philosophy of the home school;
- (2) the selection of instructional materials, curriculum, and textbooks;
- (3) the time, place, and method of instruction; and
- (4) the evaluation of the home school instruction."

Section 299. Section 20-5-405, MCA, is amended to read:

"20-5-405. Medical or religious exemption. (1) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking to attend school or the person seeking to attend school, if an adult, signs and files with the governing authority, prior to the commencement of attendance each school year, a notarized affidavit on a form prescribed by the department stating that immunization is contrary to the religious tenets and practices of the signer, immunization of the person seeking to attend the school may not be required prior to attendance at the school. The statement must be maintained as part of the person's immunization records. A person who falsely claims a religious exemption is subject to the penalty for false swearing provided in 45-7-202.

(2) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking to attend school; or the person seeking to attend school, if an adult, files with the governing authority a written statement signed by a physician licensed to practice medicine in any jurisdiction of the United States or Canada stating that the physical condition of the person seeking to attend school or medical circumstances relating to ~~him~~ the person indicate that some or all of the required immunizations are not considered safe and indicating the specific nature and probable duration of the medical condition or circumstances ~~which~~ that contraindicate immunization, ~~he~~ the person is exempt from the requirements of this part to the extent indicated by the physician's statement. The statement must be maintained as part of the person's immunization records.

(3) Whenever there is good cause to believe that a person for whom an exemption has been filed under this section has a disease or has been exposed to a disease listed in 20-5-403 or will as the result of school attendance be exposed to ~~such~~ the disease, the person may be excluded from the school by the local health officer or the department until the excluding authority is satisfied that the person no longer risks contracting or transmitting that disease."

Section 300. Section 20-5-406, MCA, is amended to read:

"20-5-406. Immunization record. The governing authority of each school shall require written evidence of each pupil's immunization against the diseases listed in 20-5-403 and shall record the immunization of each pupil as part of ~~his~~ the pupil's permanent school record on a form prescribed by the department."

Section 301. Section 20-6-103, MCA, is amended to read:

"20-6-103. Permanent record of district boundaries. (1) The board of county commissioners shall maintain a permanent record ~~which that~~ that plainly and definitely describes the boundaries of each district within the county. The county superintendent shall keep a transcript of the record in ~~his~~ the superintendent's office and ~~shall~~ be is responsible for keeping the record current.

(2) If the county superintendent determines that the boundaries of any elementary district or high school district are in conflict or are incorrectly described, ~~he~~ the superintendent shall change, harmonize, and describe ~~them~~ the boundaries accurately; and ~~he~~ shall make a report of ~~such~~ the boundary adjustments to the board of county commissioners. When the board of county commissioners approves a district boundary report submitted by the county superintendent, ~~such~~ the boundaries ~~shall be~~ are the legal boundaries and description of the district within the county. Whenever district boundaries are clarified under this section, the county superintendent shall supply the trustees of the district with the legal descriptions of the boundaries of their district."

Section 302. Section 20-6-605, MCA, is amended to read:

"20-6-605. Land acquired by conditional deed or at will or sufferance. Whenever, ~~after March 17,~~ after March 17, 1939, the trustees acquire land by deed conditioned upon the use of the land for the conduct of school or related activities or whenever land has been used by the trustees at the will or sufferance of the land's owner or claimant and the district has constructed buildings or made other improvements on the land, the owner or claimant may repossess the land if it ceases to be used as specified by deed or, if not specified, for the conduct of school or related activities. However, the owner or claimant shall first notify the trustees in writing of ~~his~~ the intent to repossess the land, and the trustees shall ~~hereafter~~ after receipt have 1 year after receipt to remove any buildings or improvements placed ~~there~~ upon the land by the district. The trustees' failure to remove the buildings or improvements within that time ~~shall constitute~~ constitutes a forfeiture of ~~such~~ the buildings or improvements. Before the owner or claimant ~~shall have~~ has the right to give notice of repossession, the district's intention to permanently cease using the land ~~shall~~ must have been established by resolution of the trustees and a vote of the district's electors."

Section 303. Section 20-7-113, MCA, is amended to read:

"20-7-113. Maintenance of curriculum guide file and publishing curriculum guides by superintendent of public instruction. The superintendent of public instruction shall collect and maintain a file of curriculum guides to be made available to districts for the use of schools in planning courses of instruction. ~~He~~ The superintendent may prepare, publish, and distribute curriculum guides for the use of schools in planning courses of instruction. ~~He~~ The superintendent may solicit the assistance of educators and other qualified persons in the preparation of curriculum guides."

Section 304. Section 20-7-116, MCA, is amended to read:

"20-7-116. Supervised correspondence study. The trustees of ~~any a~~ a district may provide supervised correspondence study for a pupil when it is impossible for ~~him~~ the pupil to attend a school ~~due to~~ because of the isolation of ~~his~~ the pupil's residence or ~~his~~ the pupils's mental or physical incapacity. Supervision of the correspondence course ~~shall~~ must be provided by the district superintendent or the county superintendent if there is no district superintendent."

Section 305. Section 20-7-462, MCA, is amended to read:

"20-7-462. Responsibilities of surrogate parent. A person assigned as a surrogate parent shall represent the child with a disability in all decisionmaking processes concerning the child's education by:

- (1) becoming thoroughly acquainted with the child's history and other information contained in school and other pertinent files, records, and reports relating to that child's educational needs;
- (2) complying with state and federal law as to the confidentiality of all records and information to which ~~he~~ the person is privy pertaining to that child and using discretion in the necessary sharing of the information with appropriate people for the purpose of furthering the interests of the child;
- (3) becoming familiar with the educational evaluation and placement for the child and by giving ~~his~~ approval or disapproval for the evaluation and placement and reviewing and evaluating special education programs pertaining to the child and ~~such~~ other programs ~~as~~ that may be available; and
- (4) initiating any mediation, hearing, or appeal procedures necessary and seeking qualified legal assistance whenever ~~such~~ the assistance is in the best interest of the child."

Section 306. Section 20-7-463, MCA, is amended to read:

"20-7-463. Surrogate parent -- immunity from liability -- reimbursement. (1) A person appointed as

a surrogate parent is exempt from liability for any act or omission performed by ~~him~~ the person in ~~his~~ the capacity as a surrogate parent except an act or omission ~~which~~ that is found to have been committed in a grossly negligent or malicious manner.

(2) A surrogate parent has the same protection and immunity in professional communications as a teacher.

(3) A surrogate parent must be reimbursed by the school district for all reasonable and necessary expenses incurred in the pursuit of ~~his~~ the surrogate parent's duties, as prescribed by rules adopted by the superintendent of public instruction."

Section 307. Section 20-7-606, MCA, is amended to read:

"20-7-606. Doing business without textbook dealer's license -- penalty. Any A textbook dealer who ~~shall sell~~ sells or ~~offer~~ offers for sale or adoption a textbook to any district or county superintendent without first obtaining a textbook license from the superintendent of public instruction shall be guilty of a misdemeanor. Upon conviction of ~~such~~ the misdemeanor, ~~he~~ the person shall be fined not less than \$500 or more than \$2,000."

Section 308. Section 20-7-607, MCA, is amended to read:

"20-7-607. Restricting competition -- penalty. At any time a licensed textbook dealer enters into any understanding, agreement, or combination to control textbook prices or otherwise restrict competition in the sale of textbooks, ~~he~~ the dealer shall forfeit ~~his~~ the dealer's surety bond and ~~textbook dealer's~~ license. The attorney general shall institute and prosecute legal proceedings for the forfeiture of the surety bond of ~~such~~ the licensed textbook dealer and for revocation of ~~his~~ the textbook dealer's license."

Section 309. Section 20-7-608, MCA, is amended to read:

"20-7-608. Offer or acceptance of emoluments or other inducements -- penalty. (1) ~~No~~ A textbook dealer or ~~his~~ the dealer's agent ~~shall~~ may not offer any emolument or other inducement to any trustee or school employee to influence the selection, adoption, or purchase of textbooks.

(2) ~~No~~ A trustee, county superintendent, or school employee ~~shall~~ may not accept any emolument or other inducement from a textbook dealer or agent of ~~such~~ the dealer for the use of ~~his~~ the official's or employee's influence in the selection, adoption, or purchase of textbooks.

(3) The violation of any provisions of this section ~~shall constitute~~ is a misdemeanor. In addition, any trustee, county superintendent, or school employee convicted of ~~such~~ the misdemeanor ~~shall~~ must be removed

from ~~his~~ the officer's or employee's position.

(4) ~~Nothing in this~~ This section shall ~~may not~~ be construed to prevent the supplying of a necessary number of sample textbooks for the purpose of examination by school officials or school employees."

Section 310. Section 20-8-108, MCA, is amended to read:

"20-8-108. Provisions for indigent students. ~~In all cases where~~ If a person to be sent to ~~said school~~ the Montana school for the deaf and blind is too poor to pay for necessary clothing and transportation, the judge of the district court of the district where ~~such~~ the person resides, upon application of any relative or friend or of any officer of the county where ~~said~~ the person resides, shall, if ~~he deems~~ the judge considers the person a proper subject, make an order to that effect, ~~which shall~~ The order must be certified by the clerk of the court to the superintendent of ~~said~~ the school, who shall then provide the necessary clothing and transportation at the expense of the county, and; upon ~~his~~ the superintendent rendering ~~his~~ proper accounts ~~therefor~~ for the expenditures quarter-annually, the county commissioners shall allow and pay the ~~same~~ the accounts out of the county treasury."

Section 311. Section 20-8-120, MCA, is amended to read:

"20-8-120. Communications skills required of certain employees. (1) Each permanent employee of the school who works with deaf children or works for or with a fellow employee who is deaf ~~must~~ shall acquire acceptable total communications skills as prescribed by the board of public education by the end of ~~his~~ the first year of employment.

(2) Upon request to the board of public education by the superintendent, an exception to this requirement may be made for an employee not working directly with deaf children."

Section 312. Section 20-9-207, MCA, is amended to read:

"20-9-207. Documentation of expenditures. (1) The expenditure of district ~~moneys~~ money, other than employee contract payments, may be authorized by the trustees when:

(a) payee-signed claims, ~~wherein~~ in which the payee attests to the accuracy of the claim and that ~~he~~ the payee has not received the claimed amount, have been issued to the district; or

(b) the payee has provided the district with an invoice or other document identifying the quantity and total cost per item included on the invoice.

(2) The intention of this section is to provide sufficient documentation for each expenditure of district

moneys money."

Section 313. Section 20-9-424, MCA, is amended to read:

"20-9-424. Validation of petition -- election administrator's certificate. (1) The petitioners for a school district bond election shall submit their petition to the county election administrator of the county where the school district is located for validation of the signatures on the petition. The county election administrator shall examine the petition and attach or endorse ~~thereon~~ on the petition a certificate ~~which shall~~ that must state:

(a) the total number of electors of the school district who are, at the time, qualified to vote under the provisions of 20-20-301;

(b) which and how many of the individuals whose names are subscribed to the petition possess the qualifications to vote on a bond proposition; and

(c) whether the number of qualified signers established in subsection (1)(b) is more or less than 20% of the total number of registered electors established in subsection (1)(a).

(2) After completing the examination, the county election administrator shall immediately send the petition and ~~his~~ certificate to the school district. The county election administrator ~~shall~~ may not receive compensation for the examination of school district bond petitions."

Section 314. Section 20-9-436, MCA, is amended to read:

"20-9-436. County attorney to assist in the proceedings. The trustees of ~~any~~ a school district conducting bond proceedings shall prepare and maintain a transcript of their bond proceedings. It is a part of the official duties of the county attorney of every county of this state to advise and assist the trustees of each school district of ~~his~~ the county in its bond proceedings. Before any transcript of school district bond proceedings is sent to the board of investments, ~~he~~ the county attorney shall carefully examine ~~such~~ the transcript, and the transcript may not be sent until ~~he~~ the county attorney has attached ~~his~~ an opinion to the transcript that the proceedings are in full compliance with law. ~~The~~ However, the trustees of any school district, ~~however,~~ may, upon consent of the county attorney, employ any attorney licensed in Montana to assist the county attorney in the performance of ~~his~~ these duties."

Section 315. Section 20-9-441, MCA, is amended to read:

"20-9-441. Redemption of bonds -- investment of debt service fund ~~moneys~~ money. (1) Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one

or more bonds of ~~such the~~ school district held by the state of Montana, the county treasurer shall apply ~~such the~~ money in payment of as many of ~~such the~~ bonds as can be paid and redeemed. The county treasurer shall give notice not less than 30 days before the next interest due date to the board of investments that ~~on such interest due date such the~~ bonds will be paid on the interest due date. Before ~~such the~~ interest due date, the county treasurer shall remit to the state treasurer the amount of money that is necessary to pay the bonds that are being redeemed and the interest due on ~~such the~~ bonds. When the state treasurer receives ~~such the~~ payment, ~~he the~~ treasurer shall cancel ~~such the~~ bonds and any unpaid coupons of ~~such the~~ bonds and return the canceled bonds and coupons to the county treasurer.

(2) Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one or more optional bonds of ~~such the~~ school district not held by the state of Montana, not yet due but then redeemable or becoming redeemable on the next interest due date, the county treasurer shall apply ~~such the~~ available money in payment of as many of ~~such the~~ bonds as can be paid and redeemed. The county treasurer shall give notice to the holder of the bonds, if known ~~to him~~, or to any bank or financial institution at which the bonds are payable, at least 30 days before the next interest due date, that the bonds will be paid and redeemed on ~~such that~~ date. If the bonds are payable at some bank or financial institution, the county treasurer shall remit to the bank or financial institution, before ~~such the~~ interest due date, an amount sufficient to pay and redeem the bonds. If the bonds are not presented for payment and redemption on ~~such the~~ interest due date, the accrual of interest ~~shall cease~~ ceases on ~~such the~~ interest due date.

(3) Whenever there is money available in any school district debt service fund sufficient to pay and redeem one or more outstanding bonds not yet due or redeemable and not held by the state of Montana, the trustees of ~~such the~~ school district may direct the county treasurer to purchase ~~such the~~ bonds of the district if this can be done at not more than par and accrued interest or at ~~such a~~ reasonable premium ~~as that~~ the trustees may feel justified in paying, but ~~in no case not~~ not exceeding 6%.

(4) Whenever the trustees cannot purchase outstanding bonds of the school district at a reasonable price, the available debt service fund money ~~shall~~ must be invested by the trustees under the provisions of 20-9-213(4). ~~Such The~~ investments ~~shall~~ must be sold in ample time before the debt service fund money is required for the payment of the bonds of the school district."

Section 316. Section 20-9-442, MCA, is amended to read:

"20-9-442. Entries of payments and notification of school district. The county treasurer shall make the necessary entries of all payments of interest and principal on ~~his~~ the treasurer's bond registration record and

shall promptly notify the clerk of the school district when ~~such~~ the payments are made. The county treasurer also shall deliver the canceled coupons and bonds to the county clerk at the end of each month. The county clerk shall file ~~such~~ the canceled coupons and bonds in ~~his~~ the clerk's office."

Section 317. Section 20-10-112, MCA, is amended to read:

"20-10-112. Duties of superintendent of public instruction. In order to have a uniform and equal provision of transportation by all districts in the state of Montana, the superintendent of public instruction shall:

- (1) prescribe rules and forms for the implementation and administration of the transportation policies adopted by the board of public education;
- (2) prescribe rules for the approval of school bus routing by the county transportation committee;
- (3) prescribe the format of the contract for individual transportation and supply each county superintendent with a sufficient number of ~~such~~ contracts;
- (4) prescribe rules for the approval of individual transportation contracts, including the increases of the schedule rates ~~due to~~ because of isolation under the policy of the board of public education, and provide a degree-of-isolation chart to school district trustees to serve as a guide;
- (5) approve, disapprove, or adjust all school bus routing submitted by the county superintendent;
- (6) approve, disapprove, or adjust all individual transportation contracts submitted by the county superintendent;
- (7) prescribe rules for the consideration of controversies appealed to ~~him~~ the superintendent and rule on ~~such~~ the controversies; and
- (8) disburse the state transportation reimbursement in accordance with the provisions of law and the transportation policies of the board of public education."

Section 318. Section 20-10-121, MCA, is amended to read:

"20-10-121. Duty of trustees to provide transportation -- types of transportation -- bus riding time limitation. (1) The trustees of ~~any~~ a district may furnish transportation to an eligible transportee who attends a school of the district or has been granted permission to attend a school outside of the district. Whenever the trustees of a district provide transportation for ~~any~~ an eligible transportee, the trustees ~~must~~ shall provide all eligible transportees of the district with transportation. The trustees shall furnish transportation when directed to do so by the county transportation committee and ~~such~~ when that direction is upheld by the superintendent of public instruction.

(2) The tendering of a contract to the parent or guardian ~~whereby~~ under which the district would pay the parent or guardian for individually transporting the pupil or pupils ~~shall fulfill~~ fulfills the district's obligation to furnish transportation for an eligible transportee. The parent or guardian of an eligible transportee may, ~~at his discretion,~~ provide transportation or arrange for transportation for ~~his~~ the parent's or guardian's child at ~~his~~ the parent's or guardian's own expense to any district willing to accept ~~his~~ the child.

(3) The type of transportation provided by a district may be:

(a) by a school bus; or

(b) by ~~such~~ individual transportation ~~as~~:

(i) paying the parent or guardian for individually transporting the pupil;

(ii) paying board and room reimbursements;

(iii) providing supervised correspondence study; or

(iv) providing supervised home study.

(4) When the parent or guardian of an elementary pupil consents to a trip of over 1 hour, the trustees may require ~~such~~ the eligible transportee to ride a school bus for more than 1 hour ~~per~~ each trip."

Section 319. Section 20-10-122, MCA, is amended to read:

"20-10-122. Discretionary provision of transportation and payment for this transportation. (1) The trustees of ~~any~~ a district ~~also~~ may provide school bus transportation to any pupil of a public school who is not an eligible transportee of the district:

(a) on a school bus conveying eligible transportees when the ineligible transportee will not displace an eligible transportee from ~~such~~ the school bus because of the lack of seating capacity;

(b) on a school bus operated by the district for the sole purpose of providing transportation for ineligible transportees. ~~Such~~ The school bus ~~shall~~ must service those children living the greatest distance from the school to be attended.

(c) on a school bus operated for the purpose of relieving congestion in a school building or to avoid the necessity of erecting a new building or for any other reasons of economy or convenience.

(2) When the trustees of a district provide school bus transportation to an ineligible transportee under the conditions of subsection (1)(a) or (1)(b), the district may charge each ineligible transportee ~~his~~ a proportionate share, as determined by the trustees, of the cost of operating ~~such~~ the school bus. Money realized from ~~such~~ the payments ~~shall~~ must be deposited to the credit of the transportation fund."

Section 320. Section 20-10-123, MCA, is amended to read:

"20-10-123. Provision of transportation for nonpublic school children. Any child attending a nonpublic school may ride a school bus when a permit to ride ~~such~~ the school bus is secured from the operating district by the parent or guardian of ~~such~~ the nonpublic school child and when there is seating capacity available on ~~such~~ the school bus. When a nonpublic school child rides a school bus, the operating district may charge ~~such~~ the child ~~his~~ a proportionate share, as determined by the trustees, of the cost of operating ~~such~~ the school bus. Money realized from ~~such~~ the payments ~~shall~~ must be deposited to the credit of the transportation fund."

Section 321. Section 20-15-209, MCA, is amended to read:

"20-15-209. Determination of approval or disapproval of proposition -- subsequent procedures if approved. (1) To carry, the proposal to organize the community college district must receive a majority of the total number of votes cast ~~thereon~~, and the coordinator of community college districts, from the results ~~so~~ certified and attested, shall determine whether the proposal has received the majority of the votes cast ~~thereon~~ for each county within the proposed district and shall certify the results to the regents. Approval for the organization of a new community college district ~~shall~~ must be granted at the discretion of the legislature acting upon the recommendation of the regents. ~~Should~~ If the certificate of the coordinator of community college districts ~~show~~ shows that the proposition to organize ~~such~~ the community college district has received a majority of the votes cast ~~thereon~~ in each county within the proposed district, the regents may make an order declaring the community college district organized and cause a copy ~~thereof~~ of the order to be recorded in the office of the county clerk and recorder in each county in which a portion of ~~such~~ the new district is located. If the proposition carries, the regents ~~also~~ shall determine which candidates have been elected trustees. ~~Should~~ If the proposition to organize the community college district ~~fail~~ fails to receive a majority of the votes cast ~~thereon~~, ~~no~~ a tabulation ~~shall~~ may not be made to determine the candidates elected trustees.

(2) Within 30 days of the date of the organization order, the regents shall set a date and call an organization meeting for the board of trustees of the community college district and shall notify the ~~duty~~ elected trustees of their membership and of the organization meeting. ~~Such~~ The notification ~~shall~~ must designate a temporary ~~chairman~~ presiding officer and secretary for the purposes of organization."

Section 322. Section 20-15-219, MCA, is amended to read:

"20-15-219. Qualifications for office of trustee -- nominating petitions. (1) Any person who is qualified to vote in a community college district under the provisions of 20-20-301 is eligible for the office of

community college trustee.

(2) Any five electors of a community college district qualified under the provisions of 20-20-301 may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. A nominating petition containing the signatures of the five electors and the name of each person nominated for candidacy must be submitted to the election clerk designated by the board of trustees no less than 30 days before the regular school election day at which ~~he~~ the person is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated must also be indicated."

Section 323. Section 20-15-222, MCA, is amended to read:

"20-15-222. Results of election -- qualifying oath -- term of office. (1) When the board of trustees of the community college district has received all the certified results of the election from the component elementary districts, the then-qualified members of the board of trustees of ~~such~~ the community college district shall tabulate the results ~~so~~ received, shall declare and certify the candidate or candidates receiving the greatest number of votes to be elected to the position or positions to be filled, and shall declare and certify the results of the votes cast on any proposition presented at ~~such~~ the election.

(2) (a) ~~No~~ A person who receives a certificate of election as a community college trustee may not assume the trustee position until ~~he~~ the person has qualified by taking an oath of office prescribed by the constitution of Montana at the next regularly scheduled meeting of the board of trustees after receipt of the certificate of election.

(b) If the elected person does not qualify in accordance with this requirement, another person must be appointed in a manner provided by 20-15-223 and shall serve until the next regular election.

(3) After a person has qualified for a trustee position, ~~he~~ the person shall hold ~~such~~ the position for the term of the position and until ~~his~~ a successor has been elected or appointed and has been qualified."

Section 324. Section 20-15-224, MCA, is amended to read:

"20-15-224. Board of trustees -- organization, meetings, quorum, mileage, and seal. (1) (a) The trustees of each community college district shall annually organize as a governing board of the community college district at the next regularly scheduled meeting after the regular election day and after the issuance of the election certificate to the newly elected trustees.

(b) In order to organize, the trustees of the community college district ~~shall~~ must be given notice by the coordinator of the time and place where the organization meeting will be held, and at ~~such~~ the meeting they shall

choose one of their members as ~~chairman~~ presiding officer and as secretary. In addition, the trustees may employ or appoint a competent person who is not a member of the trustees as the clerk of the community college district.

(c) The ~~chairman~~ presiding officer and secretary of the trustees of the community college district shall serve until the next organization meeting. The ~~chairman~~ presiding officer shall preside at all meetings of the trustees in accordance with the customary rules of order. ~~He~~ The presiding officer shall perform the duties prescribed by this title and any other duties that normally pertain to ~~such~~ the office.

(2) The board of trustees of the community college shall hold monthly meetings within the community college district on ~~such~~ the day of the month the trustees may set. The ~~president~~ presiding officer and secretary of the board or a majority of the board may also call special meetings of the board of trustees at any time and place within the community college district if in ~~their~~ its judgment necessity requires it: the meeting. The secretary of the board shall give each member a 48-hour written notice of all special meetings.

(3) A majority of the board of trustees ~~shall constitute~~ constitutes a quorum for the transaction of business, except that ~~no~~ a contract ~~shall~~ may not be let, teacher employed or dismissed, or bill approved unless a majority of the total board membership ~~shall vote~~ votes in favor of ~~such~~ the action.

(4) A member of the board of trustees ~~shall~~ must receive mileage, as provided for in 2-18-503, for the distance necessarily traveled in going to and returning from the place of the meeting and ~~his~~ the member's place of residence each day that ~~such~~ the trip is actually made.

(5) The board shall keep a common seal with which to attest its official acts."

Section 325. Section 20-15-227, MCA, is amended to read:

"20-15-227. Trustee removal procedure. (1) Any person may seek the removal of a community college trustee by filing a complaint with the board of county commissioners, containing charges based on one or more of the grounds cited in 20-15-228.

(2) If upon receiving ~~such~~ a complaint it appears that there is probable cause for removal, the board of county commissioners shall suspend ~~such~~ the trustee from ~~his~~ the trustee position until charges can be heard in the appropriate district court. The board of county commissioners shall then transmit the complaint, together with a statement of suspension, to the district court."

Section 326. Section 20-15-228, MCA, is amended to read:

"20-15-228. Grounds for removal. A community college trustee may be removed ~~whenever he~~ if the trustee:

- (1) moves ~~his~~ the trustee's residence from the applicable community college district;
- (2) is no longer a registered elector of the community college district under the provisions of 20-20-301;
- (3) is absent from the district 60 consecutive days;
- (4) fails to attend three consecutive meetings of the trustees without reasonable cause;
- (5) fails to perform responsibilities in accordance with 20-15-226; or
- (6) ceases to have the capacity to hold office."

Section 327. Section 20-20-201, MCA, is amended to read:

"20-20-201. Calling of school election. (1) At least 40 days before any school election, the trustees of ~~any a~~ district shall call ~~such~~ the school election by resolution, stating the date and purpose of ~~such~~ the election, and shall conduct it in accordance with the procedures required by law; when:

- (a) an election must be held on the regular school election day;
- (b) in their discretion, the trustees order an election for a purpose authorized by law;
- (c) the county superintendent orders an election in accordance with the law authorizing ~~such~~ an order;
- (d) the board of public education orders an election in accordance with the law authorizing ~~such~~ an order;
- (e) the county commissioners order an election in accordance with the law authorizing ~~such~~ an order;
- (f) the board of trustees of a community college district orders an election in accordance with the law authorizing ~~such~~ an order, (in which case the community college district shall bear its share of the cost of ~~such~~ the election); or
- (g) a school election is required by law under any other circumstances.

(2) The resolution calling any school election ~~shall~~ must be transmitted to the county election administrator no later than 35 days before the election in order to enable ~~him~~ the administrator to close the registration and prepare the lists of registered electors as required by school election laws."

Section 328. Section 20-20-301, MCA, is amended to read:

"20-20-301. Qualifications of elector. An individual is entitled to vote at school elections if ~~he~~ the individual has the qualifications set forth in 13-1-111 and is a resident of the school district or, in a school district that has been apportioned into single-member trustee districts according to 20-3-337, a resident of the trustee district."

Section 329. Section 20-20-411, MCA, is amended to read:

"20-20-411. Conduct of election. Election judges shall conduct school elections in a manner that ensures a fair and unbiased determination of the matters put before the electorate and see that each elector has an adequate opportunity to cast ~~his~~ the elector's vote."

Section 330. Section 20-20-417, MCA, is amended to read:

"20-20-417. Request for county election administrator to conduct election. (1) By June 1 of each year, the trustees of ~~any~~ a district may request the county election administrator to conduct certain school elections during the ensuing school fiscal year.

(2) Whenever the county election administrator agrees to conduct a school election, ~~he~~ the administrator shall:

(a) perform the duties imposed on the trustees and the clerk of the district for school elections in 20-20-203, 20-20-313, and 20-20-401;

(b) conduct the election in accordance with the provisions of Title 13, chapters 13 and 15; and

(c) deliver to the trustees, for the purpose of canvassing the vote, the certified tally sheets and other items as provided in 13-15-301.

(3) Whenever the trustees request the county election administrator to conduct a school election, the school district shall pay the costs of the election as provided in 13-1-302."

Section 331. Section 20-25-101, MCA, is amended to read:

"20-25-101. Antidiscrimination. The Montana university system shall instruct ~~men and women~~ all individuals on equal terms."

Section 332. Section 20-25-226, MCA, is amended to read:

"20-25-226. Assents to acts of congress. (1) (a) The state of Montana assents to the provisions of an act of congress entitled "An Act to Provide for an Increased Annual Appropriation for Agricultural Experiment Stations and Regulating the Expenditure Thereof", approved March 16, 1906, and consents to receive the benefits ~~thereof~~ of the act in the manner and for the purposes intended and provided in the act.

(b) The agricultural experiment station ~~shall~~ must be the beneficiary of the funds in the act and shall use the funds only for the purposes ~~therein~~ provided in the act.

(c) The treasurer of Montana state university-Bozeman may receive all ~~moneys~~ money appropriated by the act, to be expended under the supervision of the regents in the manner designated in the act, and ~~shall~~ must

receive; and shall hold; and account for the funds and make reports to the secretary of agriculture as required by the act.

(2) (a) The state accepts and assents to the terms and provisions of the act of congress approved May 8, 1914, entitled "An Act to Provide for Cooperative Agricultural Extension Work Between the Agricultural Colleges in the Several States Receiving the Benefits of an Act of Congress Approved July Second, Eighteen Hundred and Sixty-two, and of Acts Supplementary Thereto, and the United States Department of Agriculture".

(b) The president of Montana state university-Bozeman may enter into all necessary agreements with the secretary of agriculture of the United States for the receipt and expenditure of all money paid under the provisions of ~~said~~ the act.

(c) ~~He~~ The president may receive and expend ~~such~~ the money in accordance with the provisions of ~~said~~ the act and any agreements ~~so~~ made pursuant to the act."

Section 333. Section 20-25-242, MCA, is amended to read:

"20-25-242. Purpose of station. (1) It is the purpose of this the Montana forest and conservation experiment station to:

(a) study the forest and forest land resources of the state to the end that the state and its citizens may attain the highest economic and social benefits from the forest soils within the state and the influences and products flowing ~~therefrom~~ from forests;

(b) study the growth and the utilization of timber with special reference to their improvement and the widening of the markets available to the state;

(c) determine:

(i) the relationship between the forest and water conservation and waterflow regulation;

(ii) the relationship between the forest and pasturage for domestic livestock and wildlife;

(iii) the relationship between the forest and recreation; and

(iv) those other direct and indirect benefits that may be secured by the maintenance of or the establishment of forests or woodlands;

(d) study and develop the establishment of windbreaks, shelterbelts, and woodlots on the farms of the state that moisture may be conserved ~~thereby~~ by windbreaks, shelterbelts, and woodlots for the best production of agricultural crops and forage, for the prevention of soil wastage and erosion, to make the farm home more comfortable, and to produce forest material for the use of the farmer and the ~~stockman~~ livestock producer;

(e) study the findings of other agencies so that the information ~~thus obtained~~ may be used to improve

the growth, management, and utilization of the timber within the state and to protect it against damage by fire, insects, disease, and other harmful agencies;

(f) collect, compile, and publish statistics relative to Montana forests and forestry and the influences flowing ~~therefrom~~ from forests and forestry;

(g) prepare and publish bulletins and reports, along with the necessary illustrations and maps, so that the information collected by the station in forestry and in conservation may be made available for use; and distribute this information or material in ~~such~~ other ways as that the board of regents may direct;

~~(g)~~(h) collect a library and bibliography of literature pertaining to or useful for the purpose of 20-25-241 through 20-25-245;

~~(h)~~(i) study logging, lumbering, and milling operations and other operations dealing with the products of forest soils with special reference to their improvement;

(j) investigate and make tests of forest products produced or that may be produced within the state so that markets may be improved ~~thereby~~;

~~(j)~~(k) consider ~~such~~ other scientific and economic problems as that, in the judgment of the board of regents, are of value to the people of the state;

~~(j)~~(l) cooperate with the other departments of the university of Montana-Missoula, with the departments of the state government when mutually beneficial, and with private individuals and agencies and cooperate with the United States government and its branches as a land-grant institution or otherwise in accordance with their regulations; and

~~(k)~~(m) establish ~~such~~ field experiment stations as that, in the judgment of the board of regents, may be necessary.

(2) The board of regents may accept, for and in behalf of the state of Montana, ~~such~~ gifts of land or other donations as that may be made to the state for the purposes of 20-25-241 through 20-25-245."

Section 334. Section 20-25-306, MCA, is amended to read:

"20-25-306. Designation of holidays by board of regents. (1) The board of regents of higher education may designate the following business days as holidays for all employees of the university system in exchange for the same number of legal holidays enumerated in 1-1-216:

- (a) the Friday following Thanksgiving;
- (b) the Monday before Christmas Day or New Year's Day if either holiday falls on Tuesday; and
- (c) the Friday after Christmas Day or New Year's Day if either holiday falls on Thursday.

(2) A full-time employee who is scheduled for a day off on a day that is designated as a holiday under subsection (1) is entitled to receive another day off with pay during the same pay period of the designated holiday or as scheduled by the employee and ~~his~~ the employee's supervisor in addition to the employee's regularly scheduled days off ~~provided if~~ the employee is in a pay status on ~~his~~ the last regularly scheduled working day immediately before the holiday or on ~~his~~ the first regularly scheduled working day immediately after the holiday. Part-time employees receive pay for the designated holiday on a prorated basis according to rules adopted by the department of administration or appropriate administrative officer under 2-18-604."

Section 335. Section 20-25-322, MCA, is amended to read:

"20-25-322. Traffic citations -- agreements with city or county. The president of each unit may ~~in his discretion~~ enter into an agreement with the city or county in which ~~his~~ the unit is located to authorize members of the unit's security department to issue citations for parking or moving traffic violations as defined by state or municipal laws ~~which that~~ occur within the boundaries of the campus or on streets or alleys contiguous ~~thereto~~ to the campus. All ~~such~~ citations ~~shall~~ must be considered within the jurisdiction of the appropriate local authority and ~~shall~~ must be handled in the same manner as citations issued by peace officers of ~~such~~ the local authority."

Section 336. Section 20-25-323, MCA, is amended to read:

"20-25-323. Control and direction of security department. The president of each unit ~~shall have~~ has general control and direction of the security department of ~~his~~ the unit."

Section 337. Section 20-25-504, MCA, is amended to read:

"20-25-504. Evidence as to domiciliary intent -- changes in status. (1) To determine the domicile of a person, the units of the system shall apply the following rules:

(a) Nonpayment of Montana income tax by a person whose income is sufficient to be taxed is highly persuasive evidence of non-Montana domicile.

(b) A person ~~must~~ shall intend to establish a domicile in Montana.

(2) After registration, a student's classification for tuition and fee purposes remains unchanged in the absence of evidence to the contrary. A written statement of the evidence ~~shall~~ must be filed with the registering authority of the unit. Changes in classification ~~shall~~ must be in writing signed by the registering authority and ~~shall~~ take effect at the student's next registration.

(3) A minor shall qualify for a change in status only if ~~his~~ the minor's parents or the parent having legal

custody or, if neither parent has legal custody, the parent with whom ~~he~~ the minor customarily resides or legal guardian or person having legal custody completes the requirements for establishing domicile ~~heretofore set forth.~~

(4) It is presumed a minor or adult registered as a full-time student at any unit is not qualified for a change in ~~his or his~~ the person's dependent's classification for tuition and fee purposes unless ~~he~~ the person completes 12 continuous months of residence while not attending a unit of the system or other institution of higher learning or while serving in the armed forces.

(5) Any student whose request for classification as a resident student is denied has the right of appeal to the executive secretary of the Montana university system. Immediately upon rejection and at the request of the student, the registering authority shall forward a copy of ~~his~~ the authority's decision and a complete file on the student to the executive secretary. The executive secretary may accept other evidence of residence from either the student, the registering authority, or other interested persons. Within 30 days of the receipt of the decision of the registering authority, the executive secretary shall determine the resident status of the student and shall notify the student and the registering authority of ~~his~~ the decision. The executive secretary's decision may be appealed to the regents if the regents agree to entertain ~~such~~ an appeal."

Section 338. Section 20-25-511, MCA, is amended to read:

"20-25-511. Student's right of privacy -- legislative intent. It is the legislature's intent that an institution of the university system of Montana is obligated to respect a student's right of privacy. This obligation must be observed by establishing procedures to safeguard the institution's activities ~~which that~~ are necessary to protect the health, safety, and privacy of a person's residence and the privacy of ~~his~~ the person's records. Intrusions by peace officers and other officials exercising responsibility for law enforcement must be governed by standards and procedures no less stringent than those applicable to intrusions on private quarters outside the institutions. ~~Further, a~~ A student may not be subjected to discrimination ~~in the manner~~ by the use of covert records."

Section 339. Section 20-25-512, MCA, is amended to read:

"20-25-512. Contracts waiving right to privacy prohibited. A university or college facility may not require a student to sign any contract ~~which that~~ would waive ~~his or her~~ the student's right to privacy and due process of law."

Section 340. Section 20-25-513, MCA, is amended to read:

"20-25-513. Written notice required for entry to student's room -- emergency. An authorized official

of the university or college may not enter the room of a student located at ~~such an~~ institution unless ~~he~~ the official has given the student a notice in writing. An emergency such as a fire or a call for help or ~~where~~ when there is probable cause to believe the occupant needs assistance is the only exception to the written notice requirement. In ~~such~~ an emergency, evidence of a crime obtained as a result of ~~such~~ the emergency entry ~~shall~~ may not be admissible in any court of law unless due process of law has been satisfied in obtaining ~~such~~ the evidence."

Section 341. Section 20-25-516, MCA, is amended to read:

"20-25-516. Academic records to be kept separate -- student's right to examine records. (1) Academic records ~~shall~~ must be kept separate from disciplinary and all other records. Academic transcripts ~~shall~~ may contain only information of an academic nature.

(2) A student ~~shall have~~ has the right to examine all written summaries, descriptions, statements, or reports of an academic or disciplinary nature ~~which that~~ may have been compiled upon ~~him or her~~ the student."

Section 342. Section 20-25-603, MCA, is amended to read:

"20-25-603. Teacher instruction -- course required of education students. All units of the Montana university system and all private colleges and universities in Montana that offer any degree in education shall require that any person who receives any degree in education from that unit, private college, or private university ~~after December 31, 1972,~~ must have successfully completed a course in health education to include drug and alcohol education and abuse prior to being awarded ~~his~~ the degree."

Section 343. Section 20-25-703, MCA, is amended to read:

"20-25-703. Limitation on use of funds. ~~No less than~~ At least 70% of the funds allocated to the program ~~shall~~ must be used to provide job opportunities for students with demonstrated financial need. The remainder of the funds allocated to this program may be used to provide job opportunities on a basis other than financial need. ~~Such~~ The other bases include but are not limited to:

- (1) laboratory, teaching, and tutorial assistantships requiring particular skills; and
- (2) cases in which a student's family cannot demonstrate financial need but in which the student has a desire to contribute toward ~~his~~ the student's education through employment."

Section 344. Section 20-25-801, MCA, is amended to read:

"20-25-801. Western Regional Higher Education Compact approved. The legislature of the state of

Montana hereby approves, ratifies, and adopts the Western Regional Higher Education Compact approved by the western governors conference meeting at Denver, Colorado, on November 10, 1950, which compact is as follows:

WESTERN REGIONAL HIGHER EDUCATION COMPACTARTICLE I

(1) WHEREAS, the future of this nation and of the western states is dependent upon the quality of the education of its youth; and

(2) WHEREAS, many of the western states individually do not have sufficient numbers of potential students to warrant the establishment and maintenance within their borders of adequate facilities in all of the essential fields of technical, professional, and graduate training, nor do all of the states have the financial ability to furnish within their borders institutions capable of providing acceptable standards of training in all of the fields mentioned above; and

(3) WHEREAS, it is believed that the western states, or groups of such states within the region, cooperatively can provide acceptable and efficient educational facilities to meet the needs of the region and of the students thereof;

(4) NOW, THEREFORE, the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming and the territories of Alaska and Hawaii do hereby covenant and agree as follows:

ARTICLE II

Each of the compacting states and territories pledges to each of the other compacting states and territories faithful cooperation in carrying out all the purposes of this compact.

ARTICLE III

The compacting states and territories hereby create the western interstate commission for higher education, hereinafter called the commission. Said commission shall be a body corporate of each compacting state and territory and an agency thereof. The commission shall have all the powers and duties set forth herein, including the power to sue and be sued and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states and territories.

ARTICLE IV

(1) The commission shall consist of three resident members from each compacting state or territory. At all times one commissioner from each compacting state or territory shall be an educator engaged in the field of higher education in the state or territory from which ~~he~~ the educator is appointed.

(2) The commissioners from each state and territory shall be appointed by the governor thereof as

provided by law in such state or territory. Any commissioner may be removed or suspended from office as provided by the law of the state or territory from which ~~he shall have been~~ the commissioner is appointed.

(3) The terms of each commissioner shall be 4 years; provided, however, that the first three commissioners shall be appointed as follows: one for 2 years, one for 3 years, and one for 4 years. Each commissioner shall hold office until ~~his~~ a successor shall be appointed and qualified. If any office becomes vacant for any reason, the governor shall appoint a commissioner to fill the office for the remainder of the unexpired term.

ARTICLE V

(1) Any business transacted at any meeting of the commission must be by affirmative vote of a majority of the whole number of compacting states and territories.

(2) One or more commissioners from a majority of the compacting states and territories shall constitute a quorum for the transaction of business.

(3) Each compacting state and territory represented at any meeting of the commission is entitled to one vote.

ARTICLE VI

(1) The commission shall elect from its number a ~~chairman~~ presiding officer and a ~~vice-chairman~~ vice presiding officer and may appoint and, at its pleasure, dismiss or remove such officers, agents, and employees as may be required to carry out the purpose of this compact and shall fix and determine their duties, qualifications, and compensation, having due regard for the importance of the responsibilities involved.

(2) The commissioners shall serve without compensation but shall be reimbursed for their actual and necessary expenses from the funds of the commission.

ARTICLE VII

(1) The commission shall adopt a seal and bylaws and shall adopt and promulgate rules and regulations for its management and control.

(2) The commission may elect such committees as it deems necessary for the carrying out of its functions.

(3) The commission shall establish and maintain an office within one of the compacting states for the transaction of its business and may meet at any time but in any event must meet at least once a year. The ~~chairman~~ presiding officer may call such additional meetings and upon the request of a majority of the commissioners of three or more compacting states or territories shall call additional meetings.

(4) The commission shall submit a budget to the governor of each compacting state and territory at such time and for such period as may be required.

(5) The commission shall, after negotiations with interested institutions, determine the cost of providing the facilities for graduate and professional education for use in its contractual agreements throughout the region.

(6) On or before January 15 of each year, the commission shall submit to the governors and legislatures of the compacting states and territories a report of its activities for the preceding calendar year.

(7) The commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time for inspection by the governor of any compacting state or territory or ~~his~~ the governor's designated representative. The commission shall not be subject to the audit and accounting procedure of any of the compacting states or territories. The commission shall provide for an independent annual audit.

ARTICLE VIII

(1) It shall be the duty of the commission to enter into such contractual agreements with any institutions in the region offering graduate or professional education and with any of the compacting states or territories as may be required in the judgment of the commission to provide adequate service and facilities of graduate and professional education for the citizens of the respective compacting states or territories. The commission shall first endeavor to provide adequate services and facilities in the fields of dentistry, medicine, public health, and veterinary medicine and may undertake similar activities in other professional and graduate fields.

(2) For this purpose the commission may enter into contractual agreements:

(a) with the governing authority of any educational institution in the region or with any compacting state or territory to provide such graduate or professional educational services upon terms and conditions to be agreed upon between contracting parties; and

(b) with the governing authority of any educational institution in the region or with any compacting state or territory to assist in the placement of graduate or professional students in educational institutions in the region providing the desired services and facilities, upon such terms and conditions as the commission may prescribe.

(3) It shall be the duty of the commission to undertake studies of needs for professional and graduate educational facilities in the region, the resources for meeting such needs, and the long-range effects of the compact on higher education and from time to time to prepare comprehensive reports on such research for presentation to the western governors' conference and to the legislatures of the compacting states and territories. In conducting such studies, the commission may confer with any national or regional planning body which may be established. The commission shall draft and recommend to the governors of the various compacting states and territories uniform legislation dealing with problems of higher education in the region.

(4) For the purpose of this compact the word "region" shall be construed to mean the geographical limits

of the several compacting states and territories.

ARTICLE IX

The operating costs of the commission shall be apportioned equally among the compacting states and territories.

ARTICLE X

This compact shall become operative and binding immediately as to those states and territories adopting it whenever five or more of the states or territories of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Alaska, and Hawaii have duly adopted it prior to July 1, 1953. This compact shall become effective as to any additional states or territories adopting thereafter at the time of such adoption.

ARTICLE XI

This compact may be terminated at any time by consent of a majority of the compacting states or territories. Consent shall be manifested by passage and signature in the usual manner of legislation expressing such consent by the legislature and governor of such terminating state. Any state or territory may at any time withdraw from this compact by means of appropriate legislation to that end. Such withdrawal shall not become effective until 2 years after written notice thereof by the governor of the withdrawing state or territory, accompanied by a certified copy of the requisite legislative action, is received by the commission. Such withdrawal shall not relieve the withdrawing state or territory from its obligations hereunder accruing prior to the effective date of withdrawal. The withdrawing state or territory may rescind its action of withdrawal at any time within the 2-year period. Thereafter, the withdrawing state or territory may be reinstated by application to and the approval by a majority vote of the commission.

ARTICLE XII

(1) If any compacting state or territory shall at any time default in the performance of any of its obligations assumed or imposed in accordance with the provisions of this compact, all rights, privileges, and benefits conferred by this compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the commission.

(2) Unless such default shall be remedied within a period of 2 years following the effective date of such default, this compact may be terminated with respect to such defaulting state or territory by affirmative vote of three-fourths of the other member states or territories.

(3) Any such defaulting state may be reinstated by:

(a) performing all acts and obligations upon which it has heretofore defaulted; and

(b) application to and the approval by a majority vote of the commission."

Section 345. Section 20-25-806, MCA, is amended to read:

"20-25-806. Appointment of commissioners to the western interstate commission for higher education. (1) In making the appointments of commissioners provided for in 20-25-801, the governor shall appoint three members as follows:

- (a) one member who is an educator engaged in the field of higher education in Montana;
- (b) one member who is engaged in a professional occupation; and
- (c) one member who is a legislator.

(2) The term of each commissioner is 4 years as provided in the compact. The legislator appointed shall serve until the expiration of ~~his~~ the term of appointment, even though ~~his~~ the legislative term may have ended."

Section 346. Section 20-31-301, MCA, is amended to read:

"20-31-301. Organization -- procedural rules -- compensation of members. (1) The members of the fire services advisory council shall elect a ~~chairman~~ presiding officer, a ~~vice-chairman~~ vice presiding officer, and ~~such~~ other officers considered advisable by the council. The terms of the officers ~~shall~~ must be established by the council.

- (2) The council shall adopt rules governing its procedures, subject to approval of the board of regents.
- (3) Members of the council ~~shall~~ must receive compensation under 2-18-501 through 2-18-503."

Section 347. Section 22-1-101, MCA, is amended to read:

"22-1-101. State library commission established. (1) There is a state library commission.

(2) This commission is composed of the following members:

- (a) the state superintendent of public instruction or ~~his~~ the superintendent's designee;
- (b) five persons appointed by the governor, who shall serve staggered terms of 3 years; and
- (c) a librarian appointed by the commissioner of higher education from one of the six units of the Montana university system, who shall serve a term of 3 years.

(3) The commission shall annually elect a ~~chairman~~ presiding officer from its membership.

(4) The members of ~~said~~ the commission ~~shall~~ must be compensated and receive travel expenses as provided for in 2-15-124."

Section 348. Section 22-1-308, MCA, is amended to read:

"22-1-308. Public library -- board of trustees. (1) Upon the establishment of a public library under the provisions of this part, the mayor, with the advice and consent of the city council or city commissioners, shall appoint a board of trustees for the city library and the ~~chairman~~ presiding officer of the board of county commissioners, with the advice and consent of ~~said~~ the board, shall appoint a board of trustees for the county library.

(2) The library board ~~shall~~ must consist of five trustees. Not more than one member of the governing body ~~shall~~ may be, at any one time, a member of ~~such~~ the board.

(3) Trustees shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

(4) Trustees shall hold their office for 5 years from the date of appointment and until their successors are appointed. Initially, appointments ~~shall~~ must be made for 1-, 2-, 3-, 4-, and 5-year terms. Annually thereafter, there ~~shall~~ must be appointed before July 1 of each year, in the same manner as the original appointments for a 5-year term, a trustee to take the place of the retiring trustee. Trustees ~~shall~~ may not serve ~~no~~ more than two full terms in succession.

(5) Following ~~such~~ the appointments, in July of each year, the trustees shall meet and elect a ~~chairman~~ presiding officer and ~~such~~ other officers ~~as that they deem~~ consider necessary, for 1-year terms. Vacancies in the board of trustees ~~shall~~ must be filled for the unexpired term in the same manner as original appointments."

Section 349. Section 22-1-317, MCA, is amended to read:

"22-1-317. City-county library -- board of trustees. (1) A joint city-county library ~~shall~~ must be governed by a board of trustees composed of five members chosen as specified in the contract, with terms not to exceed 5 years.

(2) Trustees ~~shall~~ may not serve ~~no~~ more than two full terms in succession.

(3) Trustees shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

(4) Trustees shall meet and elect a ~~chairman~~ a presiding officer and ~~such~~ other officers ~~as that they~~ consider necessary, for 1-year terms.

(5) The board of trustees ~~shall have~~ has the same powers and duties as the board of trustees of a city library or a county library."

Section 350. Section 22-1-506, MCA, is amended to read:

"22-1-506. Liability for injury to books or failure to return. ~~Every~~ A person who defaces, tears, or otherwise injures any book or other work or who fails to return any book taken by ~~him~~ the person is liable to the state in three times the value of the book ~~thereof if such~~ the book is not replaced by a new one or another book of identical title, in good order and condition; ~~and no~~ A statute of limitations ~~shall~~ may not ever be effective against the claim of the state under this section."

Section 351. Section 22-1-601, MCA, is amended to read:

"22-1-601. Library compact. The Interstate Library Compact is ~~hereby~~ approved, enacted into law, and entered into by the state of Montana; ~~which~~ The compact is in full as follows:

INTERSTATE LIBRARY COMPACT Article I. Policy and Purpose

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the states party to this compact to cooperate and share their responsibilities; to authorize cooperation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a cooperative basis; and to authorize cooperation and sharing among localities, states, and others in providing joint or cooperative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

Article II. Definitions

As used in this compact:

- (1) "public library agency" means any unit or agency of local or state government operating or having power to operate a library;
- (2) "private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library;
- (3) "library agreement" means a contract establishing an interstate library district pursuant to this compact or providing for the joint or cooperative furnishing of library services.

Article III. Interstate Library Districts

(1) Any one or more public library agencies in a party state in cooperation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable,

such district may establish, maintain, and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may cooperate therewith, assume duties, responsibilities, and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.

(2) Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or cooperative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(3) If a library agreement provides for joint establishment, maintenance, or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

(a) undertake, administer, and participate in programs or arrangements for:

(i) securing, lending, or servicing books and other publications, any other materials suitable to be kept or made available by libraries, or library equipment; or

(ii) for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof;

(b) accept for any of its purposes under this compact any and all donations and grants of money, equipment, supplies, materials, and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof or interstate agency or from any institution, person, firm, or corporation and receive, utilize, and dispose of the same;

(c) operate mobile library units or equipment for the purpose of rendering bookmobile service within the district;

(d) employ professional, technical, clerical, and other personnel and fix terms of employment, compensation, and other appropriate benefits; and where desirable, provide for the in-service training of such personnel;

(e) sue and be sued in any court of competent jurisdiction;

(f) acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service;

(g) construct, maintain, and operate a library, including any appropriate branches thereof;

(h) do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing

powers.

Article IV. Interstate Library Districts, Governing Board

(1) An interstate library district which establishes, maintains, or operates any facilities or services in its own right shall have a governing board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its business in accordance with provision therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.

(2) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

Article V. State Library Agency Cooperation

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or cooperative library programs, render joint or cooperative library services, and enter into and perform arrangements for the cooperative or joint acquisition, use, housing, and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services, or arrangements may include provision for the exercise on a cooperative or joint basis of any power exercisable by an interstate library district, and an agreement embodying any such program, service, or arrangement shall contain provisions covering the subjects detailed in Article VI of this compact for interstate library agreements.

Article VI. Library Agreements

(1) In order to provide for any joint or cooperative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact shall, as among the parties to the agreement:

(a) detail the specific nature of the services, programs, facilities, arrangements, or properties to which it is applicable;

(b) provide for the allocation of costs and other financial responsibilities;

(c) specify the respective rights, duties, obligations, and liabilities of the parties;

(d) set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.

(2) No public or private library agency shall undertake to exercise, itself or jointly with any other library

agency, by means of a library agreement, any power prohibited to such agency by the constitution or statutes of its state.

(3) No library agreement shall become effective until filed with the compact administrator of each state involved and approved in accordance with Article VII of this compact.

Article VII. Approval of Library Agreements

(1) Every library agreement made pursuant to this compact shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of ~~his~~ that state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within 90 days of its submission shall constitute approval thereof.

(2) In the event that a library agreement made pursuant to this compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by ~~him~~ the officer or it as to all matters within ~~his~~ the officer's or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (1) of this article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

Article VIII. Other Laws Applicable

Nothing in this compact or in any library agreement shall be construed to supersede, alter, or otherwise impair any obligation imposed on any library by otherwise applicable law nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

Article IX. Appropriations and Aid

(1) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.

(2) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the

states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

Article X. Compact Administrator

Each state shall designate a compact administrator with whom copies of all library agreements to which ~~his~~ the administrator's state or any public library agency thereof is party shall be filed. The administrator shall have such other powers as may be conferred upon ~~him~~ the administrator by the laws of ~~his~~ that state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

Article XI. Entry into Force and Withdrawal

(1) This compact shall enter into force and effect immediately upon its enactment into law by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by such state.

(2) This compact shall continue in force with respect to a party state and remain binding upon such state until 6 months after such state has given notice to each other party state of the repeal thereof. Such withdrawal shall not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

Article XII. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Section 352. Section 22-2-103, MCA, is amended to read:

"22-2-103. Council membership -- tenure -- compensation. The term of office of each member is 5 years. The governor shall designate a ~~chairman~~ presiding officer and a ~~vice-chairman~~ vice presiding officer from the members of the council to serve in those capacities at the pleasure of the governor. The ~~chairman~~ presiding officer is the chief executive officer of the council. Each vacancy must be filled for the balance of the unexpired

term in the same manner as the original appointment. The members of the council must be compensated and receive travel expenses as provided for in 2-15-124."

Section 353. Section 22-2-403, MCA, is amended to read:

"22-2-403. Definitions. As used in this part, the following definitions apply:

(1) (a) "Artist" means a practitioner in the visual arts generally recognized by ~~his~~ the practitioner's peers or critics as a professional who produces works of art.

(b) The term does not include the project architect, or any member of ~~his~~ the architect's firm, of a new state building that is to have works of art under the provisions of this part.

(2) "New state building" means any structure to be built, remodeled, or renovated with money appropriated by the legislature that is, in the opinion of the architecture and engineering division of the department of administration, appropriate for the inclusion of works of art.

(3) (a) "Work of art" means any work of visual art, including but not limited to a drawing, painting, mural, fresco, sculpture, mosaic, photograph, work of calligraphy, work of graphic art (including an etching, lithograph, offset print, or silk screen), craft (including crafts in clay, textile, fiber, wood, metal, plastic, or glass), or mixed media (including a collage, assemblage, or any combination of art media).

(b) The term does not include environmental landscaping."

Section 354. Section 22-2-406, MCA, is amended to read:

"22-2-406. Administration -- selection of works of art. (1) The Montana arts council is primarily responsible for the administration of this part. The council ~~must~~ shall:

(a) submit its recommendations to the architecture and engineering division of the department of administration for inclusion in the report required by Title 17, chapter 7, part 2, concerning the appropriateness of any ~~such~~ building for the inclusion of works of art, a description of the types of works of art suggested for inclusion in the building, and the anticipated costs of acquisition, maintenance, and administrative expenses associated with the suggested works of art;

(b) appoint a three-member screening committee for each new state building to recommend artists to be commissioned or completed works of art to be purchased. The committee ~~must consist~~ consists of the project architect or ~~his~~ the architect's designee, a professional artist, and a representative from the user agency who is a resident of the community in which the new state building is to be constructed.

(c) select; commission the artist for; review the design, execution, and placement of; and finally accept

all works of art. The Montana arts council ~~must~~ shall consult with the screening committee in fulfilling the requirements of this subsection (1)(c).

(d) assist in contract negotiations with artists who are selected;

(e) ensure that works of art acquired for display under the provisions of this part are displayed in ~~such~~ a manner that they are in public view;

(f) ensure that each work of art is properly maintained and may use the funds provided for in 22-2-404 or any other funds available for ~~such~~ maintenance; and

(g) maintain a close working relationship with the artist throughout each project.

(2) ~~No~~ A payment may not be made to any artist for works of art under this part without prior authorization of the Montana arts council."

Section 355. Section 22-3-431, MCA, is amended to read:

"22-3-431. Registration of heritage properties. (1) Any citizen of Montana may submit to the historic preservation officer for ~~his~~ consideration the necessary forms to nominate heritage properties to the register.

(2) (a) For private properties, the historic preservation officer shall notify the owner of the property and allow ~~him~~ the owner a reasonable period of time to concur or object to the nomination of the property for registration. If the owner of the property, or a majority of owners if the property has more than one owner, objects to registration, the historic preservation officer may not nominate the property unless the objection is withdrawn. If there are no ~~such~~ objections, the historic preservation officer may, upon approval by the preservation review board, nominate heritage properties to the register.

(b) The historic preservation officer and the preservation review board may review the nomination of property that was not nominated ~~due to~~ because of owner objection to determine whether the property is eligible for registration. If the historic preservation officer and the preservation review board determine that the property is eligible for registration, the preservation officer shall provide for the register information about the property for determination of registration eligibility.

(c) The historic preservation officer shall follow the procedures mandated by 36 CFR 60.6 relating to seeking property owner concurrence or objection to registration.

(3) For lands owned by the state, a county, or a municipality, the historic preservation officer may, upon approval by the preservation review board, nominate heritage properties to the register. The historic preservation officer shall notify the appropriate governmental agency and give public notice when any ~~such~~ governmental property is being considered for nomination. Unless agency or public objections are submitted in writing within

30 days after notification, the historic preservation officer shall complete the nominations. When an agency or any citizen of Montana submits written objections, the historic preservation officer shall consider the objections and may conduct a public hearing. If a hearing is held, it ~~shall~~ must be commenced within 30 days after the final date for submission of written objections. Within 60 days after submission of the objections or after the public hearing, the historic preservation officer shall make a final decision on the proposed registration and prepare a statement responsive to the objections submitted."

Section 356. Section 22-3-432, MCA, is amended to read:

"22-3-432. Antiquities permits. (1) ~~No~~ A person may not excavate, remove, or restore any heritage property or paleontological remains on lands owned by the state without first obtaining an antiquities permit from the historic preservation officer.

(2) Antiquities permits are to be granted only after careful consideration of the application for a permit and after consultation with the appropriate state agency. Permits are subject to strict compliance with the following guidelines:

(a) Antiquities permits may be granted only for work to be undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions, societies, or persons with a view toward dissemination of knowledge about cultural properties, provided ~~no such~~ a permit may not be granted unless the historic preservation officer is satisfied that the applicant possesses the necessary qualifications to guarantee the proper excavation of those sites and objects that may add substantially to ~~man's~~ knowledge about Montana and its antiquities.

(b) The antiquities permit must specify that a summary report of ~~such~~ the investigations, containing relevant maps, documents, drawings, and photographs, must be submitted to the historic preservation officer. The historic preservation officer shall determine the appropriate time period allowable between all work undertaken and submission of the summary report.

(3) All heritage property and paleontological remains collected under an antiquities permit are the permanent property of the state and must be deposited in museums or other institutions within the state or loaned to qualified institutions outside the state, unless otherwise provided for in the antiquities permit.

(4) An antiquities permit is not a substitution for any other type of permit that a state agency may require for other purposes."

Section 357. Section 22-3-701, MCA, is amended to read:

"22-3-701. Creation of law enforcement officers' memorial. The memorial in the Montana law enforcement museum, located in the old Montana state prison, Deer Lodge, Montana, which is dedicated to the ~~men and women~~ individuals who have served their communities and the state of Montana as law enforcement officers and have been killed or died in the line of duty, is designated as this state's official law enforcement officers' memorial."

Section 358. Section 22-3-805, MCA, is amended to read:

"22-3-805. Discovery -- reporting requirements -- field review. (1) A person who by archaeological excavation or by agricultural, mining, construction, or other ground-disturbing activity discovers human skeletal remains, a burial site, or burial material shall immediately notify the county coroner. Failure to notify the county coroner subjects a person to the penalty provided in 22-3-808.

(2) Upon discovery of human skeletal remains, a burial site, or burial material, excavation or further disturbance must cease until the coroner has determined whether the remains are subject to the provisions of Title 46, chapter 4, or any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death or whether a forensic examination of the human skeletal remains, burial site, or burial material is necessary. The coroner shall make ~~his a~~ a determination within 2 working days from the time the person responsible for the excavation notifies ~~him~~ the coroner of the discovery or recognition of the remains. If the coroner cannot make the determination within 2 working days, ~~he~~ the coroner shall notify a member of the board of the reason for and the approximate length of the delay. The coroner shall take all reasonable steps to make ~~his a~~ a determination without removing or causing further disturbance of the remains.

(3) If a forensic examination, action under Title 46, chapter 4, or action under any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death is necessary and yields evidence of criminal activity, the evidence may be seized by the coroner or law enforcement agency with jurisdiction for use in a criminal proceeding as provided by law.

(4) If the coroner determines that the remains are not subject to the provisions of Title 46, chapter 4, or any other provisions of law concerning the investigation of the circumstances, manner, and cause of death and that a forensic examination is not necessary, ~~he~~ the coroner shall telephone the state historic preservation officer within 24 hours. Within 24 hours of notification, the state historic preservation officer shall contact either the landowner and the board or the landowner and the board member representing the nearest reservation and notify them of the discovery of human skeletal remains, a burial site, or burial material.

(5) If the state historic preservation officer cannot be contacted, the coroner shall notify a member of the

board or the law enforcement agency of the nearest reservation within 24 hours. The board or the agency shall immediately notify the landowner and the board member representing that reservation.

(6) Within 36 hours after the board receives notification of a discovery of human skeletal remains, a burial site, or burial material, the board shall designate representatives to conduct, with the permission of the landowner, an initial field review. If the field review cannot be completed within the next 36 hours, the board's representatives shall negotiate with the landowner or ~~his~~ the landowner's representative for a reasonable time extension to complete the review. The field review must include:

- (a) a determination of whether the site can be preserved;
- (b) negotiation with the landowner concerning onsite reburial or disinterment and reburial; and
- (c) a recommendation, including a timeframe, concerning final treatment or disposition of the human skeletal remains or burial material.

(7) If the board's representatives fail to make a recommendation or if the landowner and the board cannot agree and mediation fails to provide, within 40 days after notification to the board, a resolution acceptable to the landowner and the board, the human skeletal remains and burial materials must be removed and control is vested in the board. The board shall give control of the remains or materials in the following priority to:

- (a) the descendants, if identifiable;
- (b) the tribe or other cultural group that has the closest cultural affiliation with the human skeletal remains or burial materials;
- (c) the tribe or other cultural group recognized as having aboriginally or historically occupied the area where the remains or materials were discovered if, upon notification by the board, the tribe or cultural group states a claim for the remains or materials; or
- (d) if unclaimed by any tribe or cultural group, the board, which shall determine the appropriate disposition and oversee the reinterment of the remains and materials.

(8) For purposes of this section, "cultural group" means a present-day group or organization that has a relationship of shared group identity ~~which~~ that can be reasonably traced historically or prehistorically to an identifiable earlier group or organization."

Section 359. Section 22-3-806, MCA, is amended to read:

"22-3-806. Scientific analysis -- permit required. (1) Although onsite reburial is preferred, the board may, upon petition by a person seeking permission to perform scientific analysis, grant a permit for the scientific removal and analysis of human skeletal remains and burial material upon proof and determination by the board

that the analysis is scientifically justifiable. A petition for a permit must include:

- (a) payment of the nonrefundable application fee provided for in 22-3-804; and
 - (b) a brief narrative describing the methodology to be used, the timeframe needed to complete the scientific study, and any other information specifically requested by the board relating to the proposed study.
- (2) The methodology proposed must be reviewed by the state historic preservation officer or ~~his~~ the officer's designated representative and the physical anthropologist on the board, and a recommendation must be made to the full board. Once approved by the board, any change in methodology or in the timeframe must be approved by the board before the original timeframe expires. The timeframe for scientific study may not exceed 12 months from the date of issuance of the permit.
- (3) A permit for scientific analysis issued by the board is subject to terms, conditions, and procedures prescribed by the board and must include the condition that a permittee shall pay all costs of excavation, study, and disposition.
- (4) The board shall either issue or deny a permit within 30 working days from the date of the permit petition. If the board denies a permit upon a finding that scientific analysis is not justifiable, the board shall provide the applicant with a written statement outlining the grounds for its finding. The applicant may appeal the decision of the board under the provisions of Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.
- (5) The board may suspend or revoke a permit pursuant to the Montana Administrative Procedure Act upon a finding that the permittee has violated any provision of this part or any term, condition, or procedure of a permit issued by the board.
- (6) The provisions of this section do not apply to a forensic examination by the county coroner, action under Title 46, chapter 4, or action under any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death."

Section 360. Section 23-2-301, MCA, is amended to read:

"23-2-301. Definitions. For purposes of this part, the following definitions apply:

- (1) "Barrier" means an artificial obstruction located in or over a water body, restricting passage on or through the water, ~~which~~ that totally or effectively obstructs the recreational use of the surface water at the time of use. A barrier may include but is not limited to a bridge or fence or any other ~~manmade~~ artificial obstacle to the natural flow of water.
- (2) "Class I waters" means surface waters, other than lakes, that:
 - (a) lie within the officially recorded federal government survey meander lines ~~thereof~~ of the waters;

(b) flow over lands that have been judicially determined to be owned by the state by reason of application of the federal navigability test for state streambed ownership;

(c) are or have been capable of supporting the following commercial activities: log floating, transportation of furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation, or the transportation of merchandise, as these activities have been defined by published judicial opinion as of April 19, 1985; or

(d) are or have been capable of supporting commercial activity within the meaning of the federal navigability test for state streambed ownership.

(3) "Class II waters" means all surface waters that are not class I waters, except lakes.

(4) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Diverted away from a natural water body" means a diversion of surface water through a manmade constructed water conveyance system, including but not limited to:

(a) an irrigation or drainage canal or ditch;

(b) an industrial, municipal, or domestic water system, excluding the lake, stream, or reservoir from which the system obtains water;

(c) a flood control channel; or

(d) a hydropower inlet and discharge facility.

(7) "Lake" means a body of water where the surface water is retained by either natural or artificial means and the natural flow of water is substantially impeded.

(8) "Occupied dwelling" means a building used for a human dwelling at least once a year.

(9) "Ordinary high-water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water marks.

(10) "Recreational use" means with respect to surface waters: fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft unless otherwise prohibited or regulated by law, or craft propelled by oar or paddle, other water-related pleasure activities, and related unavoidable or incidental uses.

(11) "Supervisors" means the board of supervisors of a soil conservation district, the directors of a grazing district, or the board of county commissioners if a request pursuant to 23-2-311(3)(b) is not within the boundaries

of a conservation district or if the request is refused by the board of supervisors of a soil conservation district or the directors of a grazing district.

(12) "Surface water" means, for the purpose of determining the public's access for recreational use, a natural water body, its bed, and its banks up to the ordinary high-water mark."

Section 361. Section 23-2-311, MCA, is amended to read:

"23-2-311. Right to portage -- establishment of portage route. (1) A member of the public making recreational use of surface waters may, above the ordinary high-water mark, portage around barriers in the least intrusive manner possible, avoiding damage to the landowner's land and violation of ~~his~~ the landowner's rights.

(2) A landowner may create barriers across streams for purposes of land or water management or to establish land ownership as otherwise provided by law. If a landowner erects a structure ~~which~~ that does not interfere with the public's use of the surface waters, the public may not go above the ordinary high-water mark to portage around the structure.

(3) (a) A portage route around or over a barrier may be established to avoid damage to the landowner's land and violation of ~~his~~ the landowner's rights, as well as to provide a reasonable and safe route for the recreational user of the surface waters.

(b) A portage route may be established when either a landowner or a member of the recreating public submits a request to the supervisors that ~~such~~ a route be established.

(c) Within 45 days of the receipt of a request, the supervisors shall, in consultation with the landowner and a representative of the department, examine and investigate the barrier and the adjoining land to determine a reasonable and safe portage route.

(d) Within 45 days of the examination of the site, the supervisors shall make a written finding of the most appropriate portage route.

(e) The cost of establishing the portage route around artificial barriers must be borne by the involved landowner, except for the construction of notification signs of ~~such~~ the route, which is the responsibility of the department. The cost of establishing a portage route around artificial barriers not owned by the landowner on whose land the portage route will be placed must be borne by the department.

(f) Once the route is established, the department has the exclusive responsibility ~~thereafter~~ to maintain the portage route at reasonable times agreeable to the landowner. The department shall post notices on the stream of the existence of the portage route and the public's obligation to use it as the exclusive means around a barrier.

(g) If either the landowner or the recreationist disagrees with the route described in subsection (3)(e), ~~he~~ the person may petition the district court to name a three-member arbitration panel. The panel must consist of an affected landowner, a member of an affected recreational group, and a member selected by the two other members of the arbitration panel. The arbitration panel may accept, reject, or modify the supervisors' finding under subsection (3)(d).

(h) The determination of the arbitration panel is binding upon the landowner and upon all parties that use the water for which the portage is provided. Costs of the arbitration panel, computed as for jurors' fees under 3-15-201, ~~shall~~ must be borne by the contesting party or parties; ~~and~~ All other parties shall bear their own costs.

(i) The determination of the arbitration panel may be appealed within 30 days to the district court.

(j) Once a portage route is established, the public shall use the portage route as the exclusive means to portage around or over the barrier.

(4) ~~Nothing contained in this~~ This part addresses ~~does not address~~ the issue of natural barriers or portage around ~~said~~ the barriers, and ~~nothing contained in this part makes such~~ does not make the portage lawful or unlawful."

Section 362. Section 23-2-321, MCA, is amended to read:

"23-2-321. Restriction on liability of landowner and supervisor. (1) A person who makes recreational use of surface waters flowing over or through land in the possession or under the control of another, pursuant to 23-2-302, or land while portaging around or over barriers or while portaging or using portage routes, pursuant to 23-2-311, is owed no duty by a landowner, ~~his~~ the landowner's agent, or ~~his~~ the landowner's tenant other than that provided in subsection (2).

(2) A landowner, ~~his~~ the landowner's agent, or tenant is liable to a person making recreational use of waters or land described in subsection (1) only for an act or omission that constitutes willful or wanton misconduct.

(3) ~~No~~ A supervisor or any member of the arbitration panel who participates in a decision regarding the placement of a portage route is not liable to ~~any~~ a person who is injured or whose property is damaged because of placement or use of the portage route except for an act or omission that constitutes willful and wanton misconduct."

Section 363. Section 23-2-402, MCA, is amended to read:

"23-2-402. Purpose -- intent. (1) The purpose of this part is to:

(a) provide continued recreational and commercial use and enjoyment of the Smith River waterway, consistent with the river's capacity;

(b) seek ways to minimize conflicts between river users and private landowners; and

(c) protect the integrity of the river's water and canyon resources for future generations.

(2) The intent of this part is to interpret and implement this part in a manner consistent with the statement of purpose for the state park system in 23-1-101.

(3) ~~Nothing in this~~ This part may not be construed in any way to restrict a landowner's access to or use of ~~his~~ the landowner's land, improvements, water rights, or adjacent waterways."

Section 364. Section 23-2-503, MCA, is amended to read:

"23-2-503. Boat liveries. (1) The owner of a boat livery shall cause to be kept a record of the name and address of the person or persons hiring any vessel ~~which that~~ is permitted by him the owner to be operated, the identification number of ~~such the~~ the vessel, the departure date and time, and the expected time of return. The record ~~shall~~ must be preserved for at least 6 months.

(2) ~~Neither the~~ The owner of a boat livery ~~nor his or the owner's~~ agent or employee ~~shall~~ may not permit any motorboat or any vessel permitted by ~~him~~ the owner to be operated as a motorboat or vessel to depart from ~~his~~ the owner's premises unless it ~~shall have~~ has been provided, either by owner or renter, with the equipment required pursuant to 23-2-521 and any rules made pursuant ~~thereto~~ to that section."

Section 365. Section 23-2-505, MCA, is amended to read:

"23-2-505. Owner's civil liability. The owner of a vessel ~~shall be~~ is liable for any injury or damage occasioned by the negligent operation of ~~such the~~ the vessel, whether ~~such the~~ the negligence consists of a violation of the provisions of the statutes of this state or neglecting to observe ~~such~~ ordinary care and ~~such~~ operation ~~as that~~ the rules of the common law require. ~~The~~ However, the owner ~~shall~~ is not be liable, ~~however,~~ unless ~~such the~~ the vessel is being used with ~~his or her~~ the owner's express or implied consent. It ~~shall~~ must be presumed that ~~such the~~ the vessel is being operated with the knowledge and consent of the owner if, at the time of the injury or damage, it is under the control of ~~his or her~~ the owner's spouse, father, mother, brother, sister, son, daughter, or other immediate member of the owner's family. ~~Nothing contained herein shall~~ This section may not be construed to relieve any other person from any liability ~~which he~~ that the person would otherwise have, ~~but nothing contained herein shall~~ However, this section may not be construed to authorize or permit any recovery in excess of injury or damage actually incurred."

Section 366. Section 23-2-527, MCA, is amended to read:

"23-2-527. Collisions, accidents, and casualties. (1) The operator of a vessel involved in a collision, accident, or other casualty, so far as ~~he~~ the operator can do so without serious danger to ~~his~~ the operator's own vessel, crew, and passengers (~~if any~~), shall render to other persons affected by the collision, accident, or other casualty ~~such assistance as that~~ such assistance as that may be practicable and ~~as that~~ as that may be necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty, ~~and~~ The operator shall give his the operator's name, address, and identification of ~~his~~ the operator's vessel in writing to any person injured and to the owner or person in control of any property damaged in the collision, accident, or other casualty.

(2) The department shall prepare and distribute to each sheriff's office and each game warden of this state a standardized accident report form. ~~Any~~ A person involved in a collision, accident, or other casualty involving a death, disappearance, personal injury, or property damage in excess of \$100 shall immediately report ~~such~~ the collision, accident, or other casualty to the sheriff's office or game warden of the county in which the collision, accident, or casualty occurred and fill out a standardized accident report form.

(3) A sheriff advised of a collision, accident, or other casualty reported under this part shall:

- (a) conduct an appropriate investigation of ~~such~~ the collision, accident, or other casualty; and
- (b) prepare and submit a report of the results of the investigation, together with the completed standardized accident report forms, to the department."

Section 367. Section 23-2-535, MCA, is amended to read:

"23-2-535. Alcohol concentration standards -- evidence admissible -- administration of tests. (1) The inferences contained in 61-8-401(4) apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol in a person at the time of the act alleged, as shown by analysis of the person's blood, breath, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of ~~his~~ the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-405 and the definition of alcohol concentration provided in 61-8-407 apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" ~~shall have~~ has the meaning provided in 61-8-401(3)."

Section 368. Section 23-5-131, MCA, is amended to read:

"23-5-131. Losses at illegal gambling may be recovered in civil action. A person, or ~~his~~ the person's dependent or guardian, who, by playing or betting at an illegal gambling device or illegal gambling enterprise, loses money, property, or any other thing of value and pays and delivers it to another person connected with the operation or conduct of the illegal gambling device or illegal gambling enterprise, within 1 year following ~~his~~ the person's loss, may:

- (1) bring a civil action in a court of competent jurisdiction to recover the loss;
- (2) recover the costs of the civil action and exemplary damages of no less than \$500 and no more than \$5,000; and
- (3) join as a defendant any person having an interest in the illegal gambling device or illegal gambling enterprise."

Section 369. Section 23-5-135, MCA, is amended to read:

"23-5-135. Discharge of defendant. (1) A person against whom a civil action is brought, as provided in 23-5-131, may move to have the action against ~~him~~ the person dismissed if ~~he~~ the person has repaid to the person who suffered the loss or ~~his~~ that person's dependent the gambling loss, the costs of bringing the civil action, and the exemplary damages agreed upon by the parties or assessed by the court.

(2) A civil action brought to recover gambling losses does not bar or interfere with another proceeding or action, whether criminal, civil, or administrative, that may be brought under the laws of the state."

Section 370. Section 23-5-155, MCA, is amended to read:

"23-5-155. Counterfeiting or defacing documents -- penalty. (1) A person commits the offense of counterfeiting or defacing a document when ~~he~~ the person purposely or knowingly counterfeits, alters, or wrongfully displays a seal, decal, license, identification number or device, or other document issued by the department.

(2) A person convicted of the offense of counterfeiting or defacing a document is guilty of a felony and

must be punished in accordance with 23-5-162."

Section 371. Section 23-5-221, MCA, is amended to read:

"23-5-221. Definition. As used in this part, "Calcutta pool" means a form of auction pool conducted by an organization authorized by the department. The Calcutta pool must be an auction pool in which:

- (1) a person's wager is equal to ~~his~~ the person's bid;
- (2) the proceeds from the pool, minus administrative costs and prizes paid, are contributed to a charitable or nonprofit corporation, association, or cause;
- (3) the rules of the pool are publicly posted;
- (4) no more than one wager for each competitor is allowed;
- (5) at least 50% of the total pool is paid out in prizes;
- (6) persons may not bid or wager money on any elementary school or high school sports event; and
- (7) the underlying event has more than two entrants."

Section 372. Section 23-5-409, MCA, is amended to read:

"23-5-409. Bingo and keno tax -- records -- distribution -- statement and payment. (1) A licensee who has received a permit to operate bingo or keno games shall pay to the department a tax of 1% of the gross proceeds from the operation of each live bingo and keno game operated on ~~his~~ the licensee's premises.

(2) A licensee shall keep a record of gross proceeds in the form the department requires. At all times during the business hours of the licensee, the records must be available for inspection by the department.

(3) A licensee shall annually complete and deliver to the department a statement showing the total gross proceeds for each live keno or bingo game operated by ~~him~~ the licensee and the total amount due as live bingo or keno tax for the preceding year. This statement must contain any other relevant information required by the department.

(4) The department shall forward the tax collected under subsection (3) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed game is located for deposit to the county or municipal treasury. A county is not entitled to proceeds from taxes on live bingo or keno games located in incorporated cities and towns within the county. The tax collected under subsection (3) is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury."

Section 373. Section 23-5-622, MCA, is amended to read:

"23-5-622. Tampering with video gambling machine -- penalty. (1) A person commits the offense of tampering with a video gambling machine if ~~he~~ the person purposely or knowingly manipulates or attempts or conspires to manipulate the outcome or payoff of a video gambling machine by physical tampering or other interference with the proper functioning of the machine.

(2) A violation of this section is a felony and must be punished in accordance with 23-5-162."

Section 374. Section 23-7-212, MCA, is amended to read:

"23-7-212. Assistant director for security -- qualifications -- duties -- compensation. (1) The director shall appoint an assistant director for security, who serves at the pleasure of the director.

(2) The assistant director for security must be qualified by training and experience, have at least 5 years of law enforcement experience, and be knowledgeable and experienced in computer security.

(3) The assistant director for security ~~shall~~:

(a) must be responsible for a security division to ~~assure~~ ensure security, honesty, fairness, and integrity in the operation and administration of the lottery, including but not limited to an examination of the background of all prospective employees, ticket or chance sales agents, lottery vendors, and lottery contractors. The security division is designated a law enforcement agency for the purpose of administering this chapter.

(b) shall in conjunction with the director, confer with the attorney general or ~~his~~ the attorney general's designee to promote and ensure security, honesty, fairness, and integrity of the operation and administration of the lottery; and

(c) shall, in conjunction with the director, report any alleged violation of law to the attorney general, the legislative auditor, and any other appropriate law enforcement authority for further investigation and action.

(4) The salary of the assistant director for security is equal to 90% of the salary of the director of the lottery."

Section 375. Section 23-7-302, MCA, is amended to read:

"23-7-302. Sales restrictions. (1) The price of each lottery game ticket or chance must be clearly stated ~~thereon~~ on the ticket or chance. The price of a lottery game chance vended by a machine or electronic device must be clearly stated on the machine or device.

(2) Tickets and chances may not be sold to or purchased by persons under 18 years of age.

(3) Tickets and chances may be purchased only with cash or a check and may not be purchased on credit.

(4) Tickets and chances may not be sold to or purchased by commissioners, the director, ~~his~~ the director's staff, gaming suppliers doing business with the state lottery, suppliers' officers and employees, employees of any firm auditing or investigating the state lottery, governmental employees auditing or investigating the state lottery, or members of their households.

(5) The names of elected officials may not appear on any ticket or chance."

Section 376. Section 23-7-307, MCA, is amended to read:

"23-7-307. Conflict of interest. ~~No~~ A commissioner, director, assistant director, state lottery employee, licensed ticket or chance sales agent, or member of ~~his~~ a listed person's household may not have a financial interest in any gaming supplier or any contract between the state lottery and a gaming supplier or accept any gift or thing of value from a gaming supplier."

Section 377. Section 23-7-401, MCA, is amended to read:

"23-7-401. State lottery fund. There is a fund of the enterprise fund type, as defined in 17-2-102, to be known as the state lottery fund. The gross revenue from the state lottery, consisting of money from the sale of lottery tickets and chances, ticket or chance sales agent license fees, unclaimed prizes, or any other source, must be deposited in the fund, except that, at the discretion of the director, money for prizes paid immediately by a sales agent and money equaling the sales agent's commission may be drawn by a sales agent from ~~his~~ the agent's gross revenue before depositing ~~his~~ the gross revenue with the state lottery."

Section 378. Section 25-1-401, MCA, is amended to read:

"25-1-401. Deposit of money in lieu of undertaking. In all cases ~~where~~ in which an undertaking or bond with sureties is required by the provisions of this code, the plaintiff or defendant may deposit with the clerk of the court, ~~or~~ justice of the peace, or city judge, as ~~the case may be~~ appropriate, a sum of money equal to the amount required by the undertaking or bond, which ~~shall~~ must be taken as security in the place ~~thereof~~ of the undertaking or bond. At any time, ~~such~~ the deposit may be withdrawn by the party making it upon giving the undertaking with sufficient sureties as required by law, approved by the clerk, ~~or~~ justice, or judge, upon notice to the adverse party or ~~his~~ the adverse party's attorney, who may object to the sufficiency of the sureties in the same manner as though the undertaking were filed in the first instance."

Section 379. Section 25-1-402, MCA, is amended to read:

"25-1-402. Governmental entities not required to give security. In any civil action or proceeding ~~wherein~~ in which the state, a county, or a municipal corporation or any officer in ~~his~~ the officer's official capacity on behalf of the state or a county, city, or town is a party plaintiff or defendant, ~~no~~ a bond, undertaking, or security ~~can~~ may not be required of the state, county, municipal corporation, or town or any officer ~~thereof~~ of those entities; ~~but~~ however, on complying with the other provisions of this code, the state, county, municipal corporation, or town or any officer ~~thereof~~ acting in ~~his~~ the officer's official capacity has the same rights, remedies, and benefits as if the bond, undertaking, or security were given and approved as required by this code. The board of trustees of any school district is entitled to the benefit of this section."

Section 380. Section 25-1-1102, MCA, is amended to read:

"25-1-1102. Contents of registration certificate. The certificate of registration of a process server must contain the following statements:

- (1) the name, age, address, and telephone number of the registrant;
- (2) that the registrant has not been convicted of a felony;
- (3) that the registrant has been a resident of this state for a period of 1 year immediately preceding the filing of the certificate; and
- (4) that the registrant will perform ~~his~~ the duties as a process server in compliance with the provisions of law governing the service of process in this state."

Section 381. Section 25-2-125, MCA, is amended to read:

"25-2-125. Against public officers or their agents. The proper place of trial for an action against a public officer or person specially appointed to execute ~~his~~ the officer's duties for an act done by ~~him~~ the officer or person in virtue of ~~his~~ the office or against a person who, by ~~his~~ the officer's or person's command or in ~~his~~ the officer's or person's aid, does anything ~~touching~~ relating to the duties of ~~such~~ the officer is the county where the cause or some part ~~thereof~~ of the cause of action arose."

Section 382. Section 25-2-206, MCA, is amended to read:

"25-2-206. Judgment affecting real property to be transmitted. When an action or proceeding affecting the title to or possession of real estate has been brought in or transferred to any court of a county other than the county in which the real estate or some portion of ~~it~~ the real estate is situated, the clerk of ~~such~~ the court ~~must~~ shall, after final judgment ~~therein~~ in the action, certify under ~~his~~ the clerk's seal of office and transmit to the

corresponding court of the county in which the real estate affected by the action is situated a copy of the judgment. The clerk receiving ~~such the~~ copy ~~must shall~~ file, docket, and record the judgment in the record of the court, briefly designating it as a judgment transferred from court (naming the proper court)."

Section 383. Section 25-3-206, MCA, is amended to read:

"25-3-206. Execution by elisor. (1) Process or orders in an action or proceeding may be executed by a person residing in the county, designated by the court or a judge ~~thereof~~, and denominated an elisor; in the following cases:

- (a) The sheriff and coroner are both parties.
- (b) Either of these officers is a party, and the process is against the other.
- (c) Either of these officers is a party, and there is a vacancy in the office of the other.
- (d) It appears by affidavit to the satisfaction of the court in which the proceeding is pending or the judge ~~thereof~~ that both of these officers are disqualified or, by reason of any bias, prejudice, or other cause, would not act promptly or impartially.

(2) When process is delivered to an elisor, ~~he must~~ the elisor shall execute and return ~~it~~ the process in the same manner ~~as that~~ the sheriff is required to execute similar process. The court or judge may at any time on ~~its~~ the court's or judge's own motion appoint an elisor."

Section 384. Section 25-3-401, MCA, is amended to read:

"25-3-401. Notice requirements after appearance of defendant. A defendant appears in an action when ~~he~~ the defendant answers, files a motion, or gives the plaintiff written notice of ~~his~~ appearance or when an attorney gives notice of appearance for ~~him~~ the defendant or has ~~such the~~ appearance entered in open court. After appearance, a defendant or ~~his~~ the defendant's attorney is entitled to notice of all subsequent proceedings of which notice is required to be given."

Section 385. Section 25-3-402, MCA, is amended to read:

"25-3-402. Persons to be served. Subject to the provisions of Rule 5(b), M.R.Civ.P., whenever a plaintiff or a defendant who has appeared resides out of this state and has no attorney in the action or proceeding, service may be made on the clerk of court for ~~him~~ that party. ~~But However,~~ in all cases ~~where~~ in which a party has an attorney in the action or proceeding, the service of papers, when required, must be upon the attorney instead of the party, except of subpoenas, writs, and other process issued in the suit and papers to

bring ~~him~~ the party into contempt, unless the court orders otherwise."

Section 386. Section 25-3-501, MCA, is amended to read:

"25-3-501. Service of telephonic telegraphic or telegraphic telephonic copy. (1) Any summons, writ, or order in ~~any~~ a civil action or proceeding and all other papers requiring service may be transmitted by telegraph or telephone for ~~such~~ service in any place; ~~and the~~ The telegraphic or telephonic copy of ~~such~~ the writ, order, or paper ~~so~~ transmitted may be served or executed by the officer or person to whom it is sent for that purpose and returned by ~~him~~ the officer or person, if any return ~~be requisite~~ is required, in the same manner and with the same ~~force and~~ effect in all respects as the original ~~thereof~~ might be delivered to ~~him~~; ~~and the officer or person.~~ The officer or person serving or executing the ~~same~~ writ, order, or paper has the same authority and is subject to the same liabilities as if the copy were the original.

(2) The original, when a writ or order, must also be filed in the court from which it was issued, and a certified copy ~~thereof~~ of the writ or order must be preserved in the telegraph or telephone office from which it is sent. In sending it the writ or order, either the original or certified copy may be used by the operator for that purpose. Whenever any document to be sent by telegraph or telephone bears a seal, either private or official, it is not necessary for the operator, in sending the ~~same~~ document, to telegraph or telephone a description of the seal or any words or device ~~thereon~~ on the seal, but the ~~same~~ seal may be expressed in the telegraphic or telephonic copy by the letters "L.S." or by the word "seal."

Section 387. Section 25-3-602, MCA, is amended to read:

"25-3-602. Operation of vehicle considered consent to service on secretary of state. The acceptance by a nonresident of the rights and privileges conferred by the laws of this state to use the highways, roads, and streets of the state and its political subdivisions, as evidenced by ~~his~~ the nonresident operating a motor vehicle ~~thereon~~ on the highways, roads, and streets, ~~shall be deemed~~ is considered equivalent to and construed to be an appointment by ~~such~~ the nonresident of the secretary of state of the state of Montana to be ~~his~~ the nonresident's true and lawful attorney upon whom may be served all lawful summonses and processes against ~~him~~ the nonresident growing out of any accident, collision, or liability in which ~~said~~ the nonresident may be involved while operating a motor vehicle upon ~~such~~ the highways, roads, and streets; ~~and said~~ The acceptance or operation ~~shall be~~ is a signification of ~~his~~ the nonresident's agreement that any summons or process against ~~him~~ which the nonresident that is ~~so~~ served ~~shall be~~ on the secretary of state is of the same legal force and validity as if served on ~~him~~ the nonresident personally within the state of Montana."

Section 388. Section 25-3-603, MCA, is amended to read:

"25-3-603. Operation of vehicle by agent. The operation by any person, ~~by himself individually or his~~ by the person's agent, of any motor vehicle, whether registered or unregistered and with or without a license to operate, on any public way in this state ~~shall be deemed~~ is considered equivalent to an appointment by ~~such the~~ the person of the secretary of state ~~or his successor in office~~ to be ~~his~~ the person's true and lawful attorney upon whom may be served all lawful processes in any action or proceeding against ~~him~~ the person growing out of an accident or collision in which ~~he~~ the person or ~~his~~ the person's agent may be involved while operating a motor vehicle on any public way in this state; ~~and such~~ The operation shall be is a signification of an agreement by ~~such~~ the person that any ~~such~~ process against ~~him~~ the person that is served upon the secretary of state ~~or his successor in office shall be~~ is of the same force and validity as if served upon ~~him~~ the person personally. This section ~~shall~~ does not apply in case of any cause of action, for the service of process in which provision is made by 25-3-602, ~~nor shall~~ and it does not authorize service of process upon any person who may with due diligence be found and personally served with process within the state of Montana."

Section 389. Section 25-4-101, MCA, is amended to read:

"25-4-101. Motions and orders -- where made. (1) Motions must be made in the county in which the action is brought or in any adjoining county in the same district. In ~~case of~~ the absence of the judge of the district from ~~his~~ the district or in an action pending in which ~~such the~~ judge is disqualified to act, ~~such a~~ motion may be made before the judge of any adjoining district unless there is another judge in the same district who is not disqualified to act; ~~in which~~ In that case, ~~such a~~ motion ~~shall~~ must be made before another judge in the same district.

(2) Orders made out of court may be made by the judge of the court in any part of the state."

Section 390. Section 25-4-102, MCA, is amended to read:

"25-4-102. Transfer when judge unable to hear motion or return of order. When a notice of motion is given or an order to show cause is made returnable before a judge out of court and, at the time fixed for the motion or on the return day of the order, the judge is unable to hear the parties, the matter may be transferred by ~~his~~ the judge's order to some other judge."

Section 391. Section 25-4-203, MCA, is amended to read:

"25-4-203. Verification of pleadings. (1) In any case in which an affidavit of verification is required,

except as otherwise specifically provided, ~~such the~~ affidavit of verification must be to the effect that the pleading is true to the knowledge of the deponent, except as to the matters ~~therein~~ stated in the affidavit on information and belief, and that as to those ~~he the deponent~~ believes it to be true. ~~Such The~~ verification must be made by the party or, if there are several parties united in interest or pleading, by one at least of ~~such the~~ parties acquainted with the facts if ~~such the~~ party is in the county and capable of making the affidavit. The verification may also be made by the agent or attorney of the party if the party is absent from the county where the attorney resides or is from any other cause unable to verify the pleading, and in ~~such that~~ case, the verification must state that the deponent is the agent or attorney of the party, the reason why ~~such the~~ verification is made by ~~such the~~ agent or attorney, and that the matters stated in the pleadings are true to the best knowledge, information, and belief of ~~such the~~ agent or attorney.

(2) When a corporation is a party, the verification may be made by any officer ~~thereof~~ of the corporation and must state what the office of the officer ~~he~~ is and that the matters stated ~~therein in the verification~~ are true to the best knowledge, information, and belief of ~~such the~~ officer. If there is no officer of the corporation within the county, the verification may be made by ~~its~~ the corporation's attorney."

Section 392. Section 25-4-302, MCA, is amended to read:

"25-4-302. Pleading an account. It is not necessary for a party to set forth in a pleading the items of an account ~~therein~~ alleged in the pleading, but ~~he the party must shall~~ deliver to the adverse party, within 5 days or ~~such further~~ additional time ~~as that~~ the court may allow or may be agreed to by the parties, after a demand ~~thereof~~ in writing, a copy of the account or be precluded from giving evidence ~~thereof~~ of the account. The court or judge ~~thereof~~ may order a further account when the one delivered is too general or is defective in any particular."

Section 393. Section 25-4-401, MCA, is amended to read:

"25-4-401. Counterclaim by person sued in representative capacity. In an action against an executor, ~~or~~ administrator, or other person sued in a representative capacity, the defendant may set forth as a counterclaim a demand belonging to the decedent or other person whom ~~he~~ the executor, administrator, or person represents ~~where~~ when the person so represented would have been entitled to set forth the ~~same~~ counterclaim in an action against ~~him~~ the person."

Section 394. Section 25-4-402, MCA, is amended to read:

"25-4-402. Counterclaim against person suing in representative capacity. In an action brought by an executor or administrator in ~~his~~ a representative capacity, a demand against the decedent belonging at the time of ~~his~~ the decedent's death to the defendant may be set forth by the defendant as a counterclaim as if the action had been brought by the decedent in ~~his~~ the decedent's lifetime; ~~and if~~ If a balance is found to be due to the defendant, judgment must be rendered ~~therefor~~ for the balance against the plaintiff in ~~his~~ the representative capacity. Execution can be issued upon ~~such a~~ the judgment only in a case ~~where~~ in which it could be issued upon a judgment in an action against the executor or administrator."

Section 395. Section 25-4-403, MCA, is amended to read:

"25-4-403. Counterclaim in action on contract. A counterclaim on a contract is subject to the following rules:

(1) Except as otherwise provided by the Uniform Commercial Code, if the action is founded upon a contract ~~which~~ that has been assigned by the party ~~thereto~~ to the contract, a demand existing against the party ~~thereto~~ to the contract or an assignee of the contract at the time of the assignment ~~thereof~~ and belonging to the defendant, in good faith, before notice of the assignment must be allowed as a counterclaim to the amount of the plaintiff's demand if it might have been ~~so~~ allowed against the party or the assignee while the contract belonged to ~~him~~ the party or the assignee.

(2) If the plaintiff is a trustee for another or if the action is in the name of the plaintiff who has no actual interest in the contract upon which it is founded, a demand against the plaintiff ~~shall~~ may not be allowed as a counterclaim, but so much of a demand existing against the person whom ~~he~~ the plaintiff represents or for whose benefit the action is brought as will satisfy the plaintiff's demand must be allowed as a counterclaim if it might have been ~~so~~ allowed in an action brought by the person beneficially interested."

Section 396. Section 25-4-404, MCA, is amended to read:

"25-4-404. Cross-claim to be asserted in answer. ~~Where~~ When the judgment may determine the ultimate rights of two or more defendants as between themselves, a defendant who requires ~~such~~ a determination ~~must~~ shall demand it in ~~his~~ the answer. The controversy between the defendants ~~must~~ may not delay a judgment to which the plaintiff is entitled unless the court otherwise directs."

Section 397. Section 25-4-502, MCA, is amended to read:

"25-4-502. No postponement when expected evidence admitted. The court may also require the

moving party to state, upon affidavit, the evidence ~~which he~~ that the party expects to obtain, and if the adverse party ~~thereupon~~ admits that ~~such the~~ evidence would be given and that it be considered as actually given on the trial or offered and overruled as improper, the trial ~~shall~~ may not be postponed."

Section 398. Section 25-4-601, MCA, is amended to read:

"25-4-601. Procedure when answer admits part of plaintiff's claim. ~~Where~~ When the answer of the defendant, expressly or by not denying, admits a part of the plaintiff's claim to be just, the court, upon the plaintiff's motion, may, in its discretion, order that the action be severed, that a judgment be entered for the plaintiff for the part ~~so~~ admitted, and, if the plaintiff ~~so~~ elects, that the action be continued with like effect ~~as~~ with regard to the subsequent proceedings as if it had been originally brought for the remainder of the claim. The order must prescribe the time and manner of the plaintiff's election. If the plaintiff elects to continue the action, ~~his~~ the plaintiff's right to costs upon the judgment is the same as if it were taken in an action brought for only that part of the claim. If the plaintiff does not elect to continue the action, costs must be awarded as upon final judgment in any other case."

Section 399. Section 25-4-602, MCA, is amended to read:

"25-4-602. Judgment for excess when plaintiff admits counterclaim. In an action upon contract ~~where~~ when the complaint demands judgment for a sum of money only, if the defendant by ~~his~~ the answer does not deny the plaintiff's claim but sets up a counterclaim amounting to less than the plaintiff's claim, the plaintiff, upon filing with the clerk an admission of the counterclaim, may take judgment for the excess, as upon a default for want of an answer."

Section 400. Section 25-5-103, MCA, is amended to read:

"25-5-103. Suing a party by a fictitious name. When the plaintiff ~~is ignorant of~~ does not know the name of the defendant, ~~such the~~ defendant may be designated in any pleading or proceeding by any name; ~~and when~~ his When the defendant's true name is discovered, the pleadings or proceedings may be amended accordingly."

Section 401. Section 25-5-202, MCA, is amended to read:

"25-5-202. Who may defend when spouse sued. If a husband and wife ~~be~~ are sued together, each spouse may defend for ~~his or her~~ the spouse's own right, and if the other spouse ~~neglect~~ fails to defend, the spouse who does choose to defend may defend for the other spouse's right also."

Section 402. Section 25-5-203, MCA, is amended to read:

"25-5-203. Defendants -- adverse claims to real property. In an action brought by a person out of possession of real property to determine an adverse claim of an interest or estate ~~therein in the property~~, the person making ~~such the~~ the adverse claim and the persons in possession may be joined as defendants, and if the judgment ~~be is~~ is for the plaintiff, ~~he the plaintiff~~ may have a writ for the possession of the premises as against the defendants in the action against whom the judgment has passed."

Section 403. Section 25-5-301, MCA, is amended to read:

"25-5-301. Appointment of guardian. When a guardian ad litem is appointed by the court, ~~he the~~ guardian ad litem must be appointed as follows:

(1) when the minor is plaintiff, upon the application of the minor if ~~he be of the age of the minor is~~ 14 years of age or, if under that age, upon the application of a relative or friend of the minor;

(2) when the minor is defendant, upon the application of the minor if ~~he be of the age of the minor is~~ 14 years of age and ~~apply applies~~ applies within 10 days after the service of the summons or, if under that age or if ~~he the~~ the ~~minor~~ neglects ~~to~~ to apply, upon the application of a relative or friend of the minor or of any other party to the action;

(3) when an insane or incompetent person is party to an action or proceeding, upon the application of a relative or friend of ~~such the~~ the insane or incompetent person or of any other party to the action or proceeding."

Section 404. Section 25-7-206, MCA, is amended to read:

"25-7-206. Procedure when insufficient number attend. (1) If a sufficient number of jurors ~~duly~~ drawn and notified do not attend to form a jury, the judge or the jury commissioner, pursuant to an order of the court to be entered in the minutes, shall, in the presence of two witnesses, draw a sufficient number of ballots from the box to complete the jury. The sheriff shall notify the persons thus drawn to attend immediately or at a time fixed by court. If for any reason a sufficient number of jurors to try the issue is not obtained from the persons notified, the court may make or order further drawings until a sufficient number is obtained.

(2) Each person ~~so~~ notified ~~must~~ shall attend at the time required by the notice and, unless excused by the court or set aside, ~~must~~ shall serve as a juror upon the trial. For a neglect or refusal to do so, ~~he the person~~ may be fined in the same manner as any other trial juror regularly drawn and notified. ~~He~~ The person is subject to the same exceptions and challenges as any other trial juror."

Section 405. Section 25-7-209, MCA, is amended to read:

"25-7-209. Ballots of jurors not sworn. The ballot with the name of a juror who is absent when ~~his~~ the juror's name is drawn or called or is set aside or excused from serving on that trial must be again returned to the box containing the undrawn ballots as soon as the jury is sworn."

Section 406. Section 25-7-223, MCA, is amended to read:

"25-7-223. Challenges to jurors for cause. Challenges for cause may be taken on one or more of the following grounds:

(1) a want of any of the qualifications prescribed by this code to render a person competent as a juror;

(2) being the spouse of or related to a party by consanguinity or affinity within the sixth degree;

(3) standing in the relation of guardian and ward, debtor and creditor, employer and employee, or principal and agent to either party or being a partner in business with either party or surety on any bond or obligation for either party. However, a challenge for cause may not be taken because of debtor and creditor relation when the same arises solely:

(a) by reason of current bills of gas, water, electricity, or telephone; or

(b) because a prospective juror is a depositor of funds with a bank, savings and loan institution, credit union, or similar financial institution.

(4) having served as a juror or been a witness on a previous trial between the same parties for the same cause of action;

(5) interest on the part of the juror in the event of the action or in the main question involved in the action, except ~~his~~ the juror's interest as a member or citizen of a municipal corporation;

(6) having an unqualified opinion or belief as to the merits of the action;

(7) the existence of a state of mind in the juror evincing enmity against or bias in favor of either party."

Section 407. Section 25-7-301, MCA, is amended to read:

"25-7-301. Order of trial. When the jury has been sworn, the trial ~~shall~~ must proceed in the following order unless the court, for good cause and special reason, otherwise directs:

(1) The party who has the burden of proof may briefly state ~~his~~ the party's case and the evidence by which ~~he~~ the party expects to sustain it.

(2) The adverse party may then, or at the opening of ~~his~~ the adverse party's case, briefly state ~~his~~ the defense and the evidence ~~he~~ that the adverse party expects to offer in support of it.

(3) The party who has the burden of proof shall first produce ~~his~~ the party's evidence; and the adverse party ~~will shall~~ then produce ~~his~~ the adverse party's evidence.

(4) The parties ~~will shall~~ then be confined to rebutting evidence unless the court, for good reasons in furtherance of justice, permits them to offer evidence in their original case.

(5) When the instructions have been passed upon and settled by the court and before the arguments of counsel to the jury have begun, the court shall charge the jury in writing, giving in ~~such~~ the charge only ~~such~~ the instructions ~~as that~~ are passed upon and settled at ~~such~~ the settlement. In charging the jury, the court shall give to it the jury all matters of law ~~which that~~ the court thinks necessary for the jury's information in rendering a verdict.

(6) When the jury has been charged, unless the case is submitted to the jury on either side or on both sides without argument, the party upon whom rests the burden of proof ~~must shall~~ commence and may conclude the argument. If several defendants having several defenses appear by different counsel, the court ~~must shall~~ determine their relative order in the evidence and argument. Counsel, in arguing the case to the jury, may argue and comment upon the law of the case as given in the instructions of the court, as well as upon the evidence in the case."

Section 408. Section 25-7-304, MCA, is amended to read:

"25-7-304. Procedure when a juror becomes sick. If, after the impaneling of the jury and before verdict, a juror becomes sick ~~so as to be~~ and is unable to perform ~~his~~ the juror's duty, the court may order ~~him~~ the juror to be discharged. In that case, subject to the provisions of Rule 47(c), M.R.Civ.P., the trial may proceed with the other jurors or another juror may be sworn and the trial may begin anew or the jury may be discharged and a new jury ~~then or afterward~~ impaneled."

Section 409. Section 25-7-403, MCA, is amended to read:

"25-7-403. Conduct of jury after case submitted to it. When the case is finally submitted to the jury, it may decide in court or retire for deliberation. If the jurors retire, they must be kept together in some convenient place, under charge of an officer, until at least two-thirds of them agree upon a verdict or are discharged by the court. Unless by order of the court, the officer having ~~them~~ the jurors under ~~his~~ the officer's charge ~~must may~~ not ~~suffer allow~~ any communication to be made to ~~them~~ the jurors ~~or~~ and the officer may not make any ~~himself~~ communication, except to ask ~~them~~ the jurors if they or two-thirds of them are agreed upon a verdict; and he ~~must~~ The officer may not, before ~~their~~ the jurors' verdict is rendered, communicate to any person the state of their

deliberations or the verdict agreed upon."

Section 410. Section 25-7-501, MCA, is amended to read:

"25-7-501. Return of verdict -- polling the jury. (1) When the jurors or two-thirds of them have agreed upon a verdict, they must be conducted into court, their names must be called by the clerk, and the verdict must be rendered by ~~their foreman~~ the lead juror. The verdict must be in writing and signed by the ~~foreman~~ lead juror and must be read by the clerk to the jury, and the inquiry made whether it is ~~their~~ the jury's verdict.

(2) Either party may require the jury to be polled, which is done by the court or clerk asking each juror if it is ~~his~~ the juror's verdict. If upon ~~such~~ the inquiry or polling more than one-third of the jurors disagree ~~thereto~~ to the verdict, the jury must be sent out again, but if ~~no such~~ disagreement ~~be~~ is not expressed, the verdict is complete and the jury discharged from the case."

Section 411. Section 25-7-503, MCA, is amended to read:

"25-7-503. Content of verdict -- action for recovery of personal property. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff or if the defendant, by ~~his~~ the defendant's answer, ~~claim~~ claims a return ~~thereof~~ of the property, the jury, if ~~its~~ the verdict ~~be~~ is in favor of the plaintiff or if, ~~being~~ the verdict is in favor of the defendant, ~~it~~ and the jury also finds that ~~he~~ the defendant is entitled to a return ~~thereof~~ of the property, shall find the value of the property. ~~(but However,~~ failure to find all the facts mentioned in this section ~~shall~~ may not invalidate the verdict). ~~and~~ The jury may at the same time assess the damages, if ~~they~~ damages are claimed in the complaint or answer, ~~which~~ that the prevailing party has sustained by reason of the taking or detention of ~~such~~ the property."

Section 412. Section 25-7-701, MCA, is amended to read:

"25-7-701. Oath of referee. ~~Every~~ Each referee, before acting ~~as such~~, shall take and subscribe an oath or affirmation before some authorized officer, which ~~shall~~ must be filed with the clerk of the court ~~by which he is~~ that appointed the referee, that ~~he~~ the referee will honestly, impartially, and faithfully perform the duties of referee in the action or matter referred to ~~him~~ the referee, as required by law, to the best of ~~his~~ the referee's knowledge and ability."

Section 413. Section 25-7-702, MCA, is amended to read:

"25-7-702. Grounds for objection to appointment of referee. Either party may object to the

appointment of any person as referee on the same grounds that ~~he~~ the party might object to ~~him~~ the person as a trial juror, as provided in 25-7-223."

Section 414. Section 25-8-101, MCA, is amended to read:

"25-8-101. When court may order deposit or delivery. When it is admitted by the pleading or shown upon the examination of a party that ~~he~~ the party has in ~~his~~ the party's possession or under ~~his~~ the party's control any money or other thing capable of delivery ~~which that~~, being the subject of the litigation, is held by ~~him~~ the party as trustee for another party or ~~which that~~ belongs or is due to another party, the court may order the ~~same money or thing~~, upon motion, to be deposited in court or delivered to ~~such~~ the party upon ~~such~~ conditions as ~~that~~ may be just, subject to the further direction of the court."

Section 415. Section 25-8-103, MCA, is amended to read:

"25-8-103. With whom money deposited. (1) Whenever ~~moneys are~~ money is paid into or deposited in court, the ~~same shall~~ money must be delivered to the clerk in person or to ~~such of his~~ the clerk's deputies as ~~shall be~~ who are specially authorized by ~~his~~ the deputy's appointment in writing to receive the ~~same money~~. He ~~must~~ The clerk or deputy shall, unless otherwise directed by law, deposit it ~~the money~~ with the county treasurer to be held by ~~him~~ the treasurer subject to the order of the court.

(2) ~~Such~~ The appointment ~~shall~~ must be filed with the county treasurer, who shall exhibit it and give to each person ~~applying~~ asking for the ~~same~~ appointment a certified copy of the ~~same~~ appointment. ~~It shall~~ The appointment is be in force until a revocation in writing is filed with the county treasurer, who shall ~~thereupon~~ upon receipt write "revoked" in ink across the face of the appointment."

Section 416. Section 25-8-104, MCA, is amended to read:

"25-8-104. Safekeeping of deposit by county treasurer. The treasurer shall keep each fund distinct and open an account ~~with each~~ for each fund. For the safekeeping of the money deposited with the treasurer, ~~his~~ the treasurer's official bond ~~shall be~~ is security."

Section 417. Section 25-9-103, MCA, is amended to read:

"25-9-103. Death of party after verdict; -- no lien. If a party ~~die~~ dies after a verdict or decision upon any issue of fact and before judgment, the court may nevertheless render judgment ~~thereon~~. ~~Such a~~ The judgment is not a lien on the real property of the deceased party but is payable in the course of administration

on ~~his~~ the deceased party's estate."

Section 418. Section 25-9-104, MCA, is amended to read:

"25-9-104. Procedure after judgment on an issue of law. On a judgment for the plaintiff upon an issue of law, ~~he~~ the plaintiff may proceed in the manner prescribed by Rule 55(a) and (b), M.R.Civ.P., upon the failure of the defendant to answer. If judgment ~~be is~~ for the defendant upon an issue of law and the taking of an account or the proof of any fact ~~be is~~ necessary to enable the court to complete the judgment, a reference may be ordered, as provided in Rule 55(b)."

Section 419. Section 25-9-204, MCA, is amended to read:

"25-9-204. Clerk to include interest in judgment. The clerk ~~must~~ shall include in the judgment entered up by ~~him~~ the clerk any interest on the verdict or decision of the court, from the time it was rendered or made."

Section 420. Section 25-9-311, MCA, is amended to read:

"25-9-311. Entry of satisfaction of judgment in docket. Satisfaction of a judgment may be entered in the clerk's docket upon an execution returned satisfied or upon an acknowledgment of satisfaction filed with the clerk, made in the manner of an acknowledgment of a conveyance of real property by the judgment creditor or by ~~his~~ the judgment creditor's endorsement on the face or on the margin of the record of the judgment or by ~~his~~ the judgment creditor's attorney unless a revocation of ~~his~~ the attorney's authority is filed. Whenever a judgment is satisfied in fact otherwise than upon an execution, the party or attorney ~~must~~ shall give ~~such~~ the acknowledgment or make ~~such~~ the endorsement, and upon motion, the court may compel ~~it~~ the acknowledgment or endorsement or may order the entry of satisfaction to be made without ~~it~~ the acknowledgment or endorsement."

Section 421. Section 25-9-404, MCA, is amended to read:

"25-9-404. Payment of attorney fees. A judgment must order payment of attorney fees and litigation expenses separately from an order for periodic payments of future damages. The attorney fees and expenses must be paid either in a lump sum or by periodic payments pursuant to an agreement entered into between the claimant and ~~his~~ the claimant's attorney. An agreement for the immediate lump-sum payment of that portion of the attorney fees incurred to recover future damages to be paid by periodic payments must be calculated on the basis of the present value of the future damages."

Section 422. Section 25-9-504, MCA, is amended to read:

"25-9-504. Notice of filing. (1) At the time of the filing of the foreign judgment, the judgment creditor or ~~his~~ the judgment creditor's attorney shall file with the clerk of the court an affidavit setting forth the name and last-known post-office address of the judgment debtor and the judgment creditor. The affidavit must also include a statement that the foreign judgment is valid and enforceable; and the extent to which it has been satisfied.

(2) Promptly upon filing the foreign judgment and affidavit, the judgment creditor or someone on ~~his~~ the judgment creditor's behalf shall mail notice of the filing of the judgment and affidavit, attaching a copy of each to the notice, to the judgment debtor and to ~~his~~ the judgment debtor's attorney of record, if any, each at ~~his~~ the person's last-known address, by certified mail, return receipt requested. The notice must include the name and post-office address of the judgment creditor and the judgment creditor's attorney, if any, in this state. The judgment creditor shall file with the clerk of the court an affidavit setting forth the date upon which the notice was mailed.

(3) The proceeds of an execution may not be distributed to the judgment creditor earlier than 30 days after the date of mailing the notice of filing."

Section 423. Section 25-9-507, MCA, is amended to read:

"25-9-507. Optional procedure. The right of a judgment creditor to bring an action to enforce ~~his~~ the judgment creditor's judgment instead of proceeding under this part remains unimpaired."

Section 424. Section 25-10-101, MCA, is amended to read:

"25-10-101. When costs allowed, of course, to plaintiff. Costs are allowed, of course, to the plaintiff upon a judgment in ~~his~~ the plaintiff's favor in the following cases:

- (1) in an action for the recovery of real property or damages ~~thereto~~ to real property;
- (2) in an action to recover the possession of personal property ~~where~~ when the value of the property exceeds \$50; ~~such~~ with the value shall be determined by the jury, court, or referee by whom the action is tried;
- (3) in an action for the recovery of money or damages, exclusive of interest, when plaintiff recovers over \$50;
- (4) in a special proceeding;
- (5) in an action ~~which~~ that involves the title or possession or right of possession of real estate; ~~or~~
- (6) in an action that involves the legality of any tax, impost, assessment, toll, or municipal fine; ~~or~~
- (7) in quo warranto proceedings;

~~(6)~~(8) in an action to foreclose a lien or pledge, to prevent or abate a nuisance, or for an injunction; or
~~(7)~~(9) in an action for property damage arising out of the ownership, maintenance, or use of a motor vehicle if ~~he~~ the plaintiff is entitled to ~~attorney's~~ attorney fees under 25-10-303."

Section 425. Section 25-10-102, MCA, is amended to read:

"25-10-102. When costs allowed, of course, to defendant. Costs must be allowed, of course, to the defendant upon a judgment in ~~his~~ the defendant's favor in the actions mentioned in 25-10-101."

Section 426. Section 25-10-104, MCA, is amended to read:

"25-10-104. When costs of appeal discretionary. (1) In the following cases, the costs of appeal are in the discretion of the court:

- (a) when a new trial is ordered;
- (b) when a judgment is modified.

(2) In all other cases, the successful party shall recover from the other party ~~his~~ the successful party's costs."

Section 427. Section 25-10-107, MCA, is amended to read:

"25-10-107. Costs when tender was made before commencement of action. When, in an action for the recovery of money only, the defendant alleges in ~~his~~ the answer that before the commencement of the action ~~he~~ the defendant tendered to the plaintiff the full amount to which ~~he~~ the plaintiff was entitled and ~~thereupon~~ deposits in court for the plaintiff the amount ~~so~~ tendered and the allegation ~~be~~ is found to be true, the plaintiff cannot recover costs but ~~must~~ shall pay costs to the defendant."

Section 428. Section 25-10-108, MCA, is amended to read:

"25-10-108. Imposing costs on party acting as representative. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or person expressly authorized by statute, costs may be recovered as in an action by and against a person prosecuting or defending in ~~his~~ the person's own right; ~~but~~ such However, the costs must, by the judgment, be made chargeable only upon the estate, fund, or party represented unless the court directs the ~~same~~ costs to be paid by the plaintiff or defendant personally for mismanagement or bad faith in the action or defense."

Section 429. Section 25-10-201, MCA, is amended to read:

"25-10-201. Costs generally allowable. A party to whom costs are awarded in an action is entitled to include in ~~his~~ the party's bill of costs ~~his~~ the party's necessary disbursements, as follows:

- (1) the legal fees of witnesses, including mileage, or referees and other officers;
- (2) the expenses of taking depositions;
- (3) the legal fees for publication when publication is directed;
- (4) the legal fees paid for filing and recording papers and certified copies ~~thereof~~ of papers necessarily used in the action or on the trial;
- (5) the legal fees paid stenographers for per diem or for copies;
- (6) the reasonable expenses of printing papers for a hearing when required by a rule of court;
- (7) the reasonable expenses of making transcript for the supreme court;
- (8) the reasonable expenses for making a map or maps if required and necessary to be used on trial or hearing; and
- (9) ~~such~~ other reasonable and necessary expenses ~~as~~ that are taxable according to the course and practice of the court or by express provision of law."

Section 430. Section 25-10-303, MCA, is amended to read:

"25-10-303. Attorney's Attorney fees -- motor vehicle claim. In an action involving solely the recovery of property damages arising out of the ownership, maintenance, or use of a motor vehicle, in which the plaintiff secures a judgment equal to or greater than the amount of damages claimed by the plaintiff in ~~his~~ the plaintiff's last written offer to the defendant or ~~his~~ the defendant's agent prior to the filing of the cause of action, the court shall allow plaintiff's reasonable ~~attorney's fee~~ attorney fees, which ~~shall~~ must be fixed by the court, notwithstanding any agreement between the parties to the contrary. If the defendant or ~~his~~ the defendant's agent fails to make any offer within 15 days of the date requested to do so by the plaintiff, the plaintiff may file the cause of action and, if successful in the action, ~~shall be~~ is entitled to ~~his~~ reasonable ~~attorney's fee~~ attorney fees under this ~~provision~~ section."

Section 431. Section 25-10-402, MCA, is amended to read:

"25-10-402. No charge for copies furnished by party. In all cases ~~where~~ in which copies of pleadings, affidavits, or other papers are to be served, ~~neither~~ the sheriff ~~nor~~ or clerk ~~shall~~ may not charge or receive a fee for making ~~such~~ the copies when the ~~same~~ copies are furnished to ~~such officer~~ the sheriff or clerk by the party

to the action or ~~his~~ the party's attorney."

Section 432. Section 25-10-501, MCA, is amended to read:

"25-10-501. Bill of costs. The party in whose favor judgment is rendered and who claims ~~his~~ the party's costs ~~must~~ shall deliver to the clerk and serve upon the adverse party, within 5 days after the verdict or notice of the decision of the court or referee or, if the entry of the judgment on the verdict or decision ~~be~~ is stayed, then before ~~such~~ the entry is made, a memorandum of the items of ~~his~~ the party's costs and necessary disbursements in the action or proceeding; ~~which~~ The memorandum must be verified by the oath of the party, ~~his~~ the party's attorney or agent, or the clerk of ~~his~~ the party's attorney, stating that to the best of ~~his~~ the person's knowledge and belief, the items are correct and that the disbursements have been necessarily incurred in the action or proceeding."

Section 433. Section 25-10-503, MCA, is amended to read:

"25-10-503. How costs on appeal claimed. Whenever costs are awarded to a party by an appellate court, if ~~he~~ the party claims ~~such~~ the costs, ~~he~~ must the party shall, within 30 days after the remittitur is filed with the clerk ~~below in the original proceeding~~, deliver to ~~such~~ the clerk a memorandum of ~~his~~ the party's costs, verified as prescribed in 25-10-501, and ~~thereafter he~~ then the party may have an execution ~~therefor~~ for the costs as upon a judgment."

Section 434. Section 25-10-504, MCA, is amended to read:

"25-10-504. Clerk to include costs in judgment. The clerk ~~must~~ shall include in the judgment entered ~~up by him~~ the clerk the costs, if the ~~same~~ costs have been taxed or ascertained; ~~and he~~ must The clerk shall, within 2 days after the ~~same~~ costs are taxed or ascertained, if not included in the judgment, insert the ~~same~~ costs in a blank left in the judgment for that purpose and ~~must~~ shall make a similar insertion of the costs in the copies and docket of the judgment."

Section 435. Section 25-10-711, MCA, is amended to read:

"25-10-711. Award of costs against governmental entity when suit or defense is frivolous or pursued in bad faith. (1) In any civil action brought by or against the state, a political subdivision, or an agency of the state or a political subdivision, the opposing party, whether plaintiff or defendant, is entitled to the costs enumerated in 25-10-201 and reasonable ~~attorney's~~ attorney fees as determined by the court if:

- (a) ~~he~~ the opposing party prevails against the state, political subdivision, or agency; and
 - (b) the court finds that the claim or defense of the state, political subdivision, or agency that brought or defended the action was frivolous or pursued in bad faith.
- (2) Costs may be granted pursuant to subsection (1) notwithstanding any other provision of the law to the contrary."

Section 436. Section 25-11-102, MCA, is amended to read:

"25-11-102. Grounds for new trial. The former verdict or other decision may be vacated and a new trial granted on the application of the party aggrieved for any of the following causes materially affecting the substantial rights of ~~such~~ the party:

- (1) irregularity in the proceedings of the court, jury, or adverse party or any order of the court or abuse of discretion by which either party was prevented from having a fair trial;
- (2) misconduct of the jury. Whenever any one or more of the jurors have been induced to assent to any general or special verdict or to a finding on any question submitted to them by the court by a resort to the determination of chance, ~~such~~ the misconduct may be proved by the affidavit of any one of the jurors.
- (3) accident or surprise ~~which~~ that ordinary prudence could not have guarded against;
- (4) newly discovered evidence material for the party making the application ~~which~~ he ~~that~~ the party could not, with reasonable diligence, have discovered and produced at the trial;
- (5) excessive damages appearing to have been given under the influence of passion or prejudice;
- (6) insufficiency of the evidence to justify the verdict or other decision or that it is against law;
- (7) error in law occurring at the trial and excepted to by the party making the application."

Section 437. Section 25-13-103, MCA, is amended to read:

"25-13-103. Execution after death of a party. Notwithstanding the death of a party after the judgment, execution ~~thereon~~ on the judgment may be issued or it may be enforced as follows:

- (1) In case of the death of the judgment creditor, it may be enforced upon the application of ~~his~~ the creditor's executor, ~~or~~ administrator, or successor in interest.
- (2) In case of the death of the judgment debtor, if the judgment ~~be~~ is for the recovery of real or personal property or the enforcement of a lien ~~thereon~~ on the property, execution may be issued with the same effect as if ~~he~~ the debtor were still living."

Section 438. Section 25-13-104, MCA, is amended to read:

"25-13-104. Compelling contribution or repayment -- joint debtor; -- surety. (1) When property liable to an execution against several persons is sold ~~thereon upon execution~~ and more than a due proportion of the judgment is satisfied out of the proceeds of the sale of property of one of them or one of them pays, without a sale, more than ~~his~~ the person's proportion, ~~he~~ the person may compel contribution from the others; ~~and when~~ When a judgment is against several persons and is upon an obligation of one of them as surety for another and the surety pays the amount or any part ~~thereof of the amount~~, either by sale of ~~his~~ the surety's property or before sale, ~~he~~ the surety may compel repayment from the principal.

(2) In ~~such~~ the case described in subsection (1), the person ~~so~~ paying or contributing is entitled to the benefit of the judgment to enforce contribution or repayment if, within 10 days after ~~his~~ the person's payment, ~~he~~ file the person files with the clerk of the court where judgment was rendered notice of ~~his~~ payment and a claim to contribution or repayment. Upon the filing of ~~such~~ the notice, the clerk ~~must~~ shall make an entry ~~thereof of the~~ notice in the margin of the docket."

Section 439. Section 25-13-105, MCA, is amended to read:

"25-13-105. Compelling repayment -- surety on appeal. Whenever any surety on an undertaking on appeal, executed to stay proceedings upon a money judgment, pays the judgment, either with or without action, after its affirmation by the appellate court, ~~he~~ the surety is substituted to the rights of the judgment creditor and is entitled to control, enforce, and satisfy ~~such~~ the judgment in all respects as if ~~he~~ the surety had recovered the ~~same~~ judgment."

Section 440. Section 25-13-201, MCA, is amended to read:

"25-13-201. Judgments for money or the possession of property. When the judgment is for money or the possession of real or personal property, the ~~same~~ judgment may be enforced by a writ of execution; ~~and~~ if If the judgment ~~direct~~ directs that the defendant be arrested, the execution may issue against the person of the judgment debtor after the return of an execution against ~~his~~ the judgment debtor's property unsatisfied in whole or in part."

Section 441. Section 25-13-205, MCA, is amended to read:

"25-13-205. Judgments against county or county officer. When a judgment is rendered against the county or against any county officer in an action prosecuted against ~~him~~ the officer in ~~his~~ the officer's name of

office, when the ~~same judgment~~ is to be paid by the county, ~~no execution must~~ may not issue upon the judgment, but the ~~same judgment~~ must be paid in the same manner as other county charges. When ~~so~~ collected, the ~~same judgment~~ must be paid by the county treasurer to the proper person to whom the ~~same judgment~~ is adjudged issued, upon the delivery of a proper voucher ~~therefor~~ for payment."

Section 442. Section 25-13-302, MCA, is amended to read:

"25-13-302. Execution against principal debtor before surety. Upon the rendition of any judgment, if it ~~shall be~~ is shown that one or more of the defendants against whom the judgment is to be rendered are principal debtors and others of the ~~said~~ defendants are sureties of ~~such the~~ principal debtor, the court may order the judgment ~~so~~ to state; that fact. ~~and upon~~ Upon the issuance of an execution upon ~~such the~~ judgment, it ~~shall~~ the execution must direct the sheriff or levying officer to make the amount due ~~thereon~~ on the judgment out of the goods and chattels, lands, and tenements of the principal debtor or debtors or, if sufficient ~~thereof~~ amount cannot be found within ~~his the principal judgment debtor's~~ county to satisfy the ~~same judgment~~, to levy and make the ~~same execution~~ out of the property, personal or real, of the judgment debtor who was surety."

Section 443. Section 25-13-304, MCA, is amended to read:

"25-13-304. Execution against property of judgment debtor. If the writ ~~be~~ is against the property of the judgment debtor, it ~~shall~~ the writ must require the sheriff or levying officer to satisfy the judgment, with interest, out of the personal property of ~~such the~~ debtor and, if sufficient personal property cannot be found, out of ~~his the~~ debtor's real property as provided in 25-13-305."

Section 444. Section 25-13-308, MCA, is amended to read:

"25-13-308. Execution against person of judgment debtor. If the writ ~~be~~ is against the person of the judgment debtor, it must require the sheriff to arrest ~~such the~~ debtor and commit ~~him~~ the debtor to the jail of the county until ~~he pay~~ the debtor pays the judgment, with interest, or ~~be~~ is discharged, according to law."

Section 445. Section 25-13-405, MCA, is amended to read:

"25-13-405. Clerk to record returned execution when levy on real property. If any real estate ~~be~~ is levied upon, the clerk ~~must~~ shall record the execution and the return ~~thereto~~ of the execution at large and certify the ~~same execution and return~~ under his hand as true copies in a book to be called the "execution book", which must be indexed, with the names of the plaintiffs and defendants in execution alphabetically arranged, and kept

open at all times during office hours for the inspection of the public, without charge. It is evidence of the contents of the originals whenever they or any part ~~thereof~~ of the originals may be destroyed or mutilated."

Section 446. Section 25-13-502, MCA, is amended to read:

"25-13-502. Debts owed to judgment debtor. After the issuing of an execution against property and before its return, ~~any a~~ person indebted to the judgment debtor may pay to the sheriff the amount of ~~his~~ the person's debt or ~~so as~~ as much thereof of the debt as ~~may be~~ is necessary to satisfy the execution; ~~and the~~ The sheriff's receipt is sufficient discharge for the amount ~~so~~ paid."

Section 447. Section 25-13-506, MCA, is amended to read:

"25-13-506. Duty of secured party. (1) The secured party under any security agreement of record ~~shall~~ is required, upon 15 days' notice in writing served upon ~~him~~ the party in person by any creditor of the debtor seeking to satisfy a judgment of ~~such~~ the creditor against the debtor, ~~be required~~ to make and file in the office of the county clerk and recorder or other filing officer with whom the financing statement covering the security agreement is filed an affidavit showing the amount of the indebtedness then actually due and owing to the secured party; ~~and such~~ The affidavit ~~shall~~ must state the amount of the original obligation for which the security agreement was given as security, all additional advancement of money or property on the principal obligation since the date of the execution of the security agreement, all payments of ~~whatsoever~~ kind, whether on principal or interest, made by the debtor to the date of the execution of ~~such~~ the affidavit by the secured party, and the balance then remaining due and unpaid to the secured party. If within 15 days from the service of any ~~such~~ demand in writing on the secured party by any creditor of the debtor; the secured party ~~shall fail~~ fails, ~~refuse~~ refuses, or ~~neglect~~ neglects to file the affidavit ~~herein required~~, the security agreement ~~shall be~~ is of no force or effect as against ~~such~~ the creditor upon the seizure of any ~~such~~ personal property on execution.

(2) ~~In the event~~ If the amount shown to be due is paid to the county treasurer, ~~or~~ to a filing officer, ~~as aforesaid~~; or to the secured party in satisfaction of the security agreement by any execution creditor against the debtor, the secured party ~~shall be~~ is required to surrender to the county treasurer or ~~such~~ the filing officer the security agreement and any note or other evidence of indebtedness ~~secured thereby~~; by the agreement note, or other evidence of indebtedness. ~~which~~ The security agreement or other evidence of indebtedness ~~shall~~ must be delivered by the secured party, county treasurer, or filing officer to the execution creditor."

Section 448. Section 25-13-610, MCA, is amended to read:

"25-13-610. Tracing exempt personal property. (1) If money or other property exempt under 25-13-608 and 25-13-609 has been sold or has been lost, damaged, or destroyed and the judgment debtor has been indemnified for it the property, ~~he~~ the debtor is entitled for 6 months to an exemption of proceeds that are traceable, ~~(for example, such as~~ in a bank or savings account).

(2) Earnings exempt under 25-13-614 remain exempt for 45 days after receipt by and while in the possession of the judgment debtor in a form into which the exempt earnings are traceable ~~(for example, in a bank or savings account)~~.

(3) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor."

Section 449. Section 25-13-614, MCA, is amended to read:

"25-13-614. Earnings of judgment debtor. (1) Earnings of a judgment debtor that are not subject to garnishment, as provided in this section, are exempt.

(2) Except as provided in subsections (3) and (4), the maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subjected to garnishment may not exceed the lesser of:

(a) the amount by which ~~his~~ the debtor's disposable earnings for the week exceed 30 times the federal minimum hourly wage in effect at the time the earnings are payable; or

(b) 25% of ~~his~~ the debtor's disposable earnings for that week.

(3) The restrictions of subsection (2) do not apply in the case of an order or judgment for the maintenance or support of any person, issued by a court of competent jurisdiction or pursuant to an administrative procedure that is established by state law, affords substantial due process, and is subject to judicial review.

(4) (a) The maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subject to garnishment to enforce an order described in subsection (3) may not exceed:

(i) 50% of the judgment debtor's disposable earnings for that week if ~~he~~ the debtor is supporting ~~his~~ the debtor's spouse or dependent child, ~~(other than a spouse or child for whom the order is issued)~~; or

(ii) 60% of the judgment debtor's disposable earnings for that week if ~~he~~ the debtor is not supporting a spouse or dependent child described in subsection (4)(a)(i).

(b) However, the amount stated in subsection (4)(a)(i) may be 55% and the amount stated in subsection (4)(a)(ii) may be 65% if ~~such~~ the earnings are being garnished to enforce an order for maintenance or support for a period prior to the 12-week period that ends with the beginning of ~~such~~ the workweek.

(5) For the purposes of this section, the definitions of earnings, disposable earnings, and garnishment

are as set forth in 15 U.S.C. 1672."

Section 450. Section 25-13-702, MCA, is amended to read:

"25-13-702. Penalty for selling without notice or destruction of notice. An officer selling without the notice prescribed by 25-13-701 forfeits \$500 to the aggrieved party in addition to ~~his~~ the party's actual damages; ~~and a~~ A person willfully taking down or defacing the notice posted, if done before the sale or satisfaction of the judgment, ~~if the judgment be~~ is satisfied before sale, forfeits \$500."

Section 451. Section 25-13-704, MCA, is amended to read:

"25-13-704. Conduct of sale. (1) All sales of property under execution must be made at auction to the highest bidder, between the hours of 9 a.m. and 5 p.m. After sufficient property has been sold to satisfy the execution, no more ~~property can~~ may be sold. ~~Neither the~~ The officer holding the execution ~~nor his or the officer's~~ deputy ~~can~~ may not become a purchaser or be interested in any purchase at ~~such~~ the sale.

(2) When the sale is of personal property capable of manual delivery, it must be within view of those who attend the sale and must be sold in ~~such~~ parcels ~~as~~ that are likely to bring the highest price; ~~and when~~ When the sale is of real property consisting of several known lots or parcels, ~~they~~ the lots or parcels must be sold separately, or when a portion of ~~such~~ the real property is claimed by a third person and ~~he~~ the person requires it to be sold separately, ~~such~~ that portion must be ~~thus~~ sold separately. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, ~~shall~~ must be sold when ~~such~~ the property consists of several known lots or parcels or of articles ~~which~~ that can be sold to advantage separately, and the sheriff ~~must~~ shall follow ~~such~~ the directions."

Section 452. Section 25-13-705, MCA, is amended to read:

"25-13-705. Procedure when purchaser refuses to pay. If a purchaser refuses to pay the amount bid by ~~him~~ the purchaser for the property ~~struck off~~ sold to ~~him~~ the purchaser at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss ~~be~~ is occasioned ~~thereby~~ by the subsequent sale, the officer may recover the amount of ~~such~~ the loss, with costs, from the bidder ~~so~~ refusing to pay, in any court of competent jurisdiction; ~~and the~~ The person refusing to pay the costs ~~which~~ that have accrued by reason of ~~his~~ the unpaid bid ~~shall be deemed~~ is guilty of contempt of court and may be punished accordingly."

Section 453. Section 25-13-706, MCA, is amended to read:

"25-13-706. Rejection of subsequent bids after refusal to pay. When a purchaser refuses to pay, the officer may, ~~in his discretion, thereafter~~ reject any subsequent bid of ~~such~~ that purchaser."

Section 454. Section 25-13-713, MCA, is amended to read:

"25-13-713. Procedure when sale invalidated; -- revival of judgment. (1) If the purchaser of real property sold on execution or ~~his~~ the purchaser's successor in interest ~~be is~~ evicted ~~therefrom in consequence from the property because~~ of irregularities in the proceedings concerning the sale or of the reversal or discharge of the judgment, ~~he~~ the purchaser may recover the price paid, with interest, from the judgment creditor.

(2) If the purchaser of property at a sheriff's sale or ~~his~~ the purchaser's successor in interest ~~fail fails~~ to recover possession ~~in consequence because~~ of irregularity in the proceedings concerning the sale or because the property sold was not subject to execution and sale, the court having jurisdiction ~~thereof~~ shall, on petition of ~~such the~~ party in interest or ~~his~~ the party's attorney, revive the original judgment for the amount paid by ~~such the~~ purchaser at the sale, with interest ~~thereon on the judgment~~ from the time of payment at the same rate that the original judgment bore. When ~~so~~ revived, the ~~said~~ judgment ~~shall have~~ has the same effect as an original judgment of the ~~said~~ court of that date, bearing interest as ~~aforesaid; and any provided in this subsection.~~ Any other or after-acquired property, rents, issues, or profits of the ~~said~~ debtor ~~shall be liable is subject~~ to levy and sale under execution in satisfaction of ~~such the~~ debt; ~~but no~~ However, property of ~~such the~~ debtor sold bona fide before the filing of ~~such the~~ petition ~~shall be is not~~ subject to the lien of ~~said the~~ judgment. The notice of the filing of ~~such the~~ petition ~~shall must~~ be made by filing a notice ~~thereof~~ in the office of the county clerk where ~~such the~~ property ~~may be is~~ situated, and ~~said the~~ judgment ~~shall must~~ be revived in the name of the original plaintiff or plaintiffs for the use of ~~said the~~ petitioner, the party in interest."

Section 455. Section 25-13-801, MCA, is amended to read:

"25-13-801. Who may redeem -- definition. (1) Property sold subject to redemption, as provided by 25-13-710, or any part sold separately may be redeemed in the manner ~~hereinafter~~ provided in this part by the following persons or their successors in interest:

(a) the judgment debtor, the judgment debtor's spouse, or ~~his~~ the judgment debtor's successor in interest in the whole or any part of the property and, if the judgment debtor or successor ~~be is~~ a corporation, a stockholder ~~thereof of the corporation;~~

(b) a creditor having a lien by judgment, mortgage, or attachment on the property sold or on some share

or part thereof of the property subsequent to that on which the property is sold. If a corporation ~~be such~~ is the creditor, then any stockholder ~~thereof~~ of the corporation may redeem.

(2) The persons mentioned in subsection (1)(b) ~~of this section~~ are, in this part, termed "redemptioners"."

Section 456. Section 25-13-802, MCA, is amended to read:

"25-13-802. Time for redemption -- amount to be paid. The judgment debtor or redemptioner may redeem the property from the purchaser any time within 1 year after the sale on paying the purchaser:

(1) the amount of ~~his~~ the purchase with interest at a rate established by the judgment in the action that led to the execution sale, up to the time of redemption;

(2) the amount of any assessment or taxes ~~which that~~ the purchaser may have paid ~~thereon~~ on the property after purchase and interest on ~~such that~~ amount;

(3) the amount of any repairs, maintenance expenses, or other expenditures that the purchaser may reasonably have made after purchase for the maintenance of the property, with interest on the amounts from the date of expenditure; and

(4) if the purchaser is also a creditor having a prior lien to that of the redemptioner other than the judgment under which ~~such the~~ purchase was made, the amount of ~~such the~~ lien with interest."

Section 457. Section 25-13-803, MCA, is amended to read:

"25-13-803. Subsequent redemptions -- when permitted; -- amount paid. (1) If property ~~be so~~ is redeemed by a redemptioner, another redemptioner may, within 60 days after the last redemption, again redeem it the property from the last redemptioner on paying the sum on ~~such the~~ last redemption with interest ~~thereon~~ at the rate established by the judgment in the action that led to the execution sale, the amount of any assessment or taxes ~~which that~~ the last redemptioner may have paid ~~thereon~~ on the property after the redemption by ~~him the~~ last redemptioner with ~~like~~ interest at the same rate on ~~such that~~ amount, and the amount of any liens held by the ~~said~~ last redemptioner prior to ~~his the last redemptioner's own lien~~, with interest; ~~but However,~~ the judgment under which the property was ~~so~~ sold need not be ~~so~~ paid as a lien. The property may be again, and as often as any redemptioner is ~~so~~ disposed, redeemed from any previous redemptioner, within 60 days after the last redemption, ~~on by~~ paying the sum paid on the last previous redemption with interest ~~thereon~~ on the sum at the rate established by the judgment in the action that led to the execution sale, the amount of any assessment or taxes ~~which that~~ the last previous redemptioner paid after the redemption by ~~him the last previous redemptioner~~ with ~~like~~ interest ~~thereon~~ at the same rate, and the amount of any liens, other than the judgment under which the

property was sold, held by the last redemptioner previous to ~~his~~ the last redemptioner's own lien, with ~~like~~ interest at the same rate.

(2) If the judgment debtor or the judgment debtor's spouse redeem, the judgment debtor or the spouse ~~must~~ shall make the same payments ~~as~~ that are required to effect a redemption by a redemptioner."

Section 458. Section 25-13-804, MCA, is amended to read:

"25-13-804. Redemption by stockholder or corporation. (1) If a stockholder of a corporation redeems, the corporation, within 1 year after the date of sale, may redeem by paying to the redemptioner or the sheriff for ~~his~~ the stockholder's benefit the amount paid to effect the redemption, with interest ~~thereon~~ on that amount at the rate established by the judgment in the action that led to the execution sale from the date of redemption until the date of ~~such~~ payment, together with any taxes or assessments that may have been paid by the redemptioner, with ~~like~~ interest ~~thereon~~ at the same rate on the amount of the payment.

(2) When a stockholder redeems, any other stockholder or stockholders may, at any time after ~~such~~ the redemption and within 60 days after the expiration of 1 year from the date of sale, contribute to the redemption by paying to the redeeming stockholder or depositing with the sheriff for ~~his~~ the redeeming stockholder's benefit a sum ~~which~~ that bears the same proportion to the amount necessary to redeem ~~which~~ that the number of shares owned by ~~such~~ the contributing stockholder or stockholders bears to the number of shares of ~~such~~ the corporation outstanding, with interest on ~~such~~ the sum from the date of redemption until the date of contribution at the rate established by the judgment in the action that led to the execution sale, together with a ~~like~~ similar proportion of the taxes or assessments paid by ~~such~~ the redeeming stockholder, with ~~like~~ interest ~~thereon~~; at the same rate. ~~and if~~ If the corporation does not redeem the property within the time and in the manner and form as ~~aforsaid~~ described in this section, the ~~said~~ redeeming and contributing stockholders ~~shall be~~ are entitled to receive a sheriff's deed for ~~such~~ the property ~~so~~ redeemed and shall succeed to the ~~said~~ property as tenants in common in ~~such~~ the proportions, respectively, ~~as~~ that they shall respectively pay or contribute to ~~such~~ the redemption ~~as~~ aforsaid. The redeeming or contributing stockholder shall, in all cases when applying to redeem or contribute ~~as~~ aforsaid, present an affidavit setting forth the number of shares of stock owned by ~~him~~ the stockholder and, to the best of ~~his~~ the stockholder's knowledge, the number of shares of stock of the corporation outstanding."

Section 459. Section 25-13-806, MCA, is amended to read:

"25-13-806. Notice of redemption, liens, and taxes and assessments paid. Written notice of redemption must be given to the sheriff and a duplicate filed with the county clerk, and if any taxes or

assessments are paid by the redemptioner or if ~~he~~ the redemptioner has or acquired any liens other than that upon which the redemption was made, notice ~~thereof~~ thereof must in ~~like~~ the same manner be given to the sheriff and filed with the county clerk; ~~and if such~~ if the notice ~~be~~ is not filed, the property may be redeemed without paying ~~such~~ the tax, assessments, or lien."

Section 460. Section 25-13-807, MCA, is amended to read:

"25-13-807. Papers redemptioner must produce. A redemptioner ~~must~~ shall produce, to the officer or person from whom ~~he~~ the redemptioner seeks to redeem, and serve with ~~his~~ the notice to the sheriff:

(1) (a) a copy of the docket of the judgment under which ~~he~~ the redemptioner claims the right to redeem, certified by the clerk of the court or by the clerk of the district court in the county where the judgment is docketed;

(b) ~~or if he redeem~~ upon a mortgage or other lien, a note of the record ~~thereof~~ of the mortgage or lien, certified by the county clerk; or

(c) if upon an attachment, a copy of the affidavit of attachment, certified by the clerk of the district court;

(2) a copy of any assignment necessary to establish ~~his~~ the redemptioner's claim, verified by the affidavit of ~~himself~~ the redemptioner or of a subscribing witness ~~thereto~~;

(3) an affidavit by ~~himself~~ the redemptioner or ~~his~~ the redemptioner's agent showing the amount then actually due upon the lien."

Section 461. Section 25-13-808, MCA, is amended to read:

"25-13-808. To whom redemption money paid. The payment mentioned in 25-13-802 through 25-13-806 may be made to the purchaser or redemptioner, as the case may be, or for ~~him~~ the petitioner or redemptioner to the officer who made the sale or, ~~in case his~~ if the officer's term of office has expired, to ~~his~~ the successor in office."

Section 462. Section 25-13-809, MCA, is amended to read:

"25-13-809. Effect of redemption by debtor or debtor's spouse -- certificate of redemption. (1) If the debtor ~~redeem~~ redeems, the effect of the sale is terminated and the debtor is restored to ~~his~~ the debtor's own estate. If the spouse ~~redeem~~ redeems, ~~such~~ the spouse ~~shall~~ must become the owner of the debtor spouse's interest, subject to any liens ~~thereon~~ on the property at the time of the execution sale.

(2) Upon a redemption by a debtor or the debtor's spouse, the person to whom the payment was made ~~must~~ shall execute and deliver to ~~him~~ the debtor or ~~her~~ the judgment debtor's spouse a certificate of redemption,

acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. ~~Such~~ The certificate must be filed and recorded in the office of the county clerk of the county in which the property is situated, and the county clerk ~~must~~ shall note the record ~~thereof~~ of the certificate of redemption in the margin of the record of the certificate of sale."

Section 463. Section 25-13-810, MCA, is amended to read:

"25-13-810. When purchaser entitled to conveyance. ~~If no a redemption be is not~~ made within 1 year after the sale, the purchaser or ~~his~~ the purchaser's assignee is entitled to a conveyance; ~~or if so~~ If redeemed, whenever 60 days have elapsed and no other redemption has been made and notice ~~thereof~~ of redemption is given and the time for redemption has expired, the last redemptioner or ~~his~~ the redemptioner's assignee is entitled to a sheriff's deed; ~~but in~~ In all cases, the judgment debtor ~~shall have~~ has the entire period of 1 year from the date of the sale to redeem the property."

Section 464. Section 25-13-811, MCA, is amended to read:

"25-13-811. Who to execute conveyance. In all cases when, under the provisions of this chapter, a purchaser of property at execution sale ~~shall be~~ is entitled to a conveyance of the ~~same~~ property, ~~such~~ the conveyance ~~shall~~ must be executed to ~~him~~ the purchaser by the officer who made the sale if ~~he~~ the officer is still ~~be~~ in office, but ~~in the case~~ if the officer who made ~~such~~ the sale is not in office at the time the purchaser may be entitled to ~~such~~ the conveyance, then the conveyance ~~shall~~ must be executed by ~~his~~ the officer's successor in office."

Section 465. Section 25-13-821, MCA, is amended to read:

"25-13-821. Possession of lands during redemption period. The purchaser of ~~lands~~ land at execution sales is not entitled to the possession ~~thereof~~ of the land as against the execution debtor during the period of redemption allowed by law while ~~said~~ the execution debtor personally occupies the land as a home for ~~himself~~ the debtor and ~~his~~ the debtor's family. The intention ~~hereof~~ being of this section is to insure ensure to ~~such~~ the debtor the possession of ~~his~~ the debtor's land during the year of redemption."

Section 466. Section 25-13-822, MCA, is amended to read:

"25-13-822. Rents and profits during redemption period; -- accounting. (1) The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of ~~his~~ the redemptioner's redemption until

another redemption, are entitled to receive from the tenant in possession the rents of the property sold or the value of the use and occupation ~~thereof of the property~~. ~~But However~~, when any rents or profits have been received by the judgment creditor or purchaser or ~~his the creditor's or their purchaser's~~ assigns from the property ~~thus~~ sold preceding ~~such the~~ redemption, the amount of ~~such the~~ rents and profits ~~shall must~~ be a credit upon the redemption money to be paid. Any payments made under 25-13-802(2) and (3) must be subtracted from the credit for rents and profits.

(2) If the redemptioner or judgment debtor, before the expiration of the time allowed for ~~such~~ redemption, demands in writing of ~~such the~~ purchaser or creditor or ~~his the purchaser's or creditor's~~ assigns a written and verified statement of the amount of ~~such the~~ rents and profits ~~thus~~ received, the period for redemption is extended 5 days after ~~such the~~ sworn statement is given by ~~such the~~ purchaser or ~~his the purchaser's~~ assigns to ~~such the~~ redemptioner or debtor. If ~~such the~~ purchaser or ~~his the purchaser's~~ assigns ~~shall~~, for a period of 1 month from and after ~~such the~~ demand, ~~fail fails~~ or ~~refuse refuses~~ to give ~~such the~~ statement, ~~such the~~ redemptioner or debtor may bring an action in any court of competent jurisdiction to compel an accounting and disclosure of ~~such the~~ rents and profits, and until 15 days from and after the final determination of ~~such the~~ action, the right of redemption is extended to ~~such the~~ redemptioner or debtor."

Section 467. Section 25-13-823, MCA, is amended to read:

"25-13-823. Restraint of waste during redemption period. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. ~~But However~~, it is not waste for the person in possession of the property at the time of sale or entitled to possession afterward, during the period allowed for redemption, to continue to use ~~it the property~~ in the same manner in which it was previously used, to use it in the ordinary course of husbandry, to make the necessary repairs of buildings ~~thereon on the property~~, or to use wood or timber on the property ~~therefor for the repair of buildings on the property~~, or for the repair of fences, or for fuel for ~~his the person's~~ family while ~~he the person~~ occupies the property."

Section 468. Section 25-13-825, MCA, is amended to read:

"25-13-825. Damages for injury to property after sale and before conveyance. When real property has been sold on execution, the purchaser ~~thereof~~ or any person who may have succeeded to ~~his the purchaser's~~ interest may, after ~~his the purchaser's~~ estate becomes absolute, recover damages for injury to the property by the tenant in possession after sale and before possession is delivered under the conveyance."

Section 469. Section 25-14-102, MCA, is amended to read:

"25-14-102. Procedure when debtor withholding property from execution; -- arrest. (1) After the issuing of an execution against property and upon proof, by affidavit of a party or otherwise, to the satisfaction of a judge of the court that any judgment debtor has property ~~which he~~ that the judgment debtor unjustly refuses to apply toward the satisfaction of the judgment, ~~such the~~ judge may, by an order, require the judgment debtor to appear at a specified time and place before ~~such the~~ judge or a referee appointed by ~~him~~ the judge to answer concerning the ~~same; refusal. and such proceedings~~ Proceedings may ~~thereupon~~ be had for the application of the property of the judgment debtor toward the satisfaction of the judgment ~~as that~~ that are provided for upon the return of an execution.

(2) Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor or ~~his~~ the judgment creditor's agent or attorney, if it ~~appear~~ appears to ~~him~~ the judge that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring ~~him~~ the debtor before ~~such the~~ judge. Upon being brought before the judge, ~~he~~ the judgement debtor may be ordered to enter into an undertaking with sufficient surety that ~~he~~ the judgment debtor will attend from time to time before the judge or referee, as may be directed during the pendency of proceedings and until the final determination ~~thereof~~ of the proceedings, and will not in the meantime dispose of any portion of ~~his~~ the judgment debtor's property that is not exempt from execution. In default of entering into ~~such the~~ undertaking, ~~he~~ the judgment debtor may be committed to prison."

Section 470. Section 25-14-103, MCA, is amended to read:

"25-14-103. Debtors of judgment debtor and those holding his debtor's property to answer. After the issuing or return of an execution against property of the judgment debtor or of any one of several debtors in the same judgment; or upon proof, by affidavit or otherwise, to the satisfaction of the judge that any person or corporation has property of ~~such the~~ judgment debtor or is indebted to ~~him~~ the judgment debtor in an amount exceeding \$50, the judge may, by an order, require ~~such the~~ person or corporation or any officer or member ~~thereof of the corporation~~ to appear at a specified time and place before ~~him~~ the judge or a referee appointed by ~~him~~ the judge and answer concerning the ~~same~~ debt."

Section 471. Section 25-14-104, MCA, is amended to read:

"25-14-104. Procedure when debt to or ownership of judgment debtor denied. If it ~~appear~~ appears that a person or corporation alleged to have property of the judgment debtor or to be indebted to ~~him~~ the judgment

debtor claims an interest in the property adverse to ~~him~~ the judgment debtor or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute an action against ~~such~~ the person or corporation for the recovery of ~~such~~ the interest or debt; ~~and the~~ The court or judge may, by order, forbid a transfer or other disposition of ~~such~~ the interest or debt until an action can be commenced and prosecuted to judgment. ~~Such~~ The order may be modified or vacated by the judge granting the ~~same~~ order or the court in which the action is brought, at any time, upon ~~such~~ terms ~~as that may be~~ are just."

Section 472. Section 25-14-106, MCA, is amended to read:

"25-14-106. Immunity of witnesses to criminal proceedings. A party or witness examined in proceedings authorized by parts 1 and 2 of this chapter is not excused from answering a question on the ground that ~~his~~ the party's or witness's examination will tend to convict ~~him~~ the party or witness of the commission of a fraud or to prove that ~~he~~ the party or witness has been a party or privy to or knowing of a conveyance, assignment, transfer, or other disposition of property for any purpose or that ~~he~~ the party or witness or any other person claims to be entitled, as against the judgment creditor or a receiver appointed or to be appointed in the proceedings, to hold property derived from or through the judgment debtor or to be discharged from the payment of a debt ~~which~~ that was due to the judgment debtor or to a person in ~~his~~ the judgment debtor's behalf. ~~But~~ However, an answer cannot be used as evidence against the person ~~so~~ answering in a criminal action or criminal proceeding."

Section 473. Section 25-14-108, MCA, is amended to read:

"25-14-108. Contempt to disobey referee's orders. If any person, party, or witness ~~disobey~~ disobeys an order of the referee, properly made in the proceedings before ~~him~~ the referee under parts 1 and 2 of this chapter, ~~he~~ the person, party, or witness may be punished by the court or judge ordering the reference for a contempt."

Section 474. Section 25-14-201, MCA, is amended to read:

"25-14-201. Appointment of receiver -- notice. At any time after making an order requiring the judgment debtor or any other person to attend and be examined, as prescribed in parts 1 and 2 of this chapter, the judge may make an order appointing a receiver of the property of the judgment debtor. At least 2 days' notice of the application for the order appointing a receiver must be given personally to the judgment debtor unless the judge is satisfied that ~~he~~ the judgment debtor cannot, with reasonable diligence, be found within the state, in

which case the order must recite that fact and may dispense with notice or direct notice to be given in any manner ~~which that~~ the judge thinks proper. ~~But However, where when~~ the order to attend and be examined has been served upon the judgment debtor, a receiver may be appointed upon the return day ~~thereof of the service~~ or at the close of the examination without further notice to ~~him~~ the judgment debtor."

Section 475. Section 25-14-204, MCA, is amended to read:

"25-14-204. When property vests in receiver. The property of the judgment debtor is vested in a receiver who has ~~duly~~ qualified from the time of filing the order appointing ~~him~~ the receiver, subject to the following exceptions:

(1) Real property is vested in the receiver only from the time when the order is filed with the clerk of the court or a certified copy ~~thereof of the order~~, as the case may be, is filed with the clerk of the county where it is situated.

(2) ~~Where~~ When the judgment debtor, at the time when the order is filed, resides in another county of the state, ~~his~~ the judgment debtor's personal property is vested in the receiver only from the time when a copy of the order, certified by the clerk in whose office it is filed, is filed with the clerk of the district court of the county where ~~he~~ the judgment debtor resides."

Section 476. Section 25-14-205, MCA, is amended to read:

"25-14-205. Relation back of receiver's title. (1) ~~Where~~ When the receiver's title to personal property has become vested, as prescribed in 25-14-204, it also extends back by relation for the benefit of the judgment creditor in whose behalf the proceedings were instituted, as follows:

(a) ~~Where~~ When an order requiring the judgment debtor to attend and be examined has been served before the appointment of a receiver or the judgment debtor has been brought before the judge on arrest, the receiver's title extends back so as to include the personal property of the judgment debtor at the time of the service of the order or ~~his~~ the judgment debtor's arrest.

(b) ~~Where~~ When an order has not been served or ~~no~~ an arrest has not been made, as specified in subsection (1)(a), but an order has been made requiring a person to attend and be examined concerning property belonging or a debt due to the judgment debtor, the receiver's title extends to the personal property belonging to the judgment debtor ~~which that~~ was in the hands or under the control of the person or corporation ~~thus~~ required to attend at the time of the service of the order and to a debt then due ~~him~~ the judgment debtor from that person or corporation.

(c) In every other case, ~~where~~ when notice of the application for the appointment of the receiver was given to the judgment debtor, the receiver's title extends to the personal property of the judgment debtor at the time when the notice was served, either personally or by complying with the requirements of an order prescribing a substitute for personal service.

(2) ~~Where~~ When the case is within two or more of subsections (1)(a) through (1)(c) ~~of this section~~, the rule most favorable to the judgment creditor must be adopted.

(3) ~~But this~~ This section does not affect the title of a purchaser in good faith, without notice, and for a valuable consideration or the payment of a debt in good faith and without notice."

Section 477. Section 25-14-302, MCA, is amended to read:

"25-14-302. Notice of application for discharge. ~~Such~~ A person, referred to in 25-14-301, ~~must~~ shall cause a written notice ~~in writing~~ to be given to the plaintiff or ~~his~~ the plaintiff's agent or attorney that at a certain time and place ~~he~~ the person will apply to a judge of the district court of the county in which ~~such~~ the person may be confined for the purpose of obtaining a discharge from ~~his~~ imprisonment."

Section 478. Section 25-14-303, MCA, is amended to read:

"25-14-303. Service of notice. ~~Such~~ The notice specified in 25-14-302 must be served upon the plaintiff or ~~his~~ the plaintiff's agent or attorney ~~4 day~~ at least 1 day before the hearing of the application. If the plaintiff ~~be~~ is not a resident of the county and does not have ~~no~~ an agent or attorney in the county, ~~no such~~ the notice will not be served."

Section 479. Section 25-14-304, MCA, is amended to read:

"25-14-304. Hearing on application. At the time and place specified in the notice described in 25-14-302, ~~such~~ the person must be taken before the judge, who ~~must~~ shall examine ~~him~~ the person under oath concerning ~~his~~ the person's estate, and property, and effects, the disposal ~~thereof~~ of the estate, property, and effects, and ~~his~~ the person's ability to pay the judgment for which ~~he~~ the person is committed; ~~and such~~. The judge may also hear any other legal or pertinent evidence that may be produced by the debtor or the creditor."

Section 480. Section 25-14-306, MCA, is amended to read:

"25-14-306. Prisoner to take oath. If, upon the examination, the judge is satisfied that the prisoner is entitled to ~~his~~ discharge, ~~he~~ the judge ~~must~~ shall administer to ~~him~~ the prisoner the following oath: "I, ..., do

solemnly swear that I have not any ~~estate property~~, real or personal, ~~to~~ in the amount of \$50, except ~~such as property that~~ is by law exempted from being taken in execution; and that I have not any other ~~estate property~~ now conveyed or concealed or in any way disposed of with design to secure the ~~same property~~ to my use or to hinder, delay, or defraud my creditors; so help me God."

Section 481. Section 25-14-307, MCA, is amended to read:

"25-14-307. Order of discharge. After administering the oath in 25-14-306, the judge ~~must~~ shall issue an order that the prisoner be discharged from custody, and the officer, upon the service of ~~such the~~ order, ~~must~~ shall discharge the prisoner ~~forthwith if he be~~ the prisoner is not imprisoned for ~~no other~~ another cause."

Section 482. Section 25-14-308, MCA, is amended to read:

"25-14-308. Reapplication for discharge. If ~~such the~~ judge does not discharge the prisoner, ~~he the~~ prisoner may apply for ~~his~~ discharge at the end of every succeeding 10 days in the same manner as ~~above~~ provided in this part, and the same proceedings must ~~thereupon~~ be had upon the application."

Section 483. Section 25-14-309, MCA, is amended to read:

"25-14-309. Effect of discharge. The prisoner, after being ~~so~~ discharged, is forever exempt from arrest or imprisonment for the same debt unless ~~he be~~ the prisoner is convicted of having willfully sworn falsely upon ~~his~~ examination before the judge or in taking the oath ~~before~~ prescribed in 25-14-306."

Section 484. Section 25-14-310, MCA, is amended to read:

"25-14-310. Judgment unaffected. The judgment against ~~any a~~ prisoner who is discharged remains in full force against any estate ~~which that~~ that may then or at any time afterward belong to ~~him~~ the prisoner, and the plaintiff may take out a new execution against the goods and estate of the prisoner in ~~like~~ the same manner as if ~~he the~~ prisoner had never been committed."

Section 485. Section 25-14-311, MCA, is amended to read:

"25-14-311. Discharge at instance of plaintiff. The plaintiff in the action may at any time order the prisoner to be discharged, and ~~he the~~ prisoner is not ~~thereafter~~ liable to imprisonment for the same cause of action."

Section 486. Section 25-14-312, MCA, is amended to read:

"25-14-312. Discharge upon failure of plaintiff to advance money for support of prisoner.

Whenever a prisoner is committed to jail on an execution issued on a judgment recovered in a civil action, the creditor or ~~his~~ the creditor's agent or attorney ~~must~~ shall advance to the jailer, on ~~such~~ the commitment, sufficient money for the support of the prisoner for 1 week and ~~must~~ shall make the ~~like~~ same advance for every successive week of ~~his~~ imprisonment, and in case of failure to do so, the jailer ~~must forthwith~~ shall discharge ~~such~~ the prisoner from custody, and ~~such~~ the discharge has the same effect as if made by order of the creditor."

Section 487. Section 25-15-102, MCA, is amended to read:

"25-15-102. Content and service of summons. The summons, as provided in 25-15-101, must

describe the judgment and require the person summoned to show cause why ~~he~~ the person should not be bound by it and must be served in the same manner and returnable within the same time as the original summons."

Section 488. Section 25-15-103, MCA, is amended to read:

"25-15-103. Affidavit to accompany summons -- new complaint unnecessary. The summons must

be accompanied by an affidavit of the plaintiff or ~~his~~ the plaintiff's agent, representative, or attorney that the judgment or some part ~~thereof~~ of the judgment remains unsatisfied and must specify the amount due ~~thereon~~. It is not necessary to file a new complaint."

Section 489. Section 25-15-104, MCA, is amended to read:

"25-15-104. Answer -- time for filing; -- contents. Upon ~~such~~ the summons, the defendant may answer

within the time specified ~~therein~~ in the summons, denying the judgment or setting up any defense ~~which~~ that may have arisen subsequently; ~~or he~~ the defendant may deny ~~his~~ liability on the obligation upon which the judgment was recovered, except a discharge from ~~such~~ liability ~~by~~ because of the statute of limitations."

Section 490. Section 25-15-105, MCA, is amended to read:

"25-15-105. What constitute the pleadings. If the defendant in ~~his~~ the answer ~~deny~~ denies the

judgment or ~~set up~~ provides any defense ~~which~~ that may have arisen subsequently, the summons, with the affidavit ~~annexed~~ attached, and the answer constitute the written allegations in the case; ~~if he deny his~~ If the defendant denies liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit ~~annexed~~ attached, and the answer constitute ~~such~~ the

written allegations."

Section 491. Section 25-15-106, MCA, is amended to read:

"25-15-106. Trial of issues -- limit on verdict. The issues formed may be tried as in other cases; ~~but~~. However, when the defendant denies in his the answer any liability on the obligation upon which the judgment was rendered, if a verdict ~~be~~ is found against ~~him~~ the defendant, ~~it must~~ the judgment may not be ~~for not~~ exceeding in excess of the amount remaining unsatisfied on ~~such~~ the original judgment, with interest ~~thereon~~ on that amount."

Section 492. Section 25-15-201, MCA, is amended to read:

"25-15-201. Discharge of one joint debtor. Any joint debtor, including a partner, may compromise with a creditor, and a discharge to ~~him~~ the joint debtor by ~~such~~ the creditor is as effectual as if made to all debtors, but ~~such~~ the discharge does not relieve the other joint debtors. Any creditor can release a judgment in ~~his~~ the creditor's favor against any one or more joint debtors, and ~~such~~ the release does not discharge the others."

Section 493. Section 25-15-202, MCA, is amended to read:

"25-15-202. Effect of discharge -- right of contribution. Except as provided in 27-1-703, the discharge of a joint debtor operates as a payment to the creditor equal to the proportionate interest of the debtor discharged, but the discharge of ~~such~~ the debtor does not prevent ~~his~~ the codebtors from enforcing the right of contribution ~~in case~~ if they are compelled to pay the whole of the debt."

Section 494. Section 25-31-102, MCA, is amended to read:

"25-31-102. Transfer to district court -- dismissal. (1) If it appears from the answer of the defendant, verified by ~~his~~ oath, that the determination of the action will necessarily involve the question of title or possession to real property or the legality of any tax, impost, assessment, toll, or municipal fine, the justice ~~must~~ shall suspend all further proceedings in the action and certify the pleadings and, if any of the pleadings are oral, a transcript of the ~~same~~ pleadings from ~~his~~ the docket to the clerk of the district court of the county. From the time of the certification of ~~such~~ the pleadings or transcript to the clerk, the district court ~~shall have over the action~~ has the same jurisdiction over the action as if it had been commenced ~~herein~~ in the district court. When the action is certified to the district court, upon the answer of the defendant, ~~he must~~ the defendant shall file an undertaking, to be approved by the justice, to the effect that ~~he~~ the defendant will pay all costs that may be awarded against

him the defendant on the trial in the district court.

(2) If it appears at any point in the proceedings in a justice's court that the determination of the action will involve the question of the state's liability to make a payment of money, the justice shall sever that issue and dismiss the action as to it that issue. If the issue is not severable, the justice shall dismiss the entire action."

Section 495. Section 25-31-405, MCA, is amended to read:

"25-31-405. Designating unknown person as defendant. ~~Where~~ When the plaintiff is ignorant of the name or part of the name of a defendant, that defendant may be designated in the summons and in any other process or proceeding in the action by a fictitious name or by ~~so~~ as much of his the defendant's name as is known, adding a description identifying the person intended. The person ~~so~~ designated must ~~thereupon~~ be regarded as a defendant in the action and as sufficiently described ~~therein~~ in the action for all purposes. When his the defendant's name or the remainder of his the defendant's name is known or becomes known, the justice before whom the action is pending ~~must~~ shall amend the proceedings already taken by the insertion of the true or full name in place of the fictitious name or part of a name, and all subsequent proceedings must be taken under the name ~~so~~ inserted."

Section 496. Section 25-31-406, MCA, is amended to read:

"25-31-406. Time for answer or appearance. The time specified in the summons for the appearance of the defendant must be as follows:

- (1) if an order of arrest is endorsed upon the summons, immediately;
- (2) in all other cases, the summons must provide that the defendant shall answer in writing, file the answer, and serve a copy upon the plaintiff or his the plaintiff's attorney within 20 days after service of the summons, exclusive of the day of service, and in case of his the defendant's failure to appear or answer, judgment will be taken against him the defendant by default for the relief demanded in the complaint."

Section 497. Section 25-31-512, MCA, is amended to read:

"25-31-512. Admission of genuineness of signatures. If the plaintiff ~~annex~~ attaches to his the complaint or ~~file~~ files with the justice at the time of issuing the summons a copy of the promissory note, bill of exchange, other obligation for the payment of money, or other instrument upon which the action is brought, the defendant ~~shall be deemed~~ is considered to admit the genuineness of all the signatures ~~thereto~~ to the instrument unless he the defendant specifically ~~deny the same~~ denies the genuineness in his the answer under oath. In case

of a counterclaim, the same rule applies to the plaintiff."

Section 498. Section 25-31-523, MCA, is amended to read:

"25-31-523. Variance. A variance between the proof on the trial and the allegations in pleading ~~shall~~ must be disregarded as immaterial unless the court ~~be is~~ is satisfied that the adverse party has been misled to ~~his~~ the party's prejudice ~~thereby by the variance.~~"

Section 499. Section 25-31-705, MCA, is amended to read:

"25-31-705. Postponement upon application of a party -- proof required. The trial may be postponed upon the application of either party for a period not exceeding 4 months. The party making the application ~~must~~ shall prove, by ~~his~~ the party's own oath or otherwise, that ~~he~~ the party cannot, for want of material testimony ~~which he~~ that the party expects to procure, safely proceed to trial and ~~must shall~~ show in what respect the testimony expected is material and that ~~he~~ the party has used due diligence to procure ~~it~~ the testimony and has been unable to do so."

Section 500. Section 25-31-706, MCA, is amended to read:

"25-31-706. No postponement when expected evidence admitted. The court may require the party making the application to state, upon affidavit, the evidence ~~which he~~ that the party expects to obtain, and if the adverse party ~~thereupon admit~~ admits that ~~such the~~ such the evidence would be given and that it ~~be is~~ is considered as actually given ~~on~~ at the trial or offered and overruled as improper, the trial ~~must~~ may not be postponed."

Section 501. Section 25-31-707, MCA, is amended to read:

"25-31-707. Procedure when defendant under arrest. (1) If the application is on the part of the plaintiff and the defendant is under arrest, a postponement for more than 3 hours discharges the defendant from custody, ~~but~~ However, the action may proceed, ~~notwithstanding,~~ and the defendant is subject to arrest on execution in the same manner as if ~~he~~ the defendant had not been discharged.

(2) If the application is on the part of a defendant under arrest, before it can be granted, ~~he~~ the ~~must~~ defendant shall execute an undertaking, with two or more sufficient sureties to be approved by and in a sum to be fixed by the justice, to the effect that ~~he~~ the defendant will ~~render himself~~ be amenable to the process of the court during the pendency of the action and to ~~such as~~ the process that may be issued to enforce the judgment ~~therein~~ in the action; or that the sureties will pay to the plaintiff the amount of any judgment ~~which he~~ that the

plaintiff may recover in the action, not exceeding the amount specified in the undertaking. On filing the undertaking specified in this subsection, the justice may order the defendant discharged from custody."

Section 502. Section 25-31-1002, MCA, is amended to read:

"25-31-1002. How costs taxed. In a justice's or city court, ~~no a cost bill need~~ is not required to be filed, but the justice or judge ~~must~~ shall tax the ~~same costs~~ and make an itemized statement of all the costs incurred by each party in ~~his~~ the docket."

Section 503. Section 25-31-1111, MCA, is amended to read:

"25-31-1111. Collection of judgment against county or county officer. When a judgment is rendered against the county or against any county officer in an action prosecuted against ~~him~~ the officer in ~~his~~ the name of the office, when the ~~same judgment~~ is to be paid by the county, ~~no an execution must~~ may not issue upon the judgment, but the ~~same judgment~~ must be paid in the same manner as other county charges. When ~~se~~ collected, the ~~same judgment~~ must be paid by the county treasurer to the proper person to whom the ~~same judgment~~ is adjudged; upon the delivery of a proper voucher ~~therefor~~ for payment."

Section 504. Section 25-33-103, MCA, is amended to read:

"25-33-103. How appeal taken. The appeal is taken by serving a copy of the notice of appeal on the adverse party or ~~his~~ the adverse party's attorney and by filing the original notice of appeal with the justice or judge. The order of serving and filing is immaterial."

Section 505. Section 25-33-104, MCA, is amended to read:

"25-33-104. Papers to be transmitted. Upon the filing of the notice of appeal and the undertaking when required by 25-33-201, 25-33-203, and 25-33-205, the justice or judge ~~must~~ shall, within 10 days, upon the payment of the fees ~~therefor~~ for filing, transmit to the clerk of the district court a certified copy of ~~his~~ the docket, the pleadings, all notices, motions, and other papers filed in the cause, the notice of appeal, and the undertaking; ~~and the~~. The justice or judge may be compelled by the district court, by an order entered upon motion, to transmit ~~such~~ the papers and may be fined for neglect or refusal to transmit the ~~same papers~~. A certified copy of ~~such~~ the order may be served on the justice or judge by the party or ~~his~~ the party's attorney."

Section 506. Section 25-33-201, MCA, is amended to read:

"25-33-201. Undertaking on appeal. (1) Except as provided in subsection (4), an appeal from a justice's or city court is not effectual for any purpose unless an undertaking ~~be is~~ filed, with two or more sureties, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money. The undertaking must be conditioned, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from and all costs if the appeal ~~be is~~ withdrawn or dismissed or the amount of any judgment and all costs that may be recovered against ~~him~~ the appellant in the action in the district court.

(2) Except as provided in subsection (4), an appeal from a justice's or city court is not effectual for any purpose unless an undertaking ~~be is~~ filed, with two or more sureties, in a sum equal to twice the value of the property, including costs, when the judgment is for the recovery of specific personal property. When the action is for the recovery of specific personal property, the undertaking must be conditioned that the appellant will pay the judgment and costs appealed from and obey the order of the court made ~~therein~~ in the action if the appeal ~~be is~~ withdrawn or dismissed or pay any judgment and costs that may be recovered against ~~him~~ the appellant in ~~said~~ the action in the district court and obey any order made by the court ~~therein~~ in the action.

(3) Except as provided in subsection (4), when the judgment appealed from directs the delivery of possession of real property, the execution of the ~~same~~ judgment cannot be stayed unless a written undertaking ~~be is~~ executed on the part of the appellant, with two or more sureties, to the effect that:

(a) during the possession of ~~such~~ the property by the appellant, ~~he~~ the appellant will not commit or suffer to be committed any waste ~~thereon~~ on the property; and

(b) if the appeal ~~be is~~ dismissed or withdrawn or the judgment ~~is~~ affirmed or judgment ~~be is~~ recovered against ~~him~~ the appellant in the action in the district court, ~~he~~ the appellant will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession ~~thereof~~ of the property or ~~he~~ the appellant will pay any judgment and costs that may be recovered against ~~him~~ the appellant in ~~said~~ the action in the district court, not exceeding a sum to be fixed by the justice or judge of the court from which the appeal is to be taken, which sum must be specified in the undertaking.

(4) When the appealing party is determined by the court to be indigent, the district court shall waive the undertaking requirements of this section."

Section 507. Section 25-33-202, MCA, is amended to read:

"25-33-202. Undertaking when prevailing party appeals. If the party in whose favor the judgment is rendered appeals, the undertaking must be in the sum of \$100 and conditioned that ~~he~~ the party will pay all costs that may be awarded against ~~him~~ the party and obey any order of court made in the action."

Section 508. Section 25-33-204, MCA, is amended to read:

"25-33-204. Stay of execution when undertaking filed. If an execution ~~be~~ is issued, on the filing of the undertaking, the justice or judge ~~must~~ shall direct the officer to stay all proceedings on the ~~same~~ execution. ~~Such~~ The officer ~~must~~ shall, upon the payment of ~~his~~ the officer's fees for services rendered on the execution, ~~thereupon~~ relinquish all property levied upon and deliver the ~~same~~ property to the judgment debtor, together with all ~~moneys~~ money collected from sales or otherwise. If ~~his~~ the officer's fees on the execution ~~be~~ are not paid, the officer may retain ~~so~~ as much of the property or proceeds ~~thereof~~ as of the property as may be necessary to pay the ~~same~~ fees."

Section 509. Section 25-33-305, MCA, is amended to read:

"25-33-305. Costs when appeal unsuccessful. If the party appealing fails to reduce the judgment against ~~him~~ the party or to enlarge the judgment in ~~his~~ the party's favor appealed from \$10 or more or reverse the ~~same~~ judgment in the district court, ~~he shall~~ the party may not recover any costs of appeal."

Section 510. Section 25-35-601, MCA, is amended to read:

"25-35-601. Commencement of action -- assistance to claimant. (1) A small claims action is commenced whenever any person appears before a justice of the peace or ~~his~~ the justice's clerk and executes a sworn small claims complaint in substantially the same form as set forth in 25-35-602.

(2) The justice shall assist any claimant in preparing ~~his~~ the complaint or instruct ~~his~~ the clerk to provide ~~such~~ the assistance. The attorney general shall prepare a pamphlet explaining in plain language the procedures for prosecuting and defending a claim in small claims court and distribute copies of the pamphlet to each small claims court. The justice or ~~his~~ the justice's clerk shall give the plaintiff a copy when the plaintiff appears to execute ~~his~~ a complaint, and a copy must be attached to the order of the court/notice to defendant."

Section 511. Section 25-35-603, MCA, is amended to read:

"25-35-603. Hearing date. The date for the appearance of the defendant to be set forth in the order ~~shall~~ must be determined by the justice of the peace or by ~~his~~ the justice's clerk and may not be more than 40 or less than 10 days from the date of the order. Service of the order and a copy of the sworn complaint ~~shall~~ must be made upon the defendant not less than 5 days prior to the date set for ~~his~~ the defendant's appearance by the order. If the order is not timely served, the plaintiff may have a new appearance date set by the justice of the peace or ~~his~~ the justice's clerk and a new order issued and delivered to the sheriff, constable, or other process

server. If necessary, repeated orders may be issued at any time within 1 year after the commencement of the action."

Section 512. Section 25-35-604, MCA, is amended to read:

"25-35-604. Service on defendant -- return. (1) The original of the order and notice ~~shall~~ must be shown to the defendant, and a copy of ~~it~~ the order and notice along with a copy of the sworn complaint ~~shall~~ must be served upon the defendant by the sheriff, constable, or other process server in the same manner provided by law for service of process in civil actions in justice's court. The provisions of law relating to sheriff's fees are applicable to this section.

(2) The sheriff, constable, or other process server shall, after effecting service, return the original order to the justice of the peace or ~~his~~ the justice's clerk."

Section 513. Section 25-35-605, MCA, is amended to read:

"25-35-605. Removal to justice's court -- effect of failure to remove. (1) Any action commenced in small claims court may be removed to justice's court by a defendant upon the filing of a notice of removal with the justice within 10 days of the service of the complaint and order. From the time of filing of the notice of removal, the court to which the action is removed has and exercises the same jurisdiction over it as though the action had been originally commenced in ~~such~~ justice's court.

(2) Upon the filing of a notice of removal, the court shall give notice of that fact to all other parties to the action. All rules and statutes governing proceedings originally commenced in justice's court, except rules of pleading but including rules and statutes governing appeals from justice's court, are applicable to proceedings removed to justice's court, except that a plaintiff is not required to replead unless the court so orders, and ~~no~~ a fee ~~shall~~ may not be required of a plaintiff for the filing of a complaint if a fee for filing was paid in small claims court.

(3) Failure to request removal within the time provided in subsection (1) constitutes a waiver by the defendant of ~~his~~ the right to a trial by jury and representation by an attorney, and the justice shall inform the defendant of ~~such~~ that fact prior to commencement of the hearing."

Section 514. Section 25-35-608, MCA, is amended to read:

"25-35-608. Fees. (1) The clerk of the justice's court shall collect a fee of:

(a) \$10 from the plaintiff upon the filing of the sworn complaint; and

(b) \$5 from the defendant upon ~~his~~ the defendant's appearance and contesting of the complaint or execution of a counterclaim.

(2) The laws relating to paupers' affidavits apply to actions before the small claims court."

Section 515. Section 25-35-702, MCA, is amended to read:

"25-35-702. Witnesses -- evidence -- subpoena power. The plaintiff and the defendant may offer evidence in their behalf by witnesses appearing at ~~such~~ the hearing in the same manner as in other cases arising in justice's court or by written evidence, and the judge may direct the production of evidence ~~as he~~ that the judge considers appropriate. The small claims court has the subpoena power granted to justices' courts in all civil cases."

Section 516. Section 25-35-801, MCA, is amended to read:

"25-35-801. Entry of judgment. Upon the conclusion of the case tried to the court, the justice shall make ~~his~~ findings and enter judgment."

Section 517. Section 25-35-802, MCA, is amended to read:

"25-35-802. Costs. The prevailing party in an action before the small claims court is entitled to ~~his~~ the party's costs."

Section 518. Section 25-35-803, MCA, is amended to read:

"25-35-803. Appeal to district court -- commencement and scope. (1) If either party is dissatisfied with the judgment of the small claims court, ~~he~~ the party may appeal to the district court of the county where the judgment was rendered. An appeal ~~shall~~ must be commenced by giving written notice to the small claims court and serving a copy of the notice of appeal on the adverse party within 10 days after entry of judgment.

(2) There may not be a trial de novo in the district court. The appeal ~~shall~~ must be limited to questions of law."

Section 519. Section 25-35-804, MCA, is amended to read:

"25-35-804. Record on appeal. (1) Within 30 days of the notice, the entire record of the small claims court proceedings ~~shall~~ must be transmitted to the district court or the appeal ~~shall~~ must be dismissed. It is the duty of the appealing party to perfect the appeal.

(2) When notice of appeal is filed, the justice shall forward the electronic recording or transcript of the stenographic record of the proceedings to the district court, together with the original papers filed, certified by ~~him~~ the justice to be accurate and complete. When the record is transferred to the clerk of the district court, the justice shall notify the parties in writing."

Section 520. Section 25-35-806, MCA, is amended to read:

"25-35-806. Attorney's Attorney fees upon appeal or removal. (1) If the parties are represented by counsel on appeal, the court may grant the prevailing party ~~his~~ reasonable ~~attorney's~~ attorney fees; in addition to costs.

(2) If a defendant removes a matter to justice's court under the provisions of 25-35-605(1) but does not prevail in justice's court, the court may grant the plaintiff ~~his~~ reasonable ~~attorney's~~ attorney fees, if any."

Section 521. Section 26-1-106, MCA, is amended to read:

"26-1-106. Explanation of alterations in a writing. The party producing a writing as genuine ~~which~~ that has been altered or appears to have been altered after its execution in a part material to the question in dispute ~~must~~ shall account for the appearance or alteration. ~~He~~ The party may show that the alteration was made by another without ~~his~~ the party's concurrence, was made with the consent of the parties affected by it the alteration, or was otherwise properly or innocently made or that the alteration did not change the meaning or language of the instrument. If ~~he~~ the party does that, ~~he~~ the party may give the writing in evidence, but not otherwise."

Section 522. Section 26-1-302, MCA, is amended to read:

"26-1-302. Witness presumed to speak the truth -- how presumption rebutted. A witness is presumed to speak the truth. The jury or the court in the absence of a jury is the exclusive judge of ~~his~~ a witness's credibility. This presumption may be controverted and overcome by any matter that has a tendency to disprove the truthfulness of a witness's testimony; ~~such~~ The matters include but are not limited to:

- (1) the demeanor or manner of the witness while testifying;
- (2) the character of the witness's testimony;
- (3) bias of the witness for or against any party involved in the case;
- (4) interest of the witness in the outcome of the litigation or other motive to testify falsely;
- (5) the witness's character for truth, honesty, or integrity;
- (6) the extent of the witness's capacity and opportunity to perceive or capacity to recollect or to

communicate any matter about which ~~he~~ the witness testifies;

- (7) inconsistent statements of the witness;
- (8) an admission of untruthfulness by the witness;
- (9) other evidence contradicting the witness's testimony."

Section 523. Section 26-1-303, MCA, is amended to read:

"26-1-303. Instructions to jury on how to evaluate evidence. The jury is to be instructed by the court on all proper occasions that:

- (1) their power of judging the effect of evidence is not arbitrary but to be exercised with legal discretion and in subordination to the rules of evidence;
- (2) they are not bound to decide in conformity with the declarations of any number of witnesses ~~which~~ that do not produce conviction in their minds, against a less number or against a presumption or other evidence satisfying their minds;
- (3) a witness false in one part of ~~his~~ the witness's testimony is to be distrusted in others;
- (4) the testimony of a person legally accountable for the acts of the accused ought to be viewed with distrust;
- (5) if weaker and less satisfactory evidence is offered and it appears that it is within the power of the party to offer stronger and more satisfactory evidence, the evidence offered should be viewed with distrust."

Section 524. Section 26-1-401, MCA, is amended to read:

"26-1-401. Who has the burden of producing evidence. The initial burden of producing evidence as to a particular fact is on the party who would be defeated if no evidence were given on either side. Thereafter, the burden of producing evidence is on the party who would suffer a finding against ~~him~~ that party in the absence of further evidence."

Section 525. Section 26-1-402, MCA, is amended to read:

"26-1-402. Who has the burden of persuasion. Except as otherwise provided by law, a party has the burden of persuasion as to each fact the existence or nonexistence of which is essential to the claim for relief or defense ~~he~~ the party is asserting."

Section 526. Section 26-1-502, MCA, is amended to read:

"26-1-502. When an inference arises. An inference must be founded:

- (1) on a fact legally proved; and
- (2) on ~~such~~ a deduction from that fact ~~as~~ that is warranted by a consideration of the usual propensities or passions of ~~men~~ people, the particular propensities or passions of the person whose act is in question, the course of business, or the course of nature."

Section 527. Section 26-1-601, MCA, is amended to read:

"26-1-601. List of conclusive presumptions. The following presumptions are conclusive:

- (1) the truth of a declaration, act, or omission of a party, as against that party in any litigation arising out of ~~such~~ the declaration, act, or omission, whenever ~~he~~ the party has, by ~~such~~ the declaration, act, or omission, intentionally led another to believe a particular thing true and to act upon ~~such~~ that belief;
- (2) that a tenant is not permitted to deny the title of ~~his~~ the landlord at the time of the commencement of the relation;
- (3) the judgment or order of a court, which is declared by statute to be conclusive;
- (4) any other presumption ~~which~~ that, by statute, is expressly made conclusive."

Section 528. Section 26-1-605, MCA, is amended to read:

"26-1-605. Entries in official books and records prima facie evidence. Entries in public or other official books or records made in the performance of ~~his~~ the officer's duty by a public officer of this state or any other person in the performance of a duty specially enjoined by law are prima facie evidence of the facts stated ~~therein~~ in the book or record."

Section 529. Section 26-1-623, MCA, is amended to read:

"26-1-623. Presumption of authenticity of finding, report, or record. For the purposes of 26-1-622, any finding, report, or record or ~~duly~~ certified copy ~~thereof~~ of a finding, report, or record purporting to have been signed by ~~such~~ an officer or employee of the United States as is described in that section ~~shall~~ is prima facie ~~be deemed~~ considered to have been signed and issued by ~~such an~~ the officer or employee pursuant to law, and the person signing ~~same~~ the finding, report, or record ~~shall~~ is prima facie ~~be deemed~~ considered to have acted within the scope of ~~his~~ the officer's or employee's authority. If a copy purports to have been certified by a person authorized by law to certify the ~~same~~ finding, report, or record, ~~such~~ the certified copy ~~shall~~ must be prima facie evidence of ~~his~~ the person's authority ~~so~~ to certify."

Section 530. Section 26-1-701, MCA, is amended to read:

"26-1-701. Legislative policy. The legislature hereby declares that the health, welfare, and safety of the people of the state of Montana would be enhanced by the expeditious handling of liability claims. The legislature further declares that the handling of ~~such~~ liability claims would be expedited if voluntary payment by or on behalf of one person to or on behalf of a person who has sustained injury to ~~his~~ that person or damage to ~~his~~ that person's property could not be construed as an admission of fault or liability as to any claim arising out of the occurrence ~~which~~ that gave rise to ~~such~~ the injury or damage."

Section 531. Section 26-1-803, MCA, is amended to read:

"26-1-803. Attorney-client privilege. (1) An attorney cannot, without the consent of ~~his~~ the client, be examined as to any communication made by the client to ~~him~~ the attorney or ~~his~~ the advice given to the client in the course of professional employment.

(2) A client cannot, except voluntarily, be examined as to any communication made by ~~him~~ the client to ~~his~~ the client's attorney or the advice given to ~~him~~ the client by ~~his~~ the attorney in the course of the attorney's professional employment."

Section 532. Section 26-1-804, MCA, is amended to read:

"26-1-804. Confessions made to member of clergy. A ~~clergyman~~ member of the clergy or priest ~~cannot~~ may not, without the consent of the person making the confession, be examined as to any confession made to ~~him~~ the individual in ~~his~~ the individual's professional character in the course of discipline enjoined by the church to which ~~he~~ the individual belongs."

Section 533. Section 26-1-805, MCA, is amended to read:

"26-1-805. Doctor-patient privilege. Except as provided in Rule 35, Montana Rules of Civil Procedure, a licensed physician, surgeon, or dentist ~~cannot~~ may not, without the consent of ~~his~~ the patient, be examined in a civil action as to any information acquired in attending the patient ~~which~~ that was necessary to enable ~~him~~ the physician, surgeon, or dentist to prescribe or act for the patient."

Section 534. Section 26-1-806, MCA, is amended to read:

"26-1-806. Speech-language pathologist, audiologist-client privilege. A speech-language pathologist or audiologist ~~cannot~~ may not, without the consent of ~~his~~ the client, be examined in a civil action as to any

communication made by the client to ~~him~~ the pathologist or audiologist."

Section 535. Section 26-1-807, MCA, is amended to read:

"26-1-807. Psychologist-client privilege. The confidential relations and communications between a psychologist and ~~his~~ a client ~~shall~~ must be placed on the same basis as provided by law for those between an attorney and ~~his~~ a client. Nothing in any act of the legislature ~~shall~~ may be construed to require ~~such~~ the privileged communications to be disclosed."

Section 536. Section 26-1-809, MCA, is amended to read:

"26-1-809. Confidential communications by student to employee of educational institution. A counselor, psychologist, nurse, or teacher employed by ~~any~~ an educational institution ~~cannot~~ may not be examined as to communications made to ~~him~~ the individual in confidence by a ~~duly~~ registered student of ~~such~~ the institution. However, this provision ~~shall~~ does not apply ~~where~~ when consent has been given by the student, if not a minor, or, if ~~he~~ the student is a minor, by the student and ~~his~~ the student's parent or legal guardian."

Section 537. Section 26-1-810, MCA, is amended to read:

"26-1-810. Confidential communications made to public officer. A public officer ~~cannot~~ may not be examined as to communications made to ~~him~~ the officer in official confidence when the public interests would suffer by the disclosure."

Section 538. Section 26-1-902, MCA, is amended to read:

"26-1-902. Extent of privilege. (1) Without ~~his or its~~ a person's consent, ~~no~~ a person, including any newspaper, magazine, press association, news agency, news service, radio station, television station, or community antenna television service or any person connected with or employed by any of these for the purpose of gathering, writing, editing, or disseminating news may not be examined as to or may not be required to disclose any information obtained or prepared or the source of that information in any legal proceeding if the information was gathered, received, or processed in the course of ~~his~~ the person's employment or ~~its~~ business.

(2) A person described in subsection (1) may not be adjudged in contempt by a judicial, legislative, administrative, or any other body having the power to issue subpoenas for refusing to disclose or produce the source of any information or for refusing to disclose any information obtained or prepared in gathering, receiving, or processing information in the course of ~~his or its~~ the person's business."

Section 539. Section 26-1-903, MCA, is amended to read:

"26-1-903. Waiver of privilege. (1) Except as provided in subsection (2), dissemination in whole or in part does not constitute a waiver of provisions of 26-1-902.

(2) If the person claiming the privilege testifies, with or without having been subpoenaed or ordered to testify or produce the source, before a judicial, legislative, administrative, or other body having the power to issue subpoenas or judicially enforceable orders, ~~he~~ the person does not waive the provisions of 26-1-902 unless the person voluntarily agrees to waive the privilege or voluntarily discloses the source in the course of ~~his~~ the person's testimony. Except as provided in this subsection, the provisions of 26-1-902 may not be waived."

Section 540. Section 26-1-1011, MCA, is amended to read:

"26-1-1011. Affidavit of printer or publisher as evidence of publication. Evidence of the publication of a document or notice required by law or by an order of a court or judge to be published in a newspaper may be given by the affidavit of the printer or publisher of the newspaper or ~~his foreman~~ the printer's or publisher's supervisor or principal clerk, annexed to a copy of the document or notice, specifying the times when and the paper in which the publication was made."

Section 541. Section 26-2-101, MCA, is amended to read:

"26-2-101. Subpoena defined. The process by which the attendance of a witness is required is by a subpoena. ~~It~~ A subpoena is a writ or order directed to a person and requiring ~~his~~ the person's attendance at a particular time and place to testify as a witness. ~~It~~ The subpoena may also require ~~him~~ the person to bring with ~~him~~ the person any books, documents, or other things under ~~his~~ the person's control, ~~which he~~ that the person is bound by law to produce in evidence."

Section 542. Section 26-2-102, MCA, is amended to read:

"26-2-102. Issuance of subpoena. The subpoena is issued as follows:

(1) To require attendance before a court or at the trial of an issue ~~therein~~ in a court, it is issued under the seal of the court before which the attendance is required or in which the issue is pending.

(2) To require attendance out of the court before a judge, justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this state, it is issued by the judge, justice, or other officer before whom the attendance is required.

(3) To require attendance before a commissioner appointed to take testimony by a court of a foreign

country, of the United States, of any other state in the United States, or of any other district or county within this state or before any officer ~~or officers~~ empowered by the laws of the United States to take testimony, it may be issued by any judge or justice of the peace in places within ~~his~~ the judge's or justice's respective jurisdiction, with ~~like the same~~ power to enforce attendance and, upon certificate of contumacy to ~~said the~~ the court, to punish contempt of ~~his~~ process ~~as such that the~~ the judge or justice could exercise if the subpoena directed the attendance of the witness before ~~his~~ the judge's or justice's court in a matter pending ~~therein in that court.~~"

Section 543. Section 26-2-103, MCA, is amended to read:

"26-2-103. Service of subpoena on concealed witness. If a witness is concealed in a building or vessel so as to prevent the service of a subpoena upon ~~him~~ the witness, any court, ~~or judge,~~ or any officer issuing a subpoena may, upon proof by affidavit of the concealment and of the materiality of the witness, make an order that the sheriff of the county serve the subpoena, and the sheriff ~~must~~ shall serve it accordingly and, for that purpose, may break into the building or vessel where the witness is concealed."

Section 544. Section 26-2-104, MCA, is amended to read:

"26-2-104. Disobedience -- how punished. Disobedience to a subpoena or a refusal to be sworn or to answer as a witness or to subscribe an affidavit or deposition, when required, may be punished as a contempt by the court issuing the subpoena or requiring the witness to be ~~so~~ sworn, to ~~so~~ answer, or to ~~so~~ subscribe, ~~and~~ and if ~~if~~ if the witness ~~be is~~ is a party, ~~his~~ the party's complaint or answer may be stricken out."

Section 545. Section 26-2-105, MCA, is amended to read:

"26-2-105. Disobedience -- civil damages. A witness disobeying a subpoena also forfeits to the party aggrieved the sum of \$100 and all damages ~~which he~~ that the person may sustain by the failure of the witness to attend, ~~which~~ The forfeiture and damages may be recovered in a civil action."

Section 546. Section 26-2-106, MCA, is amended to read:

"26-2-106. Warrant to arrest and bring in disobedient witness. In case of a failure of a witness to attend, the court or officer issuing the subpoena, upon proof of the service ~~thereof~~ and of the failure of the witness, may issue a warrant to the sheriff of the county to arrest the witness and bring ~~him~~ the witness before the court or officer where ~~his~~ attendance was required."

Section 547. Section 26-2-107, MCA, is amended to read:

"26-2-107. Contents of warrant -- execution. ~~Every~~ Each warrant of commitment issued by a court or officer pursuant to this part must specify ~~therein~~, particularly, the cause of the commitment, ~~and if it be~~ If the warrant is issued for refusing to answer a question, ~~such~~ the question must be stated in the warrant. ~~Every~~ Each warrant to arrest or commit a witness pursuant to this part must be directed to the sheriff of the county where the witness may be and must be executed by ~~him~~ the sheriff in the same manner as process by the district court."

Section 548. Section 26-2-201, MCA, is amended to read:

"26-2-201. Court order to obtain deposition or attendance of prisoner. If the witness ~~be~~ is a prisoner confined in a jail or prison within this state, an order for ~~his~~ the witness's examination in the jail or prison upon deposition or for ~~his~~ the witness's temporary removal and production before a court or officer for the purpose of being orally examined may be made as follows:

- (1) by the court itself in which the action or special proceeding is pending unless it ~~be~~ is a justice's court;
- (2) by a justice of the supreme court or a judge of the district court of the county where the action or proceeding is pending if pending before a justice's court or before a judge or other person out of court."

Section 549. Section 26-2-203, MCA, is amended to read:

"26-2-203. When production of witness may be required. If the witness ~~be~~ is imprisoned in the county where the action or proceeding is pending, ~~his~~ the witness's production may be required. In all other cases, ~~his~~ the witness's examination, when allowed, must be taken upon deposition."

Section 550. Section 26-2-301, MCA, is amended to read:

"26-2-301. Witness required to attend when subpoenaed. A witness served with a subpoena ~~must~~ shall attend at the time appointed, with any papers under ~~his~~ the witness's control required by the subpoena, and answer all pertinent and legal questions and, unless sooner discharged, ~~must~~ shall remain until the testimony is closed."

Section 551. Section 26-2-302, MCA, is amended to read:

"26-2-302. Witness required to answer questions. A witness ~~must~~ shall answer questions legal and pertinent to the matter in issue though ~~his~~ the answer may establish a claim against ~~himself~~, the witness. ~~but he need~~ However, the witness is not required to give an answer ~~which~~ that will have a tendency to subject ~~him~~ the

witness to punishment for a felony, ~~nor need he or to~~ give an answer ~~which that~~ will have a direct tendency to degrade ~~his~~ the witness's character unless ~~it be~~ the answer is to the very fact in issue or to a fact from which the fact in issue would be presumed."

Section 552. Section 26-2-303, MCA, is amended to read:

"26-2-303. Person present required to testify. A person present in court or before a judicial officer may be required to testify in the same manner as if ~~he~~ the person were in attendance upon a subpoena issued by ~~such~~ the court or officer."

Section 553. Section 26-2-403, MCA, is amended to read:

"26-2-403. Arrest void -- punishment and liability. The arrest of a witness contrary to 26-2-402 is void and, when willfully made, is a contempt of the court; ~~and the~~ The person making it the arrest is responsible to the witness arrested for double the amount of the damages ~~which that~~ may be assessed against ~~him~~ the person and is also liable to an action at the suit of the party serving the witness with a subpoena for the damages sustained by ~~him~~ the party serving the witness in consequence of the arrest."

Section 554. Section 26-2-404, MCA, is amended to read:

"26-2-404. Affidavit of arrested witness -- exoneration of arresting officer. (1) An officer is not liable for making the arrest in ignorance of the facts creating the exoneration but is liable for any subsequent detention of the witness if ~~such~~ the witness claims the exemption and makes an affidavit stating that the witness:

(a) ~~he~~ has been served with a subpoena to attend as a witness before a court, officer, or other person, specifying the ~~same~~ court, officer, or person, the place of attendance, and the action or proceeding in which the subpoena was issued;

(b) ~~he~~ has not thus been served by ~~his~~ the witness's own procurement with the intention of avoiding arrest; and

(c) ~~he~~ is at the time going to the place of attendance, returning ~~therefrom~~ from the place of attendance, or remaining there in obedience to the subpoena.

(2) The affidavit may be taken by the officer and exonerates ~~him~~ the officer from liability for discharging the witness when arrested."

Section 555. Section 26-2-507, MCA, is amended to read:

"26-2-507. Demand for advance payment of witness fees in civil action. ~~No~~ A witness shall is not ~~be~~ obliged to attend court or appear before a referee, officer authorized to take depositions, or commissioner, when subpoenaed, unless ~~his~~ the witness's mileage and fees for 1 day's attendance are tendered or paid to ~~him~~ the witness on ~~his demanding the same demand~~ or unless ~~his~~ the fees for attendance ~~thereafter~~ for each succeeding day are tendered or paid to ~~him~~ the witness on demand. The fees of witnesses paid may be taxed as costs against the losing party."

Section 556. Section 26-2-509, MCA, is amended to read:

"26-2-509. Certificate of clerk to witness to obtain payment. The clerk of any court before which ~~any~~ a witness ~~shall have~~ has attended on behalf of the state or county in ~~any~~ a civil action ~~must shall~~ give to ~~such~~ the witness a certificate under seal of travel and attendance, ~~which shall entitle him~~ that entitles the witness to receive the amount ~~therein~~ stated in the certificate from the state or county treasurer."

Section 557. Section 26-3-104, MCA, is amended to read:

"26-3-104. Principal bound when surety bound. Whenever, pursuant to 26-3-102, 26-3-103, 26-3-201, and 26-3-202, a party is bound by a record and ~~such~~ the party stands in the relation of a surety for another, the ~~latter~~ other person is also bound from the time that ~~he~~ the person has notice of the action or proceeding and an opportunity at the surety's request to join in the defense."

Section 558. Section 26-3-203, MCA, is amended to read:

"26-3-203. Effect of judicial record of another state. The effect of a judicial record of ~~a sister~~ another state is the same in this state as in the state where it was made, except that it ~~can only~~ may be enforced ~~here~~ in this state only by an action or special proceeding, ~~and except that~~ However, the authority of a guardian, ~~or~~ or committee, ~~or of an~~ or executor, ~~or~~ or administrator does not extend beyond the jurisdiction of the government under which ~~he~~ the guardian, committee, executor, or administrator was invested with ~~his~~ authority."

Section 559. Section 27-1-204, MCA, is amended to read:

"27-1-204. Nominal damages when no appreciable detriment. When a breach of duty has caused no appreciable detriment to the party affected, ~~he~~ the party may ~~yet~~ recover nominal damages."

Section 560. Section 27-1-210, MCA, is amended to read:

"27-1-210. Interest on torts. (1) Subject to subsection (2), in an action for recovery on an injury as defined in 27-1-106, a prevailing claimant is entitled to interest at a rate of 10% on any claim for damages awarded that are capable of being made certain by calculation, beginning from the date 30 days after the claimant presented a written statement to the opposing party or ~~his~~ the party's agent stating the claim and how the specific sum was calculated.

(2) The interest provisions of subsection (1) do not apply to damages not capable of being made certain by calculation, including but not limited to future damages until ~~such~~ the damages are incurred and damages for:

- (a) pain and suffering;
- (b) injury to credit, reputation, or financial standing;
- (c) mental anguish or suffering;
- (d) exemplary or punitive damages;
- (e) loss of established way of life;
- (f) loss of consortium; and
- (g) attorney fees.

(3) The jury is to be advised by the court that the court will determine the amount of prejudgment interest due, if any, on any judgment rendered.

(4) Any payment by a party of ~~any~~ a claim or interest ~~thereon~~ on a claim as set forth in subsection (1) ~~shall~~ is not be an admission of liability and ~~shall~~ may not be made known to the jury."

Section 561. Section 27-1-211, MCA, is amended to read:

"27-1-211. Right to interest. ~~Every~~ Each person who is entitled to recover damages certain or capable of being made certain by calculation and the right to recover ~~which~~ that is vested in ~~him~~ the person upon a particular day is entitled also to recover interest ~~thereon~~ on the damages from that day except during ~~such~~ the time ~~as~~ that the debtor is prevented by law or by the act of the creditor from paying the debt."

Section 562. Section 27-1-223, MCA, is amended to read:

"27-1-223. Damages for injuries or death inflicted in a duel. If ~~any~~ a person slays or permanently disables another person in a duel in this state, ~~he must~~ the person shall provide for the maintenance of the spouse and minor children of the person slain or permanently disabled in ~~such~~ a manner and at ~~such~~ a cost, either by aggregate compensation in damages to each or by a monthly, quarterly, or annual allowance, ~~as~~ that is determined by the court and ~~he~~ the party is liable for and ~~must~~ shall pay all debts of the person slain or

permanently disabled."

Section 563. Section 27-1-303, MCA, is amended to read:

"27-1-303. Limitation of damages for breach of obligation. ~~No~~ A person ~~can~~ may not recover a greater amount in damages for the breach of an obligation than ~~he~~ the person could have gained by the full performance ~~thereof~~ of the obligation on both sides unless a greater recovery is specified by statute."

Section 564. Section 27-1-308, MCA, is amended to read:

"27-1-308. Collateral source reductions in actions arising from bodily injury or death -- subrogation rights. (1) In an action arising from bodily injury or death when the total award against all defendants is in excess of \$50,000 and the plaintiff will be fully compensated for ~~his~~ the plaintiff's damages, exclusive of court costs and attorney fees, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral source that does not have a subrogation right.

(2) Before an insurance policy payment is used to reduce an award under subsection (1), the following amounts must be deducted from the amount of the insurance policy payment:

- (a) the amount the plaintiff paid for the 5 years prior to the date of injury;
- (b) the amount the plaintiff paid from the date of injury to the date of judgment; and
- (c) the present value of the amount the plaintiff is ~~thereafter~~ obligated to pay to keep the policy in force for the period for which any reduction of an award is made pursuant to subsection (3).

(3) The jury shall determine its award without consideration of any collateral sources. After the jury determines its award, reduction of the award must be made by the trial judge at a hearing and upon a separate submission of evidence relevant to the existence and amount of collateral sources. Evidence is admissible at the hearing to show that the plaintiff has been or may be reimbursed from a collateral source that does not have a subrogation right. If the trial judge finds that, at the time of hearing, it is not reasonably determinable whether or in what amount a benefit from ~~such~~ a collateral source will be payable, ~~he~~ the judge shall:

- (a) order any person against whom an award was rendered and who claims a deduction under this section to make a deposit into court of the disputed amount, at interest; and
- (b) reduce the award by the amount deposited. The amount deposited and any interest ~~thereon~~ on that amount are subject to the further order of the court, pursuant to the requirements of this section.

(4) Except for subrogation rights specifically granted by state or federal law, there is no right to subrogation for any amount paid or payable to a plaintiff from a collateral source if an award is reduced by that

amount under subsection (1)."

Section 565. Section 27-1-313, MCA, is amended to read:

"27-1-313. Breach of warranty of agent's authority. The detriment caused by the breach of a warranty of an agent's authority is ~~deemed~~ considered to be the amount ~~which~~ that could have been recovered and collected from ~~his~~ the principal if the warranty had been complied with and the reasonable expenses of legal proceedings taken in good faith to enforce the act of the agent against ~~his~~ the principal."

Section 566. Section 27-1-315, MCA, is amended to read:

"27-1-315. Breach of agreement to buy real property. The detriment caused by the breach of an agreement to purchase an estate in real property is ~~deemed~~ considered to be the excess, if any, of the amount ~~which~~ that would have been due to the seller under the contract over the value of the property to ~~him~~ the seller."

Section 567. Section 27-1-316, MCA, is amended to read:

"27-1-316. Breach of covenants in grants of estates in real property. (1) The detriment caused by the breach of a covenant of seisin, of right to convey, of warranty, or of quiet enjoyment in a grant of an estate in real property is ~~deemed~~ considered to be:

(a) the price paid to the grantor or, if the breach is partial only, ~~such~~ the proportion of the price ~~as~~ that the value of the property affected by the breach bore at the time of the grant to the value of the whole property;

(b) interest ~~thereon~~ on the portion of the price for the time during which the grantee derived no benefit from the property, not exceeding 5 years; and

(c) any expenses properly incurred by the covenantee in defending ~~his~~ possession.

(2) The detriment caused by the breach of a covenant against encumbrances in a grant of an estate in real property is ~~deemed~~ considered to be the amount ~~which~~ that has been actually expended by the covenantee in extinguishing either the principal or interest ~~thereof~~ of the amount, not exceeding in the former case a proportion of the price paid to the grantor equivalent to the relative value at the time of the grant of the property affected by the breach as compared with the whole or, in the latter case, interest on a like amount."

Section 568. Section 27-1-320, MCA, is amended to read:

"27-1-320. Conversion of personal property. (1) The detriment caused by the wrongful conversion of personal property is presumed to be:

(a) the value of the property at the time of its conversion with the interest from that time or, when the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict without interest, at the option of the injured party; and

(b) a fair compensation for the time and money properly expended in pursuit of the property.

(2) The presumption declared by subsection (1) cannot be ~~repelled~~ rebutted in favor of one whose possession was wrongful from the beginning by ~~his~~ that person's subsequent application of the property to the benefit of the owner without ~~such~~ the owner's consent."

Section 569. Section 27-1-321, MCA, is amended to read:

"27-1-321. Conversion of personal property -- damages of lienholder. ~~One~~ A person having a mere lien on personal property cannot recover greater damages for ~~its~~ the property's conversion, from ~~one~~ a person having a right ~~thereto~~ to the property superior to ~~his~~ the person holding the lien after ~~his~~ the lien is discharged, than the amount secured by the lien and the compensation allowed by 27-1-320(1) for the loss of time and expenses."

Section 570. Section 27-1-402, MCA, is amended to read:

"27-1-402. How specific relief given. Specific relief is given by:

- (1) taking possession of a thing and delivering it to a claimant;
- (2) compelling the party ~~himself~~ to do that which ought to be done; or
- (3) declaring and determining the rights of parties otherwise than by an award of damages."

Section 571. Section 27-1-415, MCA, is amended to read:

"27-1-415. Parties who cannot be compelled to perform. Specific performance cannot be enforced against a party to a contract in any of the following cases:

- (1) if ~~he~~ the party has not received an adequate consideration for the contract;
- (2) if it is not, as to ~~him~~ the party, just and reasonable;
- (3) if ~~his~~ the party's assent was obtained by the misrepresentations, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract or by any promise of ~~such~~ the party ~~which~~ that has not been substantially fulfilled; or
- (4) if ~~his~~ the party's assent was given under the influence of mistake, misapprehension, or surprise, except that ~~where~~ when the contract provides for compensation in case of mistake, a mistake within the scope

of ~~such~~ the provision may be compensated for and the contract specifically enforced in other respects if proper to be so enforced."

Section 572. Section 27-1-416, MCA, is amended to read:

"27-1-416. Parties who cannot obtain specific performance. Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on ~~his~~ that party's part to the obligation of the other party except ~~where his~~ when the nonperforming party's failure to perform is only partial and either entirely immaterial or capable of being fully compensated, in which case specific performance may be compelled upon full compensation being made for the default."

Section 573. Section 27-1-417, MCA, is amended to read:

"27-1-417. Specific performance by party who signed when other party did not sign contract. A party who has signed a written contract may be compelled specifically to perform ~~it~~ the contract, even though the other party has not signed ~~it~~ the contract, if the latter has performed or offers to perform ~~it~~ the contract ~~on his part~~ and the case is otherwise proper for enforcing specific performance."

Section 574. Section 27-1-421, MCA, is amended to read:

"27-1-421. Compelling performance of successor in interest in title -- obligations respecting real property. Whenever an obligation in respect to real property would be specifically enforced against a particular person, ~~it~~ the obligation may be in ~~like~~ the same manner enforced against any other person claiming under ~~him~~ the particular person by a title created subsequently to the obligation except a purchaser or encumbrancer in good faith and for value; and except that any ~~such~~ other person may ~~exonerate himself~~ be exonerated by conveying all ~~his~~ of that person's estate to the person entitled to enforce the obligation."

Section 575. Section 27-1-432, MCA, is amended to read:

"27-1-432. Judgment for delivery of personal property. A person entitled to the immediate possession of specific personal property may recover the ~~same~~ property in the manner provided by this code. ~~Any~~ A person having the possession or control of a particular article of personal property of which ~~he~~ the person is not the owner may be compelled specifically to deliver it to the person entitled to its immediate possession."

Section 576. Section 27-1-433, MCA, is amended to read:

"27-1-433. Cancellation of written instrument. (1) A written instrument in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable may, upon ~~his~~ that person's application, be ~~so~~ adjudged and ordered to be delivered up or canceled.

(2) An instrument the invalidity of which is apparent upon its face or upon the face of another instrument ~~which~~ that is necessary to the use of the former instrument in evidence is not to be ~~deemed~~ considered capable of causing injury within the provisions of subsection (1).

(3) ~~Where~~ When an instrument is evidence of different rights or obligations, it may be canceled in part and allowed to stand for the residue."

Section 577. Section 27-1-501, MCA, is amended to read:

"27-1-501. Survival of cause of action or defense -- death or disability or transfer of interest. (1) An action, cause of action, or defense does not abate because of the death or disability of a party or the transfer of any interest ~~therein in the action or defense~~, but whenever the cause of action or defense arose in favor of ~~such~~ the party prior to ~~his~~ the party's death or disability or transfer of interest ~~therein~~, it the action or defense survives and may be maintained by ~~his~~ the party's representatives or successors in interest. If the action has not been begun or defense interposed, the action may be begun or defense interposed in the name of ~~his~~ the party's representatives or successors in interest. If the action has been begun or defense interposed, the action or proceeding may be continued as provided in Rule 25, M.R.Civ.P.

(2) Actions brought under ~~this section and~~ 27-1-513 and this section must be combined in one legal action, and any element of damages may be recovered only once."

Section 578. Section 27-1-511, MCA, is amended to read:

"27-1-511. Right of minor to bring civil action or other proceeding. A minor may enforce ~~his~~ the minor's rights by civil action or other legal proceedings in the same manner as a person of full age except that a guardian ~~must~~ shall conduct the ~~same~~ the action or proceedings."

Section 579. Section 27-1-512, MCA, is amended to read:

"27-1-512. Action by parent or guardian for injury to child or ward. Either parent may maintain an action for the injury to a minor child and a guardian for injury to a ward when ~~such~~ the injury is caused by the wrongful act or neglect of another. ~~Such~~ The action may be maintained against the person causing the injury or, if ~~such~~ the person ~~be~~ is employed by another person who is responsible for ~~his~~ the causing person's conduct,

also against ~~such~~ the other responsible person."

Section 580. Section 27-1-513, MCA, is amended to read:

"27-1-513. Action for wrongful death. When injuries to and the death of one person are caused by the wrongful act or neglect of another, the personal representative of the decedent's estate may maintain an action for damages against the person causing the death or, if ~~such~~ the person be is employed by another person who is responsible for ~~his~~ the causing person's conduct, then also against ~~such~~ the other responsible person."

Section 581. Section 27-1-514, MCA, is amended to read:

"27-1-514. Who may sue for whose seduction. (1) The rights of personal relations forbid the seduction of a spouse, child, orphan, or servant.

(2) Either parent may prosecute as plaintiff for the seduction of the child and the guardian for the seduction of the ward, though the child or ward ~~be is~~ not living with or in the service of the plaintiff at the time of the seduction or afterwards and there ~~be is~~ no loss of service.

(3) An unmarried person may prosecute as plaintiff an action for ~~his or her~~ the person's own seduction and may recover ~~therein such~~ damages, pecuniary or exemplary, ~~as that~~ are assessed in ~~such~~ the person's favor."

Section 582. Section 27-1-515, MCA, is amended to read:

"27-1-515. Protection of personal relations -- abduction. The rights of personal relations forbid:

(1) the abduction of a parent from a child;

(2) the abduction or enticement of a wife from ~~her~~ the wife's husband or a husband from ~~his~~ the husband's wife, of a child from a parent or from a guardian entitled to ~~its~~ the child's custody, or of a servant from a master."

Section 583. Section 27-1-701, MCA, is amended to read:

"27-1-701. Liability for negligence as well as willful acts. Except as otherwise provided by law, ~~everyone~~ each person is responsible not only for the results of ~~his~~ the person's willful acts but also for an injury occasioned to another by ~~his~~ the person's want of ordinary care or skill in the management of ~~his~~ the person's property or person except so far as the ~~latter~~ person has willfully or by want of ordinary care brought the injury upon ~~himself~~ the person."

Section 584. Section 27-1-711, MCA, is amended to read:

"27-1-711. Liability of minor or person of unsound mind for own torts -- exemplary damages. A minor or person of unsound mind is civilly liable for a wrong done by ~~him~~ that person but is not liable in exemplary damages unless at the time of the act ~~he~~ the person was capable of knowing that it was wrongful."

Section 585. Section 27-1-712, MCA, is amended to read:

"27-1-712. Liability for damages for deceit. (1) One who willfully deceives another with intent to induce ~~him~~ that person to alter ~~his~~ the person's position to ~~his~~ the person's injury or risk is liable for any damage ~~which~~ he thereby that the person suffers.

(2) A deceit, within the meaning of subsection (1), is either:

(a) the suggestion as a fact of that which is not true by one who does not believe it to be true;

(b) the assertion as a fact of that which is not true by one who has no reasonable ground for believing it to be true;

(c) the suppression of a fact by one who is bound to disclose it or who gives information of other facts ~~which~~ that are likely to mislead for want of communication of that fact; or

(d) a promise made without any intention of performing it.

(3) One who practices a deceit with intent to defraud the public or a particular class of persons is ~~deemed~~ considered to have intended to defraud every individual in that class who is actually misled by the deceit."

Section 586. Section 27-1-713, MCA, is amended to read:

"27-1-713. Duty to restore thing wrongfully acquired or retained. One who obtains a thing without the consent of its owner, by a consent ~~afterwards~~ later rescinded, or by an unlawful exaction ~~which~~ that the owner could not at the time prudently refuse ~~must~~ shall restore it the thing to the person from whom it was ~~thus~~ obtained unless ~~he~~ the person has acquired a title ~~thereto~~ to the thing superior to that of ~~such~~ the other person or unless the transaction was corrupt and unlawful on both sides. The restoration required by this section must be made without demand except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until ~~he~~ the party has notice of the mistake."

Section 587. Section 27-1-714, MCA, is amended to read:

"27-1-714. Limits on liability for emergency care rendered at scene of accident or emergency. (1) Any person licensed as a physician and surgeon under the laws of the state of Montana, any volunteer firefighter

or officer of any nonprofit volunteer fire company, or any other person who in good faith renders emergency care or assistance without compensation except as provided in subsection (2) at the scene of an emergency or accident is not liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by ~~such~~ the person in rendering ~~such~~ the emergency care or assistance.

(2) Subsection (1) includes a person properly trained under the laws of this state who operates an ambulance to and from the scene of an emergency or renders emergency medical treatment on a volunteer basis so long as the total reimbursement received for ~~such~~ the volunteer services does not exceed 25% of ~~his~~ the person's gross annual income or \$3,000 a calendar year, whichever is greater.

(3) If a nonprofit subscription fire company refuses to fight a fire on nonsubscriber property, ~~such~~ the refusal does not constitute gross negligence or a willful or wanton act or omission."

Section 588. Section 27-1-715, MCA, is amended to read:

"27-1-715. Liability of owner of vicious dog. (1) The owner of any a dog which ~~shall~~ that without provocation ~~bite any~~ bites a person while ~~such~~ the person is on or in a public place or lawfully on or in a private place, including the property of the owner of ~~such~~ the dog, located within an incorporated city or town ~~shall be~~ is liable for ~~such~~ damages ~~as~~ that may be suffered by the person bitten regardless of the former viciousness of ~~such~~ the dog or the owner's knowledge of ~~such~~ the viciousness.

(2) A person is lawfully upon the private property of ~~such~~ the owner within the meaning of this section when ~~he~~ the person is on ~~such~~ the property in the performance of any duty imposed upon ~~him~~ the person by the laws of this state or by the laws or postal regulations of the United States of America or when ~~he~~ the person is on ~~such~~ the property as an invitee or licensee of the person lawfully in possession of the property."

Section 589. Section 27-1-719, MCA, is amended to read:

"27-1-719. (Temporary) Liability of seller of product for physical harm to user or consumer. (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to ~~his~~ the user's or consumer's property if:

(a) the seller is engaged in the business of selling ~~such a~~ the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the

condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of ~~his~~ the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and ~~such~~ the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702. (Terminates on occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

27-1-719. (Effective on occurrence of contingency) Liability of seller of product for physical harm to user or consumer. (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling ~~such a~~ the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705."

Section 590. Section 27-1-731, MCA, is amended to read:

"27-1-731. Individual immunity for and indemnification of ditch company employees -- definitions.

(1) As used in this section:

(a) "ditch company" means a private, not-for-profit irrigation ditch or water user cooperative, corporation, association, or organization;

(b) "employee" means a director, officer, or employee of a ditch company.

(2) An employee of a ditch company is not individually liable for actions and omissions within the course and scope of ~~his~~ the employee's employment or position, except as provided in subsection (6). The immunity granted by this subsection does not apply to the liability of a not-for-profit cooperative, corporation, association, or organization.

(3) Upon receiving service of a summons and complaint in an action against ~~him~~ the employee, the employee shall give written notice to ~~his~~ the employee's supervisor requesting that a defense to the action be provided by the ditch company. If the employee ~~has no~~ does not have a supervisor, ~~he~~ the employee shall give notice of the action to the attorney of the ditch company defending legal actions of that type. Except as provided in subsection (6), the ditch company shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the ditch company. The ditch company shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the ditch company refuses or

is unable to provide a direct defense, the employee may retain other counsel. Except as provided in subsection (6), the ditch company shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may otherwise be payable under this section.

(4) The employee must be indemnified by the ditch company for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit unless the employee's conduct falls within the exclusions provided in subsection (6).

(5) Recovery against a ditch company is a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct gave rise to the claim. In an action against a ditch company, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the ditch company acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment unless the claim constitutes an exclusion provided in subsections (6)(b) through (6)(d).

(6) The employee may not be defended or indemnified by the ditch company for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:

(a) the conduct upon which the claim is based constitutes oppression, fraud, or malice or for any other reason does not arise out of the course and scope of the employee's employment or position;

(b) the conduct of the employee is a criminal offense as defined in Title 45, chapters 4 through 7;

(c) the employee compromised or settled the claim without the consent of the ditch company; or

(d) the employee failed or refused to cooperate reasonably in the defense of the case.

(7) If ~~no~~ a judicial determination has not been made applying the exclusions provided in subsection (6), the ditch company may determine whether those exclusions apply. However, if there is a dispute as to whether the exclusions of subsection (6) apply and the ditch company concludes it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the ditch company is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in ~~such~~ the action holding that the ditch company had no obligation to defend the employee. The ditch company has no obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the ditch company under this subsection."

Section 591. Section 27-1-733, MCA, is amended to read:

"27-1-733. Liability of nonprofit organizations and their employees for injuries suffered in sponsored rodeo and similar events. (1) ~~No~~ A nonprofit organization sponsoring a rodeo, cowboy polo, cutting horse, O-Mok-See, trail riding, horse packing, horse show, or jackpot roping event, or employee of the organization, is not liable for injuries suffered by a contestant as a result of ~~his~~ the contestant's voluntary participation in the event except for injuries caused by a willful or wanton act of the sponsoring organization or its employees.

(2) For purposes of this section, a minor is considered to be in voluntary participation in an event if:

- (a) ~~he~~ the minor has provided written consent to participate in the event; and
- (b) the consent is approved by one of the minor's parents or by ~~his~~ the minor's legal guardian."

Section 592. Section 27-1-802, MCA, is amended to read:

"27-1-802. Libel defined. Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation ~~to the eye which~~ that exposes any person to hatred, contempt, ridicule, or obloquy or ~~which~~ causes ~~him~~ a person to be shunned or avoided or ~~which~~ that has a tendency to injure ~~him~~ a person in ~~his~~ the person's occupation."

Section 593. Section 27-1-803, MCA, is amended to read:

"27-1-803. Slander defined. Slander is a false and unprivileged publication other than libel ~~which~~ that:

- (1) charges any person with crime or with having been indicted, convicted, or punished for crime;
- (2) imputes in ~~him~~ a person the present existence of an infectious, contagious, or loathsome disease;
- (3) tends directly to injure ~~him~~ a person in respect to ~~his~~ the person's office, profession, trade, or business, either by imputing to ~~him~~ the person general disqualification in those respects ~~which~~ that the office or other occupation peculiarly requires or by imputing something with reference to ~~his~~ the person's office, profession, trade, or business that has a natural tendency to lessen its profit;
- (4) imputes to ~~him~~ a person impotence or want of chastity; or
- (5) by natural consequence causes actual damage."

Section 594. Section 27-1-813, MCA, is amended to read:

"27-1-813. Liability of person broadcasting -- liability of owner for broadcast prepared by station.

Nothing in 27-1-811 or 27-1-812 may be construed to relieve any person broadcasting over a radio station from

liability under the law of defamation or to relieve any person, firm, or corporation owning or operating a radio broadcasting station from liability under the law of defamation on account of any broadcast prepared or made by ~~such a~~ person, firm, or corporation or by any officer or employee ~~thereof~~ of a radio station in the course of his employment. Whenever ~~such~~ an owner or operator of a radio station is liable on account of a broadcast and two or more broadcasting stations were connected simultaneously or by transcription, film, metal tape, or other approved or adapted use for joint operation in the making of the broadcast, liability is limited solely to the person, firm, or corporation owning or operating the radio station ~~which that~~ originated the broadcast."

Section 595. Section 27-1-820, MCA, is amended to read:

"27-1-820. Content of correction. To the extent that the true facts are, with reasonable diligence, ascertainable with definiteness and certainty, only a retraction constitutes a correction; otherwise the publication or broadcast of the defamed person's statement of the true facts or so much ~~thereof as~~ of the statement that is not defamatory of another, scurrilous, or otherwise improper for publication or broadcast, published or broadcast as his the defamed person's statement, constitutes a correction within the meaning of 27-1-818 through 27-1-821."

Section 596. Section 27-1-1102, MCA, is amended to read:

"27-1-1102. Duty to warn of violent behavior. A mental health professional has a duty to warn of or take reasonable precautions to provide protection from violent behavior only if the patient has communicated to the mental health professional an actual threat of physical violence by specific means against a clearly identified or reasonably identifiable victim. The duty is discharged by a mental health professional if ~~he~~ the mental health professional has:

- (1) made reasonable efforts to communicate the threat to the victim and notify the law enforcement agency closest to the patient's or the victim's residence of the threat of violence; and
- (2) supplied a requesting law enforcement agency with any information ~~he~~ the mental health professional has concerning the threat of violence."

Section 597. Section 27-1-1103, MCA, is amended to read:

"27-1-1103. Immunity from liability. (1) No monetary liability and no cause of action may arise against any mental health professional for failing to predict, warn of, or take precautions to provide protection from a patient's threatened violent behavior unless ~~he~~ the mental health professional has a duty to warn of violent

behavior, as provided in 27-1-1102.

(2) No monetary liability and no cause of action may arise against any mental health professional for disclosing confidential or privileged information in an effort to discharge a duty arising under 27-1-1102."

Section 598. Section 27-2-210, MCA, is amended to read:

"27-2-210. Actions arising from the seizure or sale of property for taxes. (1) Within 1 year is the period prescribed for the commencement of an action against an officer or officer de facto:

(a) to recover any goods, wares, merchandise, or other property seized by ~~any such~~ the officer in ~~his~~ the officer's official capacity as tax collector;

(b) to recover the price or value of any goods, wares, merchandise, or other personal property ~~so~~ seized;

(c) for damages for the seizure, detention, or sale of or injury to any goods, wares, merchandise, or other personal property seized; or

(d) for damages done to any person or property in making ~~any such a~~ a seizure.

(2) The period prescribed for the commencement of an action to recover stock sold for a delinquent assessment is within 6 months.

(3) (a) An action against a county to recover a royalty interest in land acquired by the county by tax deed must be brought within 3 years after the commencement of commercial production of oil, gas, or other minerals from the land.

(b) Nothing contained in subsection (3)(a) ~~shall change~~ changes the nature of a royalty interest prior to actual production. The purpose of subsection (3)(a) is to place a limitation on actions seeking royalty interests reserved by the county, once production has commenced, without in any way affecting the validity of any claims a county may have prior to the commencement of production."

Section 599. Section 27-2-213, MCA, is amended to read:

"27-2-213. Actions against banks. (1) Except as provided in subsection (2), there are no time limitations on the commencement of actions to recover money or other property deposited with any bank, banker, trust company, or savings and loan corporation, association, or society.

(2) Any action to obtain, set aside, or question in any manner any stated or settled account between any bank, banker, trust company, or savings and loan corporation, association, or society and any depositor with ~~such~~ the bank, banker, trust company, or savings and loan corporation, association, or society must be commenced within 5 years from the date of the statement of ~~such~~ the account. Any action based upon or arising from the

payment by any bank, banker, trust company, or savings and loan corporation, association, or society of a forged, raised, or otherwise altered check, order, or promissory note out of the deposit, money, or property of the plaintiff must be commenced within 3 years from the day on which the plaintiff or ~~his~~ the plaintiff's agent, assignee, or personal representative was notified of ~~such~~ payment or received ~~such~~ the check, order, or note marked "paid".

Section 600. Section 27-2-402, MCA, is amended to read:

"27-2-402. When defendant is out of state. When the cause of action accrues against a person who is out of the state and cannot be served with process, the action may be commenced within the term ~~herein~~ limited under this part after ~~his~~ the person's return to the state; ~~and if~~ If, after the cause of action accrues, ~~he~~ the person departs from the state and cannot be served with process, the time of ~~his~~ the person's absence is not part of the time limited for the commencement of the action."

Section 601. Section 27-2-405, MCA, is amended to read:

"27-2-405. When controversy submitted to arbitration. ~~Where~~ When the persons who might be adverse parties in an action have entered into a written agreement to submit to arbitration or to refer the cause of action or a controversy in which it might be available or have entered into a written submission ~~thereof~~ of the cause or controversy to arbitrators and, before an award or other determination ~~thereupon~~, the agreement or submission is revoked, so as to render it ineffectual, by the death of either party ~~thereto~~ or by the act of the person against whom the action might have been brought or the execution ~~thereof~~ or the remedy upon an award or other determination ~~thereunder~~ is stayed by injunction or other order procured ~~by him~~ from a competent court or judge, the time ~~which~~ that has elapsed between the entering into the written submission or agreement and the revocation ~~thereof~~ of the submission or agreement or the expiration of the stay is not a part of the time limited for the commencement of the action."

Section 602. Section 27-2-407, MCA, is amended to read:

"27-2-407. When action terminated or judgment reversed. If an action is commenced within the time limited ~~therefor~~ for the action and a judgment ~~therein~~ is reversed on appeal without awarding a new trial or the action is terminated in any other manner than by a voluntary discontinuance, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff or, if ~~he~~ the plaintiff dies and the cause of action survives, ~~his~~ the plaintiff's representative may commence a new action for the same cause after the expiration of the time ~~so~~ limited and within 1 year after ~~such~~ a reversal or termination."

Section 603. Section 27-2-408, MCA, is amended to read:

"27-2-408. Assertion of counterclaim. (1) A defendant is entitled to assert against a plaintiff, by pleading or amendment, any counterclaim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against ~~him~~ the defendant.

(2) The time period between the commencement and termination of an action is not part of the time limit for the commencement of an action by a defendant to recover for a counterclaim or to interpose it in that action or another action by the same plaintiff or a successor arising out of the same transaction or occurrence."

Section 604. Section 27-5-211, MCA, is amended to read:

"27-5-211. Appointment of arbitrators. If the arbitration agreement provides a method of appointment of arbitrators, this method ~~shall~~ must be followed. If ~~no~~ a method is not provided, the agreed method fails or for any reason cannot be followed, or an appointed arbitrator fails or is unable to act and ~~his~~ the arbitrator's successor has not been duly appointed, the district court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement."

Section 605. Section 27-5-216, MCA, is amended to read:

"27-5-216. Award. (1) The award must be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally by certified mail or as provided in the agreement.

(2) An award must be made within the time fixed by the agreement or, if no time is fixed, within ~~such~~ the time ~~as~~ that the district court orders on application of a party. The parties may extend the time, in writing, either before or after the expiration ~~thereof~~ of the time. A party waives the objection that an award was not made within the time required unless ~~he~~ the party notifies the arbitrators of ~~his~~ the party's objection prior to the delivery of the award to ~~him~~ that party."

Section 606. Section 27-5-217, MCA, is amended to read:

"27-5-217. Change of award by arbitrators. On the application of a party or, if an application to the court is pending under 27-5-311, 27-5-312, or 27-5-313, on submission to the arbitrators by the court under ~~such~~ conditions ~~as~~ that the court may order, the arbitrators may modify or correct the award upon the grounds stated in 27-5-313(1)(a) and (1)(c) or for the purpose of clarifying the award. The application must be made within 20 days after delivery of the award to the applicant. Written notice ~~thereof~~ shall must be given immediately to the opposing party, stating that ~~he~~ the opposing party must serve ~~his~~ the party's objections ~~thereto~~ to the award, if

any, within 10 days from the notice. A modified or corrected award is subject to the provisions of 27-5-311 through 27-5-313."

Section 607. Section 27-5-323, MCA, is amended to read:

"27-5-323. Venue. An initial application must be made to the court of the county in which the agreement provides the arbitration hearing must be held or, if the hearing has been held, in the county in which it was held. Otherwise, the application must be made in the county where the adverse party resides or has a place of business or, if ~~he has no~~ the adverse party does not have a residence or place of business in this state, to the court of any county. All subsequent applications must be made to the court hearing the initial application unless the court otherwise directs. ~~No~~ An agreement concerning venue involving a resident of this state is not valid unless the agreement requires that arbitration occur within the state of Montana. This requirement may only be waived upon the advice of counsel as evidenced by counsel's signature ~~thereto~~ on the agreement."

Section 608. Section 27-6-202, MCA, is amended to read:

"27-6-202. Employment of staff and maintenance of offices. (1) The director, subject to the approval of the chief justice, may employ and fix the compensation for clerical and other assistants ~~as he~~ that the director considers necessary.

(2) The panel shall maintain adequate offices, in which its records ~~shall~~ must be kept and its official business transacted."

Section 609. Section 27-6-203, MCA, is amended to read:

"27-6-203. Compensation of panel and staff. (1) All members of the panel ~~shall~~ must be paid a salary in the amount of \$40 an hour, under guidelines promulgated by the Montana supreme court.

(2) All members of the panel, the director, and ~~his~~ the director's staff are entitled to travel expenses incurred while on the business of the panel, as provided in 2-18-501 through 2-18-503, but ~~such~~ the expenses ~~shall~~ must be approved by the director before payment is made."

Section 610. Section 27-6-301, MCA, is amended to read:

"27-6-301. How cases submitted. Claimants shall submit a case for the consideration of the panel prior to filing a complaint in any district court or other court sitting in Montana by addressing an application, in writing, signed by the claimant or ~~his~~ the claimant's attorney, to the director of the panel."

Section 611. Section 27-6-305, MCA, is amended to read:

"27-6-305. Service on health care provider. Upon receipt of an application for review, the director or ~~his~~ the director's delegate shall cause to be served a true copy of the application on the health care providers involved. Service ~~shall~~ must be effected by mailing a certified copy of the application to the health care provider at the provider's last-known address, postage prepaid, by certified mail, return receipt requested."

Section 612. Section 27-6-404, MCA, is amended to read:

"27-6-404. Disqualification of panel member. (1) ~~Any A~~ member ~~shall disqualify himself~~ must be disqualified from consideration of ~~any a~~ case in which, by virtue of ~~his~~ the member's circumstances, ~~he feels his presence~~ the member believes that serving on the panel would be inappropriate, considering the purpose of the panel. The director may excuse a proposed panelist from serving.

(2) Whenever a party makes and files an affidavit that a panel member selected pursuant to this part cannot, according to the belief of the party making the affidavit, sit in review of the application with impartiality, that panel member may proceed no further. Another panel member must be selected by the health care provider's professional association or state licensing board or the state bar, as ~~the case may be~~ appropriate. A party may not disqualify more than three panel members in this manner in any single malpractice claim, and the affidavit must be filed within 15 days of the transmittal by the director, under 27-6-402, of the names of the panel members selected."

Section 613. Section 27-6-502, MCA, is amended to read:

"27-6-502. Conduct of hearing. (1) At the time set for hearing, the claimant submitting the case for review ~~shall~~ must be present and shall make a brief introduction of ~~his~~ the case, including a resume of the facts constituting the alleged professional malpractice ~~which he~~ that the claimant is prepared to prove. The health care provider against whom the claim is brought and ~~his~~ the health care provider's attorney may be present and may make an introductory statement of ~~his~~ the health care provider's case.

(2) Both parties may call witnesses to testify before the panel, ~~which~~ and the witnesses ~~shall~~ must be sworn. Medical texts, journals, studies, and other documentary evidence relied upon by either party may be offered and admitted if relevant. Written statements of facts by treating health care providers may be reviewed.

(3) The hearing ~~will~~ must be informal, and ~~no~~ an official transcript may not be made."

Section 614. Section 27-6-503, MCA, is amended to read:

"27-6-503. Conclusion of hearing -- supplemental hearing. (1) At the conclusion of the hearing, the panel may take the case under advisement or may request that additional facts, records, witnesses, or other information be obtained and presented to it at a supplemental hearing, which ~~shall~~ must be set for a date and time certain, not longer than 30 days from the date of the original hearing unless the claimant or ~~his~~ the claimant's attorney consents in writing to a longer period.

(2) Any supplemental hearing ~~shall~~ must be held in the same manner as the original hearing, and the parties concerned and their attorneys may be present."

Section 615. Section 27-6-601, MCA, is amended to read:

"27-6-601. Selection of chairman presiding officer. At or prior to the time set for the hearing, the attorney members of the panel shall select a chairman presiding officer who ~~shall~~ must be an attorney and who shall preside over the panel deliberations."

Section 616. Section 27-6-604, MCA, is amended to read:

"27-6-604. Form and content of decision. The decision must in every case be signed for the panel by the chairman presiding officer, must contain only the conclusions reached by a majority of its members, and must list the number of members, if any, dissenting from the opinion. Upon request of any party, the majority shall briefly explain the reasoning and basis for the decision and the dissenters shall explain the reasoning and basis for disagreement. Each party must be informed by the panel of the right to nonbinding mediation under 27-6-606."

Section 617. Section 27-6-702, MCA, is amended to read:

"27-6-702. Tolling of statute of limitations. The running of the applicable limitation period related to a malpractice claim is tolled upon receipt by the director of the application for review as to all health care providers named in the application as parties to the panel proceeding and as to all other persons or entities named in the application as necessary or proper parties for any court action that might subsequently arise out of the same factual circumstances set forth in the application. The running of the applicable limitation period does not begin again until 30 days after either an order of dismissal, with or without prejudice against refiling, is issued from the panel chairman presiding officer, or from the director upon the consent of the parties to the claim, or after the panel's final decision, whichever occurs first, is entered in the permanent files of the panel and a copy is served upon the complainant or the complainant's attorney if represented by counsel, by certified mail."

Section 618. Section 27-9-102, MCA, is amended to read:

"27-9-102. Requirement of signed, verified statement by defendant. A statement in writing must be made, signed by the defendant, and verified by ~~his~~ the defendant's oath to the following effect:

- (1) It must authorize the entry of judgment for a specified sum.
- (2) If it ~~be~~ is for money due or to become due, it must state concisely the facts out of which it arose and show that the sum confessed ~~therefor~~ is justly due or to become due.
- (3) If it ~~be~~ is for the purpose of securing the plaintiff against contingent liability, it must state concisely the facts constituting the liability and show that the sum confessed ~~therefor~~ does not exceed the ~~same~~ contingent liability."

Section 619. Section 27-9-104, MCA, is amended to read:

"27-9-104. Filing and costs -- justice's court. In a justice's court ~~which~~ that has authority to enter the judgment, the statement may be filed with the justice, who shall ~~thereupon~~ enter in ~~his~~ the docket a judgment of ~~his~~ the justice's court for the amount confessed, with costs. If a transcript of ~~such~~ the judgment is filed with the clerk of the district court, a copy of the statement must be filed with it."

Section 620. Section 27-12-103, MCA, is amended to read:

"27-12-103. Definitions. As used in this chapter, the following definitions apply:

- (1) "Chiropractic physician" means:
 - (a) for purposes of the annual assessment under 27-12-206, a person licensed to practice chiropractic under Title 37, chapter 12, who at the time of the assessment:
 - (i) has ~~his~~ the individual's principal residence or place of chiropractic practice in the state of Montana;
 - (ii) is not employed full time by any federal agency or entity; and
 - (iii) is not fully retired from the practice of chiropractic; or
 - (b) for all other purposes, a person licensed to practice chiropractic under Title 37, chapter 12, who at the time of the occurrence of the incident giving rise to a malpractice claim:
 - (i) had ~~his~~ the individual's principal residence or place of chiropractic practice in the state of Montana and was not employed full time by any federal agency or entity; or
 - (ii) was a professional service corporation, partnership, or other business entity organized under the laws of a state to render chiropractic services and each of whose shareholders, partners, or owners were chiropractic physicians licensed to practice chiropractic under Title 37, chapter 12.

(2) "Director" means the director of the Montana chiropractic legal panel.

(3) "Malpractice claim" means any claim or potential claim against a chiropractic physician for chiropractic treatment, lack of chiropractic treatment, or alleged departure from accepted standards of chiropractic health care that proximately results in damage to the claimant; and includes but is not limited to a tort or contract claim or potential claim.

(4) "Panel" means the Montana chiropractic legal panel created in 27-12-104."

Section 621. Section 27-12-202, MCA, is amended to read:

"27-12-202. Employment of staff and maintenance of offices. (1) The director, subject to the approval of the chief justice, may employ and fix the compensation for clerical and other assistants ~~as he~~ that the director considers necessary.

(2) The panel shall maintain adequate offices, in which its records must be kept and official business transacted."

Section 622. Section 27-12-203, MCA, is amended to read:

"27-12-203. Compensation of panel members and staff. (1) Each member of the panel must be paid a salary of \$40 an hour, under guidelines promulgated by the Montana supreme court.

(2) Each member of the panel, the director, and ~~his~~ the director's staff are entitled to travel expenses incurred while on the business of the panel, as provided in 2-18-501 through 2-18-503. The director shall approve ~~such~~ the expenses before payment is made."

Section 623. Section 27-12-301, MCA, is amended to read:

"27-12-301. How cases submitted -- no court action before application. A claimant shall submit a case for the consideration of the panel before filing a complaint in a court sitting in Montana by addressing an application in writing, signed by the claimant or ~~his~~ the claimant's attorney, to the director of the panel."

Section 624. Section 27-12-305, MCA, is amended to read:

"27-12-305. Service on chiropractic physician. Upon receipt of an application, the director or ~~his~~ the director's delegate shall serve a copy of the application on the chiropractic physician whose alleged malpractice caused the application to be filed. Service must be by mailing a certified copy of the application to the chiropractic physician at ~~his~~ the chiropractic physician's last-known address, postage prepaid, by certified mail, return receipt

requested."

Section 625. Section 27-12-404, MCA, is amended to read:

"27-12-404. Disqualification of panel member. (1) A panel member or proposed member ~~shall disqualify himself~~ must be disqualified from consideration of a case in which, by virtue of ~~his~~ the member's circumstances, ~~he~~ the member believes ~~his presence~~ that serving on the panel would be inappropriate, considering the purpose of the panel. The director may excuse a panel member or proposed member from serving.

(2) If a party files an affidavit stating that ~~he~~ the party believes a panel member cannot impartially sit in review of the application, that panel member is disqualified from consideration of the case. The affidavit must be filed within 15 days of the transmittal by the director, under 27-12-402, of the names of the panel members selected. A party may not disqualify more than three panel members. The entity that chose the disqualified member shall select another panel member."

Section 626. Section 27-12-503, MCA, is amended to read:

"27-12-503. Conclusion of hearing -- supplemental hearing. (1) At the conclusion of the hearing, the panel may take the case under advisement or may request that additional facts, records, witnesses, or other information be obtained and presented to it at a supplemental hearing. The supplemental hearing must be held at a date and time no more than 30 days from the date of the original hearing, unless the claimant or ~~his~~ the claimant's attorney consents in writing to a longer period.

(2) A supplemental hearing must be held in the same manner as the original hearing, and the parties and their attorneys may be present."

Section 627. Section 27-12-601, MCA, is amended to read:

"27-12-601. Selection of chairman presiding officer. At or prior to the time set for the hearing, the attorney members of the panel shall select a ~~chairman~~ presiding officer, who must be an attorney."

Section 628. Section 27-12-604, MCA, is amended to read:

"27-12-604. Form and content of decision. (1) The decision must:

(a) be in writing and signed by the ~~chairman~~ presiding officer;

(b) contain only the conclusions reached by a majority of the panel; and

(c) list the number of dissenting members, if any.

(2) The majority may briefly explain the reasoning and the basis for its decision, and the dissenters may likewise explain the reasons for disagreement."

Section 629. Section 27-12-701, MCA, is amended to read:

"27-12-701. Tolling of statute of limitations. (1) Upon receipt of an application by the director, the running of an applicable limitation period in a malpractice claim is tolled as to each chiropractic physician named as a party and as to each other person or entity named as a necessary or proper party for a court action that might subsequently arise out of the factual circumstances set forth in the application.

(2) The running of the applicable limitation period in a malpractice claim does not begin again until:

(a) 30 days after an order of dismissal, with or without prejudice against refiling, is issued; or

(b) after the panel's final decision is entered in the permanent files of the panel and a copy is served upon the complainant or ~~his~~ the complainant's attorney."

Section 630. Section 27-15-101, MCA, is amended to read:

"27-15-101. When plaintiff may be required to elect among arrest, injunction, and attachment.

~~Where~~ When an application for an order of arrest, injunction order, and writ of attachment or two of them is made in the same action against the same defendant and it satisfactorily appears that, under the particular circumstances of the case, two or all of them are not necessary for the plaintiff's security, the court or judge may, in ~~its~~ the court's or ~~his~~ judge's discretion, require the plaintiff to elect between them."

Section 631. Section 27-15-102, MCA, is amended to read:

"27-15-102. Availability of provisional remedies to defendant interposing counterclaim. Whenever the defendant interposes a counterclaim and ~~thereupon~~ demands an affirmative judgment against the plaintiff, ~~his~~ the defendant's right to a provisional remedy is the same as it would be in an action brought by ~~him~~ the defendant against the plaintiff for the cause of action stated in the counterclaim and demanding the same judgment. For the purpose of applying ~~to such a case~~ the provisions of ~~chapters 15 through 20 of this title and chapter 8 of Title 25, chapter 8, and Title 27, chapters 15 through 20, to a case involving a counterclaim,~~ the defendant is considered the plaintiff, the plaintiff is considered the defendant, and the counterclaim ~~so~~ set forth in the answer is considered the complaint."

Section 632. Section 27-16-102, MCA, is amended to read:

"27-16-102. When defendant may be arrested. The defendant may be arrested in the following cases:

(1) in an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the state with intent to defraud ~~his~~ the defendant's creditors;

(2) in an action for willful injury to person or character or to property ~~which~~ that the defendant knew belonged to another;

(3) in an action:

(a) for a fine or penalty or for money or property fraudulently misapplied or converted to ~~his~~ the defendant's own use by a public officer, an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of ~~his~~ employment ~~as such~~, or by any other person in a fiduciary capacity;

(b) for misconduct or neglect in office or in a professional employment; or

(c) for a willful violation of duty;

(4) in an action to recover possession of personal property unjustly obtained, when the property or any part thereof has been concealed, removed, or disposed of so that it cannot be found or taken by the sheriff;

(5) when the defendant has been guilty of fraud in contracting the debt or incurring the obligation for which the action is brought or in concealing or disposing of the property for the taking, detention, or conversion of which the action is brought;

(6) when the defendant has removed or disposed of ~~his~~ the defendant's property or is about to do so with intent to defraud ~~his~~ the defendant's creditors."

Section 633. Section 27-16-204, MCA, is amended to read:

"27-16-204. Plaintiff's undertaking. Before making the order, the judge ~~must~~ shall require a written undertaking on the part of the plaintiff, with at least two sufficient sureties, to the effect that, if the defendant ~~recover~~ recovers judgment or if the court ~~shall~~ finally ~~decide~~ decides that the plaintiff was not entitled to an order of arrest, the plaintiff will pay all costs and charges that may be awarded to the defendant and all damages ~~which~~ he that the defendant may sustain by reason of the arrest, if the ~~same~~ be arrest is wrongful or without sufficient cause, not exceeding the sum specified in the undertaking, which ~~shall~~ must be at least \$500."

Section 634. Section 27-16-205, MCA, is amended to read:

"27-16-205. Affidavits of sureties -- filing of undertaking. Each of the sureties ~~must~~ shall annex to

the undertaking an affidavit that ~~he~~ the surety is a resident and householder or freeholder within the state and worth double the sum specified in the undertaking, over and above all ~~his~~ the surety's debts and liabilities, exclusive of property exempt from execution. The undertaking must be filed with the clerk of the court."

Section 635. Section 27-16-206, MCA, is amended to read:

"27-16-206. Directions to sheriff in order. The order must require the sheriff of the county where the defendant may be found ~~forthwith~~ to arrest ~~him~~ the defendant and hold ~~him~~ the defendant to bail in a specified sum and to return the order at a time ~~therein mentioned~~ specified in the order to the clerk of the court in which the action is pending."

Section 636. Section 27-16-207, MCA, is amended to read:

"27-16-207. Service of order and affidavit. The order of arrest, with a copy of the affidavit upon which it is made, must be delivered to the sheriff, who, upon arresting the defendant, shall deliver ~~him~~ the defendant a copy of the affidavit and also, if the defendant desires, a copy of the order of arrest."

Section 637. Section 27-16-208, MCA, is amended to read:

"27-16-208. Execution of order -- prepayment of expense by plaintiff. The sheriff ~~must~~ shall execute the order by arresting the defendant and keeping ~~him~~ the defendant in custody until discharged by law. ~~But~~ However, the sheriff is not bound to keep ~~such person~~ the defendant under arrest more than 24 hours unless the plaintiff ~~advance~~ advances each day the expense of keeping ~~such person,~~ the defendant, ~~which expense shall~~ The expenses must be taxed as costs in the action and ~~in no case shall~~ may not be a charge against the county."

Section 638. Section 27-16-209, MCA, is amended to read:

"27-16-209. Liability of sheriff for escape or rescue. If after being arrested the defendant ~~escape~~ escapes or ~~be~~ is rescued, the sheriff is liable as bail, but ~~he~~ the sheriff may ~~discharge himself~~ be discharged from ~~such~~ liability by the giving ~~and~~ justification of bail at any time before judgment."

Section 639. Section 27-16-210, MCA, is amended to read:

"27-16-210. Recovery on sheriff's official bond. If a judgment ~~be~~ is recovered against the sheriff upon ~~his~~ the sheriff's liability as bail and an execution ~~thereon~~ be is returned unsatisfied in whole or in part, the same proceeding may be had on ~~his~~ the sheriff's official bond for the recovery of the whole or any deficiency as in other

cases of delinquency."

Section 640. Section 27-16-402, MCA, is amended to read:

"27-16-402. Form of undertaking for bail. The defendant may give bail by causing a written undertaking to be executed by two or more sufficient sureties, stating their places of residence and occupations, to the effect that they are bound in the amount mentioned in the order of arrest, that the defendant ~~shall~~ must at all times ~~render himself~~ be amenable to the process of the court during the pendency of the action and to ~~such~~ as the orders that may be issued to enforce the judgment ~~therein in the action~~ or that they will pay to the plaintiff the amount of any judgment ~~which~~ that may be recovered in the action."

Section 641. Section 27-16-403, MCA, is amended to read:

"27-16-403. Qualifications of sureties. The qualifications of bail ~~shall~~ must be as follows:

- (1) Each of them must be a resident and householder or freeholder within the county.
- (2) Each must be worth the amount specified in the order of arrest or the amount to which the order is reduced, as provided in this chapter, over and above all ~~his~~ the bail's debts and liabilities, exclusive of property exempt from execution; ~~but~~ However, the judge or clerk, on justification, may allow more than two sureties to justify severally, in amounts less than that expressed in the order, if the whole justification ~~be~~ is equivalent to that of two sufficient bail."

Section 642. Section 27-16-404, MCA, is amended to read:

"27-16-404. Filing of order with return and undertaking -- plaintiff's notice of nonacceptance. (1) Within the time limited for that purpose, the sheriff ~~must~~ shall file the order of arrest in the office of the clerk of the court in which the action is pending, with ~~his~~ the return endorsed ~~thereon~~ on the order, together with a copy of the undertaking of the bail. The sheriff shall retain the original undertaking ~~he must retain~~ in ~~his~~ the sheriff's possession until filed, as ~~herein~~ provided in this section.

(2) The plaintiff, within 10 days ~~thereafter~~ after filing, may serve upon the sheriff a notice that ~~he~~ the plaintiff does not accept the bail, or ~~he shall be deemed~~ the plaintiff is considered to have accepted ~~them~~ the bail and the sheriff ~~shall be~~ is exonerated from liability. If ~~no notice be~~ has not been served within 10 days, the original undertaking must be filed with the clerk of the court."

Section 643. Section 27-16-405, MCA, is amended to read:

"27-16-405. Notice of justification of sureties -- new undertaking. Within 5 days after receipt of notice, the sheriff or defendant may give to the plaintiff or ~~his~~ the plaintiff's attorney notice of the justification of the same or other bail, (specifying the place of residence and occupation of the ~~latter~~) attorney, before a judge of the court or clerk ~~thereof~~ of the court, at a specified time and place, ~~the time~~ not to be less than 5 or more than 10 days ~~thereafter~~ after the notice of the justification, except ~~by~~ with consent of parties. ~~In case~~ If other bail is given, there ~~shall~~ must be a new undertaking."

Section 644. Section 27-16-406, MCA, is amended to read:

"27-16-406. Procedure for justification. For the purpose of justification, each of the bail ~~must~~ shall attend before the judge or clerk at the time and place ~~mentioned~~ specified in the notice and may be examined on oath, on the part of the plaintiff, touching ~~his~~ the bail's sufficiency, in ~~such a manner as~~ that the judge or clerk, in ~~his~~ the judge's or clerk's discretion, may think proper. The examination ~~shall~~ must be reduced to writing and subscribed by the bail if required by the plaintiff."

Section 645. Section 27-16-407, MCA, is amended to read:

"27-16-407. Acceptance of sufficiency of sureties by judge or clerk. If the judge or clerk ~~shall find~~ finds the bail sufficient, ~~he must~~ the judge or clerk shall annex the examination to the undertaking, endorse ~~his~~ the allowance ~~thereon~~ on the examination, and cause them to be filed, and the sheriff ~~shall thereupon be~~ is then exonerated from liability."

Section 646. Section 27-16-501, MCA, is amended to read:

"27-16-501. Surrender of defendant. At any time before judgment or within 10 days ~~thereafter~~ after the judgment, the bail may surrender the defendant in their exoneration or ~~he~~ the defendant may surrender ~~himself~~ to the sheriff of the county where ~~he~~ the defendant was arrested."

Section 647. Section 27-16-502, MCA, is amended to read:

"27-16-502. Manner and time of surrender. For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may ~~themselves~~ arrest ~~him~~ the defendant or, by a written authority endorsed on a certified copy of the undertaking, may empower the sheriff to ~~do so~~ arrest the defendant."

Section 648. Section 27-16-503, MCA, is amended to read:

"27-16-503. Exoneration of sureties. Upon arrest of the defendant by the sheriff or upon ~~his~~ the defendant's delivery to the sheriff by the bail or upon ~~his~~ the defendant's own surrender, the bail ~~shall~~ must be exonerated, ~~provided such~~ if the arrest, delivery, or surrender take place before the expiration of 10 days after judgment; ~~but~~ However, if ~~such~~ the arrest, delivery, or surrender ~~be~~ is not made within 10 days after the judgment, the bail ~~shall~~ must be finally charged on their undertaking and be bound to pay the amount of the judgment within 10 days ~~thereafter~~ after the judgment."

Section 649. Section 27-16-505, MCA, is amended to read:

"27-16-505. Other circumstances in which sureties exonerated. The bail must also be exonerated by the death of the defendant, ~~his~~ the defendant's imprisonment in the state ~~penitentiary or~~ prison, or ~~his~~ the defendant's legal discharge from the obligation to render ~~himself~~ the defendant amenable to the process."

Section 650. Section 27-16-601, MCA, is amended to read:

"27-16-601. Deposit of money by defendant with sheriff. The defendant may, at the time of ~~his~~ arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. ~~In case~~ If the amount of bail ~~be~~ is reduced, as provided in this chapter, the defendant may deposit ~~such~~ the amount instead of giving bail. In either case, the sheriff shall give the defendant a certificate of the deposit made, and the defendant ~~shall~~ must be discharged from custody."

Section 651. Section 27-16-602, MCA, is amended to read:

"27-16-602. Sheriff to pay money into court -- certificates of payment. The sheriff ~~must~~ shall, immediately after the deposit, pay the ~~same~~ amount into court and take from the clerk receiving the ~~same~~ amount two certificates of ~~such~~ payment, one of which ~~he~~ the sheriff shall deliver or transmit to the plaintiff or ~~his~~ the plaintiff's attorney and the other to the defendant. For any default in making ~~such~~ the payment, the same proceedings may be had on the official bond of the sheriff to collect the sum deposited as in other cases of delinquency."

Section 652. Section 27-16-604, MCA, is amended to read:

"27-16-604. Disposition of deposited money after judgment. ~~Where~~ If money ~~shall have~~ has been deposited, ~~if and~~ it remains on deposit at the time of recovery of a judgment in favor of the plaintiff, the clerk ~~must~~ shall, under direction of the court, apply the ~~same~~ money in satisfaction ~~thereof~~ of the judgment and, after

satisfying the judgment, refund the surplus, if any, to the defendant. If the judgment ~~be~~ is in favor of the defendant, the clerk ~~must~~ shall, under the direction of the court, refund ~~him~~ the whole sum deposited and remaining unapplied to the defendant."

Section 653. Section 27-16-1002, MCA, is amended to read:

"27-16-1002. Plaintiff's affidavit and undertaking. Before an order of arrest can be made, the party applying ~~must~~ shall prove to the satisfaction of the justice, by the affidavit of ~~himself~~ the party or some other person, the facts upon which the application is founded. The plaintiff ~~must~~ shall also execute and deliver to the justice a written undertaking in the sum of \$300, with sufficient sureties, to the effect that the plaintiff will pay all costs that may be adjudged to the defendant and all damages ~~which he~~ that the defendant may sustain by reason of the arrest, if the ~~same~~ be arrest is wrongful or without sufficient cause, not exceeding the sum specified in the undertaking."

Section 654. Section 27-16-1003, MCA, is amended to read:

"27-16-1003. Defendant to be taken before justice immediately. The defendant, immediately upon being arrested, must be taken to the office of the justice who made the order; ~~and if he~~ If the justice is absent or unable to try the action or if it appears to ~~him~~ the justice by the affidavit of defendant that ~~he~~ the justice is a material witness in the action, the officer ~~must~~ shall immediately take the defendant before another justice of the county, if there is another, and if not, then before a justice of an adjoining county, who ~~must~~ shall take jurisdiction of the action and proceed ~~thereon~~ as if the summons had been issued and the order of arrest made by ~~him~~ that justice."

Section 655. Section 27-16-1004, MCA, is amended to read:

"27-16-1004. Notice to plaintiff of arrest -- officer's certificate. The officer making the arrest ~~must~~ shall immediately give notice ~~thereof~~ of the arrest to the plaintiff or ~~his~~ the plaintiff's attorney or agent and endorse on the summons and subscribe a certificate, stating the time of serving the ~~same~~ summons and the time of arrest and of ~~his~~ the officer giving notice to the plaintiff."

Section 656. Section 27-16-1005, MCA, is amended to read:

"27-16-1005. Officer to detain defendant -- expenses. The officer making the arrest ~~must~~ shall keep the defendant in custody until ~~he~~ the defendant is discharged by order of the justice. The officer ~~shall~~ may not be

bound to keep ~~such person~~ the defendant under arrest more than 24 hours unless the plaintiff ~~advance~~ pays each day the expenses of keeping ~~such person~~ the defendant, which expense ~~shall~~ must be taxed as costs in the action and ~~in no case shall~~ may not be a charge against the county."

Section 657. Section 27-16-1006, MCA, is amended to read:

"27-16-1006. Defense against order of arrest. The defendant may file an answer, under oath, putting in issue the facts stated in the affidavit for the order of arrest, which may be tried by the court unless a jury is demanded; and the plaintiff ~~shall~~ must be held to establish ~~such the facts;~~ and if he fail to do so If the plaintiff fails to establish the facts, the order of arrest ~~shall~~ must be dismissed and the defendant may proceed upon the undertaking of the plaintiff for ~~his~~ damages occasioned by the arrest. The defendant may apply to the court to be discharged from arrest upon the ground of the insufficiency of the papers on which the order of arrest was granted."

Section 658. Section 27-17-101, MCA, is amended to read:

"27-17-101. When plaintiff may claim delivery. The plaintiff in an action to recover possession of personal property may, at the time of issuing summons or at any time ~~thereafter~~ after issuing summons and before answer, claim the delivery of ~~such the~~ property to him, as provided in this chapter."

Section 659. Section 27-17-102, MCA, is amended to read:

"27-17-102. Claim and delivery in justice's court. Parts 2, 3, and 4 of this chapter and Rule 55(b)(2), M.R.Civ.P., are applicable to ~~such a~~ claim to recover personal property when made in justices' courts, and the powers ~~therein~~ given in those statutes and rules and the duties imposed on sheriffs ~~being~~ are extended to constables and the word "justice" is substituted for "judge", ~~and the~~ The justice, instead of the plaintiff or ~~his~~ the plaintiff's attorney, may, ~~in his discretion~~, by an endorsement in writing upon the affidavit, order the sheriff or constable to take the property mentioned in the affidavit."

Section 660. Section 27-17-201, MCA, is amended to read:

"27-17-201. Plaintiff's affidavit. When a delivery is claimed, an affidavit must be made by the person claiming the property or someone ~~in his~~ on the person's behalf, stating:

(1) facts ~~which~~ that establish reasonable belief that the person claiming the property is the owner or is lawfully entitled to possession and that the seizure is necessary to prevent the removal or destruction of the

property;

(2) that the property is wrongfully detained by the defendant;

(3) that the ~~same~~ property has not been taken for a tax, assessment, or fine, pursuant to statute, or seized under an execution or an attachment against the property of the person claiming the property or, if ~~so~~ seized, that it is by statute exempt from seizure; and

(4) a particular description of the property and the actual value of the property."

Section 661. Section 27-17-203, MCA, is amended to read:

"27-17-203. Order from judge. The sheriff ~~shall~~ may not make ~~no~~ a seizure unless an order from a judge of the court having jurisdiction of the cause is attached to the affidavit. The judge may sign ~~such~~ an order if ~~he~~ the judge is satisfied of either of the following:

(1) that the party seeking possession of the property has made a prima facie showing of ~~his~~ the right to possession and the necessity for seizure at a show cause hearing before ~~him~~ the judge with at least 3 days' notice to the person in possession of the property; ~~if such~~ if the person cannot be found for personal service, notice posted on the property and in three public places in the county where the property is located is sufficient service for this purpose; ~~or~~

(2) that the delay caused by notice and a hearing would seriously impair the remedy sought by the party seeking possession. Evidence of ~~such~~ impairment must be presented in open court, and the court ~~must~~ shall set forth with specificity the reasons why ~~such~~ the delay would seriously impair the remedy sought by the person seeking possession."

Section 662. Section 27-17-204, MCA, is amended to read:

"27-17-204. Endorsement requiring sheriff to take property. The plaintiff or ~~his~~ the plaintiff's attorney may ~~thereupon~~, by an endorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be to take the ~~same~~ property from the defendant."

Section 663. Section 27-17-205, MCA, is amended to read:

"27-17-205. Plaintiff's undertaking -- service and execution by sheriff. Upon receipt of the affidavit and notice with a written undertaking, executed by two or more sufficient sureties approved by the sheriff, to the effect that they are bound to the defendant in double the value of the property, as stated in the affidavit for the prosecution of the action, and for the return of the property to the defendant, if return ~~thereof~~ be of the property

is adjudged, and for the payment to ~~him~~ the defendant of ~~such~~ the sum ~~as~~ that may from any cause be recovered against the plaintiff, the sheriff ~~must forthwith~~ shall take the property described in the affidavit, if ~~he~~ is in the possession of the defendant or ~~his~~ the defendant's agent, and retain it in ~~his~~ the sheriff's custody. ~~He must~~ The sheriff shall also, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking by delivering the ~~same~~ papers to ~~him~~ the defendant personally, if ~~he~~ the defendant can be found, or to ~~his~~ the defendant's agent from whose possession the property is taken or, if neither can be found, by leaving ~~them~~ the papers at the usual place of abode of either with some person of suitable age and discretion or, if neither have any known place of abode, by putting ~~them~~ the papers in the nearest post office, directed to the defendant."

Section 664. Section 27-17-206, MCA, is amended to read:

"27-17-206. Manner of seizure of concealed property. If the property or any part ~~thereof~~ be of the property is concealed in a building or enclosure, the sheriff shall publicly demand its delivery; ~~if it be~~ If the property is not delivered, ~~he~~ the sheriff shall cause the building or enclosure to be broken open and take the property into ~~his~~ the sheriff's possession and, if necessary, ~~he~~ the sheriff may call to ~~his~~ the sheriff's aid the power of the county."

Section 665. Section 27-17-301, MCA, is amended to read:

"27-17-301. Duty of sheriff to keep and deliver property. When the sheriff ~~shall have~~ has taken property, as provided in this chapter ~~provided~~, ~~he~~ the sheriff shall keep it the property in a secure place and deliver it to the party entitled ~~thereto~~ to the property upon receiving ~~his~~ the sheriff's lawful fees for taking and ~~his~~ the necessary expenses for keeping the ~~same~~ property."

Section 666. Section 27-17-302, MCA, is amended to read:

"27-17-302. Sheriff's return of execution. The sheriff shall file the notice, undertaking, and affidavit, with ~~his~~ the sheriff's proceedings thereon, with the clerk of the court in which the action is pending within 20 days after taking the property mentioned ~~therein~~ in the notice, undertaking, and affidavit."

Section 667. Section 27-17-303, MCA, is amended to read:

"27-17-303. Exception to plaintiff's sureties -- justification -- liability of sheriff. The defendant may, within 2 days after service of a copy of the affidavit and undertaking, give notice to the sheriff that ~~he~~ he ~~excepts~~ the defendant takes exception to the sufficiency of the sureties. If ~~he~~ the defendant fails to do so, ~~he~~ shall be deemed

the defendant is considered to have waived all objections to ~~them~~ the sureties. When the defendant ~~excepts~~ takes exception, the sureties must justify on notice in like manner as upon bail on arrest; and the sheriff is responsible for the sufficiency of the sureties until the objection to them is waived, as ~~above~~ provided in this section, or until they justify. If the defendant ~~except~~ takes exception to the sureties, ~~he~~ the defendant cannot claim the property, as provided in 27-17-304."

Section 668. Section 27-17-304, MCA, is amended to read:

"27-17-304. When defendant may require return of property -- his undertaking. At any time before the delivery of the property to the plaintiff, the defendant may, if ~~he~~ the defendant does not ~~except~~ take exception to the sureties of the plaintiff, require the return ~~thereof~~ of the property upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery ~~thereof~~ of the property to the plaintiff, if ~~such~~ the delivery ~~be~~ is adjudged, and for the payment to ~~him~~ the plaintiff of ~~such~~ the sum ~~as~~ that may, for any cause, be recovered against the defendant."

Section 669. Section 27-17-306, MCA, is amended to read:

"27-17-306. Justification of defendant's sureties -- liability of sheriff. The defendant's sureties, upon notice to the plaintiff of not less than 2 or more than 5 days, shall justify before the judge or clerk in the same manner as upon bail on arrest, and upon ~~such~~ the justification the sheriff ~~must~~ shall deliver the property to the defendant. The sheriff ~~shall~~ must be responsible for the defendant's sureties until they justify or until the justification is completed or expressly waived and may retain the property until that time; ~~but~~ However, if ~~they~~ the sureties or others in their place fail to justify at the time or place appointed, ~~he~~ the sheriff shall deliver the property to the plaintiff."

Section 670. Section 27-17-309, MCA, is amended to read:

"27-17-309. Claim of property by third person -- plaintiff to indemnify sheriff. If the property taken ~~be~~ is claimed by any ~~other~~ person other than the defendant or ~~his~~ the defendant's agent and ~~such~~ the other person ~~make~~ makes an affidavit of ~~his~~ the person's title ~~thereto~~ to the property or right of the possession ~~thereof~~ of the property, stating the grounds of ~~such~~ the right or title, and ~~serve~~ serves the ~~same~~ affidavit upon the sheriff, the sheriff ~~shall~~ is not ~~be~~ bound to keep the property or deliver it to the plaintiff unless the plaintiff, on demand of ~~him~~ the plaintiff or ~~his~~ the plaintiff's agent, indemnify indemnifies the sheriff against ~~such~~ the claim by an

undertaking by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and are freeholders or householders in the county; ~~and no~~ A claim to such the property by any ~~other~~ person other than the defendant or ~~his~~ the defendant's agent ~~shall be~~ is not valid against the sheriff unless ~~so~~ made as provided in this section."

Section 671. Section 27-17-310, MCA, is amended to read:

"27-17-310. Answer of defendant claiming third person entitled to property. The defendant may, by answer, defend on the ground that a third person was entitled to the property, without connecting ~~himself~~ the defendant with the ~~latter's~~ third party's title."

Section 672. Section 27-17-402, MCA, is amended to read:

"27-17-402. Duty to return property in good condition. In all cases when a judgment is rendered, in an action to recover the possession of personal property, for the return ~~thereof,~~ of personal property or its value ~~in case~~ if a return cannot be had, it is the duty of the party against whom ~~such the~~ judgment ~~shall be~~ is rendered to return the ~~same~~ property in as good condition as the ~~same~~ property was when possession ~~thereof~~ was taken by ~~him~~ the party."

Section 673. Section 27-18-102, MCA, is amended to read:

"27-18-102. What property subject to attachment. (1) Except as provided in subsection (2), the rights or shares ~~which~~ that the defendant has in the stock of any corporation or company, together with the interest and profits ~~thereon~~ on the stock, all debts due the defendant, and all other property in this state of the defendant not exempt from execution may be attached and, if judgment is recovered, sold to satisfy the judgment and execution. Property exempt from execution is exempt from attachment.

(2) In any action in which the amount sued for is \$10 or less, the wages and earnings of the debtor or defendant for ~~his~~ personal services rendered at any time within 30 days before the commencement of the action are exempt from attachment."

Section 674. Section 27-18-112, MCA, is amended to read:

"27-18-112. Attachment book to be kept by county clerk. There must be kept in the office of the county clerk of each county a book called "attachment book", in which must be entered by ~~such the~~ the clerk, in

alphabetical order, the names of all persons against whom any writ or notice of attachment has been filed in ~~his~~ the clerk's office. There must also be entered in ~~said the~~ the book the time ~~such the~~ the writ or notice was filed. ~~Such The~~ The entry must be made under an appropriate ~~head~~ heading for that purpose."

Section 675. Section 27-18-202, MCA, is amended to read:

"27-18-202. Plaintiff's affidavit. When attachment of a defendant's property is sought, an affidavit must be made by the plaintiff or someone ~~in his~~ on the plaintiff's behalf stating:

(1) facts ~~which that~~ that show that the defendant is indebted to the plaintiff in the manner specified in 27-18-101(1);

(2) that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant;

(3) facts creating a reasonable belief that the defendant:

(a) is leaving or about to leave this state taking with ~~him~~ the defendant property, money, or other effects ~~which that~~ that might be subjected to payment of the debt;

(b) is disposing or about to dispose of ~~his~~ the defendant's property ~~which that~~ that would be subject to execution;

(c) has the power to dispose of or conceal or remove from the state property ~~which that~~ that would be subject to execution; or

(d) is likely to suffer liens or encumbrances on ~~his~~ the defendant's property ~~which that~~ that would be subject to execution;

(4) a particular description and the actual value of the property to be attached."

Section 676. Section 27-18-203, MCA, is amended to read:

"27-18-203. Affidavit requirements when debt not yet due. Actions may be commenced and writs of attachment issued upon any debt for the payment of money or specific property before the ~~same shall have~~ debt has become due when it ~~shall appear~~ appears by the affidavit, in addition to what is required in 27-18-202:

(1) that the defendant is leaving or is about to leave this state, taking with ~~him~~ the defendant property, ~~moneys~~ money, or other effects ~~which that~~ that might be subjected to the payment of the debt, for the purpose of defrauding ~~his~~ the defendant's creditors; or

(2) that the defendant is disposing of ~~his~~ property or is about to dispose of ~~his~~ property, subject to execution, for the purpose of defrauding ~~his~~ the defendant's creditors."

Section 677. Section 27-18-204, MCA, is amended to read:

"27-18-204. Plaintiff's undertaking. Before issuing the writ, the court ~~must~~ shall require a written undertaking on the part of the plaintiff, with two or more sufficient sureties to be approved by the court, in a sum not less than double the amount claimed by the plaintiff if ~~such the amount be is~~ is \$1,000 or ~~under less~~ or, ~~in case~~ if the amount ~~so~~ claimed by plaintiff ~~shall exceed~~ exceeds \$1,000, then in a sum equal to ~~such the amount~~. ~~In no case shall an~~ An undertaking may not be required ~~exceeding~~ in an amount exceeding the sum of \$20,000. The condition of ~~such the~~ undertaking ~~shall must~~ be to the effect that if the defendant recovers judgment or if the court finally decides that the plaintiff was not entitled to an attachment, the plaintiff ~~will~~ shall pay all costs that may be awarded to the defendant and all damages ~~he~~ the defendant may sustain by reason of the issuing of the attachment, not exceeding the sum specified in the undertaking."

Section 678. Section 27-18-205, MCA, is amended to read:

"27-18-205. When judge may issue writ -- notice. A judge of a court having jurisdiction of the cause may issue a writ of attachment when:

- (1) ~~he the judge~~ has received the affidavit described in 27-18-202;
- (2) ~~he the judge~~ has approved the undertaking required in 27-18-204; and
- (3) the party seeking attachment has made a prima facie showing:
 - (a) in the case of real property, of ~~his the~~ right to attachment and the necessity for seizure;
 - (b) in the case of personal property:
 - (i) of ~~his the~~ right to attachment and the necessity for seizure at a show cause hearing before the court with at least 3 days' notice to the defendant; if the defendant cannot be found for personal service, notice ~~shall~~ must be posted on the property and in three public places in the county where the property is located; or
 - (ii) of ~~his the~~ right to attachment and the necessity for seizure and that the delay caused by notice and a hearing would seriously impair the remedy sought by the party seeking possession. Evidence of ~~such the~~ impairment must be presented in open court, and the court ~~must shall~~ set forth with specificity the reasons why ~~such the~~ delay would seriously impair the remedy sought by the person seeking attachment."

Section 679. Section 27-18-207, MCA, is amended to read:

"27-18-207. Alias writs. Whenever a writ of attachment has been lost or whenever it ~~shall appear~~ appears from the sheriff's return ~~thereof of the writ~~ that no property of the party or parties defendant has been levied upon or that the levy made is insufficient to satisfy the full amount of the plaintiff's demand or if, for any

reason, the levy of the original writ is void or ineffective, the clerk of the court, upon written demand of the plaintiff or ~~his~~ the plaintiff's attorney, shall issue an alias writ in the same form as the original; ~~but no such~~ However, an alias writ ~~shall~~ may not be issued in an action after the commencement of the trial ~~thereof~~. ~~No~~ A new or additional affidavit or undertaking on attachment ~~shall~~ may not be required for the issuance of an alias writ. Alias writs of attachment may be issued to the sheriffs of different counties."

Section 680. Section 27-18-301, MCA, is amended to read:

"27-18-301. Form and content of writ -- defendant's undertaking to prevent levy. (1) The writ must be directed to the sheriff of any county in which property of ~~such~~ the defendant may be located and must require ~~him~~ the sheriff to:

(a) attach and safely keep all the property of ~~such~~ the defendant within ~~his~~ the sheriff's county, not exempt from attachment, or ~~so as much thereof of the property~~ as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint; or

(b) if the defendant gives ~~him~~ the sheriff security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy ~~such~~ the demand, besides costs, or in an amount equal to the value of the property ~~which that~~ has been or is about to be attached, take ~~such~~ the undertaking.

(2) The undertaking must be to the plaintiff in the action and must be approved in writing on the back ~~thereof of the undertaking~~ by the plaintiff or ~~his~~ the plaintiff's attorney or, upon their refusal, by the judge of the district court of the same county as the residence of the sheriff."

Section 681. Section 27-18-303, MCA, is amended to read:

"27-18-303. Order of execution when several writs against same defendant. The sheriff ~~must~~ shall endorse upon each writ of attachment received by ~~him~~ the sheriff the time when the ~~same~~ writ was received, specifying the day, hour, and minute. The writ of attachment first placed in the hands of the sheriff must be executed first, and when there are several writs against the same defendant, they must be executed in the order in which they were received by the sheriff."

Section 682. Section 27-18-306, MCA, is amended to read:

"27-18-306. Sheriff's duty to execute. The sheriff to whom the writ is directed and delivered ~~must~~ shall execute the ~~same~~ writ without delay and, if the undertaking mentioned in 27-18-301 ~~be~~ is not given, as provided in part 4. ~~He~~ The sheriff may levy, from time to time and as often as is necessary, until the amount for which it

the writ was issued has been secured. ~~In no case shall the~~ The sheriff may not attach more property than appears necessary to satisfy the plaintiff's demand."

Section 683. Section 27-18-401, MCA, is amended to read:

"27-18-401. Sheriff to take custody of books and evidences of title. The sheriff ~~must~~ shall take into ~~his~~ custody all books of account, vouchers, and other papers relating to the personal property attached and all evidences of the defendant's title to the real property attached, which ~~he must~~ the sheriff shall safely keep."

Section 684. Section 27-18-403, MCA, is amended to read:

"27-18-403. Real property in another's name. Real property or an interest ~~therein~~ in real property belonging to the defendant and held by any other person or standing on the records of the county in the name of any other person must be attached by filing with the county clerk a copy of the writ, together with a description of the property and a notice that ~~such the~~ the real property and any interest of the defendant ~~therein~~ in the real property, held by or standing in the name of ~~such the~~ the other person, (naming ~~him~~) the person, are attached. The county clerk ~~must~~ shall index ~~such the~~ the attachment when filed in the names both of the defendant and of the person by whom the property is held or in whose name it stands on the record."

Section 685. Section 27-18-405, MCA, is amended to read:

"27-18-405. Debts, credits, and personal property in control of third person or not capable of manual delivery. (1) Debts or credits and personal property not capable of manual delivery and personal property in the possession of a third person must be attached by leaving with the person owing ~~such the~~ the debt or having in ~~his~~ the person's possession or under ~~his~~ the person's control ~~such the~~ the credits and personal property or with ~~his~~ the person's agent a copy of the writ and a notice that the debts owing by ~~him~~ the person to the defendant or the credits and other personal property in ~~his~~ the person's possession or under ~~his~~ the person's control, belonging to the defendant, are attached in pursuance of ~~such the~~ the writ.

(2) Upon receiving information in writing from the plaintiff or ~~his~~ the plaintiff's attorney that any person has in ~~his~~ the person's possession or under ~~his~~ the person's control any credits or other personal property belonging to the defendant or is owing any debt to the defendant, the sheriff ~~must~~ shall serve upon ~~such that~~ that person a copy of the writ and a notice that ~~such the~~ the credits or other property or debts, ~~as the case may be,~~ are attached in pursuance of ~~said~~ the writ.

(3) Debts and credits attached may be collected by the sheriff if the ~~same~~ collection can be done without

suit. The sheriff's receipt is a sufficient discharge for the amount paid."

Section 686. Section 27-18-406, MCA, is amended to read:

"27-18-406. Money, credits, or other property in control of public officer or board. Money, credits, or other property belonging to or due and owing to another, in the possession of or under the control of a public officer or board, including all officers or boards of a county, municipal corporation, and school district or state board or state government, may be attached or garnished while in ~~such~~ possession or under ~~such~~ control by making service, as provided in this part, upon the clerk of the county or ~~chairman~~ presiding officer of the board of county commissioners, the city clerk or mayor of a municipal corporation, or the clerk of the board of school trustees or ~~chairman~~ presiding officer of ~~such the~~ board, ~~as the case may be~~ of trustees."

Section 687. Section 27-18-407, MCA, is amended to read:

"27-18-407. Liability of third persons controlling property or debts and served by sheriff. All persons having in their possession or under their control any credits or other personal property belonging to the defendant or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice ~~shall must~~ be, unless ~~such the~~ property ~~be is~~ delivered ~~up~~ or transferred or ~~such the~~ debts ~~be are~~ paid to the sheriff, liable to the plaintiff for the amount of ~~such the~~ credits, property, or debts until the attachment ~~be is~~ discharged or any judgment recovered by ~~him be~~ the plaintiff is satisfied."

Section 688. Section 27-18-410, MCA, is amended to read:

"27-18-410. Corporate stock -- service on secretary of state. In addition to the method prescribed in 27-18-409 for attaching stock or shares or interest ~~therein~~ in the stock of any corporation or company, if the president or other head of the ~~same~~ corporation or company or the secretary, cashier, or other managing agent ~~thereof of the corporation or company~~ does not live in or cannot be found in Montana and an affidavit is filed in the office of the clerk of the court in which the action is pending setting forth that ~~such the~~ officer or agent does not live in or cannot be found in Montana, the clerk shall make an order directing the writ to be served upon the secretary of state of Montana or, in ~~his~~ the secretary of state's absence ~~from his office~~, upon the deputy secretary of state. When ~~such the~~ order has been made, the writ of attachment ~~shall must~~ be served upon the secretary of state or deputy secretary of state by leaving with ~~him~~ the secretary or the deputy a copy of the writ and a notice that the stock or shares or interest ~~therein~~ in the stock or shares of ~~such the~~ corporation or company belonging to the defendant is attached in pursuance of the writ."

Section 689. Section 27-18-412, MCA, is amended to read:

"27-18-412. Interest of defendant in decedent's estate. The interest of a defendant in personal property belonging to the estate of a decedent, whether as heir, legatee, or devisee, may be attached by serving the personal representative of the decedent with a copy of the writ and a notice that ~~said the~~ the interest is attached. ~~Such The~~ The attachment ~~shall may~~ may not impair the powers of the representative over the property for the purposes of administration. A copy of ~~said the~~ the writ of attachment and of ~~said the~~ the notice ~~shall must~~ must also be filed in the office of the clerk of the court in which ~~said the~~ the estate is being administered, and the personal representative shall report ~~such the~~ the attachment to the court when any petition for distribution is filed; ~~and in In~~ In the decree made upon ~~such the~~ the petition, distribution ~~shall must~~ must be ordered to ~~such the~~ the heir, legatee, or devisee, but delivery of ~~such the~~ the property ~~shall must~~ must be ordered to the officer making the levy, subject to the claim of ~~such the~~ the heir, legatee, or devisee or any person claiming under ~~him the heir, legatee, or devisee~~. The property ~~shall may~~ may not be delivered to the officer making the levy until the decree distributing ~~such the~~ the interest has become final."

Section 690. Section 27-18-414, MCA, is amended to read:

"27-18-414. Duty of secured party. (1) The secured party under any security agreement of record ~~shall~~, upon 15 days' notice in writing served upon ~~him the party~~ the party in person by any creditor of the debtor seeking to satisfy a demand of ~~such the~~ the creditor against the debtor, must be required to make and file in the office of the county clerk and recorder or other filing officer with whom the financing statement covering the security agreement is filed an affidavit showing the amount of the indebtedness then actually due and owing to the secured party; ~~and~~ ~~such The~~ The affidavit ~~shall must~~ must state the amount of the original obligation for which the security agreement was given as security, all additional advancement of money or property on the principal obligation since the date of the execution of the security agreement, all payments of ~~whatsoever any~~ any kind, whether on principal or interest, made by the debtor to the date of the execution of ~~such the~~ the affidavit by the secured party, and the balance then remaining due and unpaid to the secured party. If, within 15 days from the service of any ~~such~~ demand in writing on the secured party by any creditor of the debtor, the secured party ~~shall fail fails, refuse refuses, or neglect neglects~~ fails, refuses, or neglects to file the affidavit ~~herein~~ in this section, the security agreement ~~shall be is~~ is of no force or effect as against ~~such the~~ the creditor upon the seizure of any ~~such~~ personal property on attachment.

(2) ~~In the event If~~ If the amount shown to be due is paid to the county treasurer, ~~or to a filing officer, as aforesaid,~~ or to the secured party in satisfaction of the security agreement by any attaching creditor against the debtor, the secured party ~~shall must~~ must be required to surrender to the county treasurer or ~~such the~~ the filing officer the security agreement and any note or other evidence of indebtedness secured ~~thereby by the security agreement~~.

which ~~and the~~ security agreement or other evidence of indebtedness ~~shall~~ must be delivered by the secured party, county treasurer, or filing officer to the attaching creditor."

Section 691. Section 27-18-501, MCA, is amended to read:

"27-18-501. Examination under oath of defendant or person controlling property or debts -- order that property be delivered. Any person owing debts to the defendant or having in ~~his~~ the person's possession or under ~~his~~ the person's control any credits or other personal property belonging to the defendant may be required to attend before the court or judge or referee appointed by the court or judge and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting ~~his~~ the defendant's property and may be examined on oath. The court or judge may, after ~~such~~ the examination, order personal property capable of manual delivery in the hands or under the control of ~~such~~ the person or of the defendant to be delivered to the sheriff on ~~such~~ terms as that may be just, having reference to any liens ~~thereon~~ on or claims against the ~~same~~ property, and a memorandum ~~to~~ must be given of all other personal property, containing the amount and description ~~thereof~~ of the property."

Section 692. Section 27-18-502, MCA, is amended to read:

"27-18-502. Person holding property to give sheriff certificate of defendant's interest. Upon the application of a sheriff holding a writ of attachment, the president or other head of an association or corporation or the secretary, cashier, or managing agent ~~thereof~~ of the association or corporation or a debtor of the defendant or a person holding property, including a bond, promissory note, or other instrument for the payment of money, belonging to the defendant ~~must~~ shall furnish to the sheriff a certificate, under ~~his~~ the person's hand, specifying ~~his~~ the person's right to a number of shares of the defendant in the stock of the association or corporation, with all dividends declared or encumbrances ~~thereon~~ on the stock, or the amount, nature, and description of the property held for the benefit of the defendant or of the defendant's interest in property ~~so~~ held or of the debt or demand owing to the defendant, as the case requires."

Section 693. Section 27-18-503, MCA, is amended to read:

"27-18-503. Order to person holding property to submit to examination under oath. If a person to whom application is made, as prescribed in 27-18-502, refuses to give ~~such~~ a certificate or if it is made to appear, by affidavit, to the satisfaction of the court or a judge ~~thereof~~, that there is reason to suspect that a certificate given by ~~him~~ the person is untrue or that it failed fully to set forth the facts required to be shown ~~thereby~~, the court

or judge may make an order directing ~~him~~ the person to attend, at a specified time and at a place within the county to which the writ is issued, and submit to an examination under oath concerning the same. The order may, in the discretion of the court or judge, direct an appearance before a referee named ~~therein~~ in the order."

Section 694. Section 27-18-601, MCA, is amended to read:

"27-18-601. Sheriff to retain nonperishable attached property and proceeds of sales. The proceeds and other property attached by the sheriff must be retained by ~~him~~ the sheriff to answer any judgment that may be recovered in the action unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment."

Section 695. Section 27-18-602, MCA, is amended to read:

"27-18-602. Claim of attached property by third person -- plaintiff to indemnify sheriff. If personal property attached ~~be is~~ claimed by a third person, ~~he~~ the person shall give notice ~~thereof~~ to the sheriff and deliver to ~~him~~ the sheriff an affidavit, stating ~~his~~ the person's claim, ownership, and a description of the property; ~~and unless~~ Unless the plaintiff, within 10 days after receiving notice ~~thereof~~, ~~give~~ gives the sheriff a good and sufficient bond to indemnify ~~him~~ the sheriff against loss or damage by reason of ~~such~~ retaining ~~said~~ the property, the sheriff shall deliver the ~~same~~ property to ~~such~~ the person making the claim."

Section 696. Section 27-18-603, MCA, is amended to read:

"27-18-603. Sheriff's inventory of attached property -- cooperation of persons controlling credits or debts. (1) The sheriff ~~must~~ shall make a full inventory of the property attached and return the ~~same~~ inventory with the writ. When the sheriff has levied several writs of attachment on the same property, only one inventory must be made.

(2) To enable ~~him~~ the sheriff to make ~~such~~ the return as to debts and credits attached, ~~he must~~ the sheriff shall request, at the time of service, the person owing the debt or having the credit to give ~~him~~ the sheriff the memorandum, stating the amount and description of each ~~debt or credit;~~ and if such If the memorandum ~~be is~~ refused, the sheriff may apply upon 1 day's notice to the court or judge for an order to compel ~~such~~ the memorandum to be given. If the order ~~be is~~ granted, it ~~shall~~ must also direct the payment of costs of the motion by the person refusing."

Section 697. Section 27-18-604, MCA, is amended to read:

"27-18-604. Sheriff's return of writ. The sheriff ~~must~~ shall return the writ of attachment with the summons if issued at the same time, otherwise, within 20 days after ~~its~~ the writ's receipt, with a certificate of ~~his~~ the sheriff's proceedings endorsed ~~thereon on~~ or attached ~~thereto to the writ.~~"

Section 698. Section 27-18-702, MCA, is amended to read:

"27-18-702. When writ quashed. At ~~such~~ the hearing the defendant may challenge the merit of the underlying action, the need for the prejudgment seizure of property, or both. The writ ~~shall~~ must be quashed if the court makes a preliminary finding that:

- (1) the plaintiff cannot establish the prima facie validity of ~~his~~ the plaintiff's claim; or
- (2) the plaintiff cannot establish by a preponderance of the evidence the need for the continued attachment of the defendant's property."

Section 699. Section 27-18-713, MCA, is amended to read:

"27-18-713. Decision of court. If upon ~~such~~ application it satisfactorily appears that the writ of attachment was improperly or irregularly issued, it must be discharged. But the court or judge may allow the plaintiff to amend ~~his~~ the plaintiff's affidavit or undertaking."

Section 700. Section 27-18-715, MCA, is amended to read:

"27-18-715. Exception to plaintiff's sureties. At any time within 30 days after the service of summons, the defendant may ~~except~~ take exception to the sufficiency of the sureties. If ~~he~~ the defendant fails to do so, ~~he~~ is deemed the defendant is considered to have waived all objections to ~~them~~ the sureties."

Section 701. Section 27-18-721, MCA, is amended to read:

"27-18-721. Proceedings to release attachment. Whenever the defendant has appeared in the action, ~~he~~ the defendant may, upon reasonable notice to the plaintiff, apply to the court in which the action is pending or to the judge ~~thereof~~ for an order to discharge the attachment, wholly or in part; ~~and upon~~ Upon the execution of the undertaking mentioned in 27-18-722, an order may be made releasing from the operation of the attachment any or all of the property attached; ~~and all~~ All of the property ~~so~~ released and all of the proceeds of the sale ~~thereof of the property~~ must be delivered to the defendant upon the justification of the sureties on the undertaking, if required by the plaintiff."

Section 702. Section 27-18-725, MCA, is amended to read:

"27-18-725. Motion to vacate or modify writ or increase security. The defendant or a person who has acquired a lien upon or interest in ~~his~~ the defendant's property after it was attached may, at any time before the actual application of the attached property or the proceeds ~~thereof~~ of the property to the payment of a judgment recovered in the action, apply to vacate or modify the writ of attachment or to increase the security given by the plaintiff or for one or more of those forms of release together or in the alternative."

Section 703. Section 27-18-726, MCA, is amended to read:

"27-18-726. Proceedings on motion. An application specified in 27-18-725 may be founded only upon:

- (1) the papers upon which the writ was granted, in which case it must be made to the court or judge, with or without notice as the court or judge ~~deems~~ considers proper; or
- (2) proof by affidavits on the part of the defendant or a person who has acquired a lien upon or interest in ~~his~~ the defendant's property after it was attached, in which case it must be made to the court or judge upon notice and may be opposed by new proof, by affidavit or other evidence on the part of the plaintiff, tending to sustain any grounds of attachment."

Section 704. Section 27-18-803, MCA, is amended to read:

"27-18-803. Notice of application for order to sell. Application for the order ~~shall~~ must be upon ~~such~~ notice to the adverse party or ~~his~~ the party's attorney ~~as that~~ the court or judge, considering the nature and condition of the property, may direct. If it ~~shall appear~~ appears to the court or judge that the delay necessary to give notice would cause a material depreciation in the value of property, the order may be made without notice."

Section 705. Section 27-18-902, MCA, is amended to read:

"27-18-902. Procedure when defendant recovers judgment. If the defendant ~~recover~~ recovers judgment against the plaintiff, any undertaking received in the action, all of the proceeds of sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands must be delivered to the defendant or ~~his~~ the defendant's agent; ~~the~~ The order of attachment ~~shall~~ must be discharged and the property released ~~therefrom~~ from attachment."

Section 706. Section 27-18-903, MCA, is amended to read:

"27-18-903. Judgment for plaintiff -- disposition of attached property and proceeds of sales. If

judgment ~~be~~ is recovered by the plaintiff, the sheriff ~~must~~ shall satisfy the ~~same~~ judgment out of the property attached by ~~him~~ which the sheriff that has not been delivered to the defendant or claimant, as ~~hereinbefore~~ provided in this part, or subjected to execution on another judgment recovered ~~previous~~ prior to the issuing of the attachment, if it ~~be~~ is sufficient for that purpose:

(1) by paying to the plaintiff the proceeds of all sales of perishable property or property ordered by the court or judge to be sold by ~~him~~ the sheriff, or of any debts or credits collected by ~~him~~ the sheriff, or ~~so~~ as much ~~thereof as shall be~~ of the proceeds, debts, or credits that is necessary to satisfy the judgment;

(2) if any balance ~~remain~~ remains due and an execution ~~shall have~~ has been issued on the judgment, by selling under the execution ~~so~~ as much of the property, real or personal, ~~as~~ that may be necessary to satisfy the balance, if the sheriff retains enough property for that purpose ~~remain in his hands~~. Notices of the sales must be given and the sales must be conducted as in other cases of sales on execution."

Section 707. Section 27-18-904, MCA, is amended to read:

"27-18-904. Delivery of excess property and proceeds to defendant. Whenever the judgment ~~shall have~~ has been paid, the sheriff, upon reasonable demand, ~~must~~ shall deliver ~~over~~ to the defendant the attached property remaining in ~~his hands~~ the sheriff's possession and any proceeds of property attached ~~unapplied that are not applied~~ on the judgment."

Section 708. Section 27-18-905, MCA, is amended to read:

"27-18-905. Execution of balance due on judgment. If, after selling all property attached by ~~him~~ the sheriff remaining in ~~his hands~~ the sheriff's possession and applying the proceeds, together with the proceeds of any debt or credit collected by ~~him~~ sheriff, deducting ~~his~~ the sheriff's fee, to the payment of the judgment, any balance ~~shall~~ must remain due, and the sheriff ~~must~~ shall proceed to collect ~~such~~ the balance in the same manner as upon an execution in other cases."

Section 709. Section 27-18-906, MCA, is amended to read:

"27-18-906. Procedure when execution returned unsatisfied. If the execution is returned unsatisfied, in whole or in part, the plaintiff may prosecute any undertaking given pursuant to 27-18-301 or 27-18-722 or ~~he~~ the plaintiff may proceed, as in other cases, upon the return of an execution."

Section 710. Section 27-18-1502, MCA, is amended to read:

"27-18-1502. Plaintiff's undertaking. Before issuing the writ, the justice ~~must~~ shall require a written undertaking in due form on the part of the plaintiff, with two or more sureties, in a sum of not less than \$50 or more than \$300, to the effect that if the defendant ~~recover~~ recovers judgment, the plaintiff will pay all costs that may be awarded to the defendant and all damages ~~which he~~ that the defendant may sustain by reason of the attachment, not exceeding the sum specified in the undertaking."

Section 711. Section 27-18-1503, MCA, is amended to read:

"27-18-1503. Exception to sureties -- justification. Within 2 days after or at any time before the service of the writ of attachment upon the defendant, ~~he~~ the defendant may ~~except~~ take exception to the sufficiency of the sureties, and if ~~he~~ the defendant fails to do so, ~~he is deemed~~ the defendant is considered to have waived all objections to ~~them~~ the sureties. When ~~excepted to~~ an exception is taken, the sureties ~~must~~ shall, within 3 days after notice by the defendant of not less than 1 day, justify before the justice, and upon failure to justify or if others in their place fail to justify at the time and place appointed, the justice shall make an order vacating the writ of attachment."

Section 712. Section 27-18-1504, MCA, is amended to read:

"27-18-1504. Form and content of writ -- defendant's undertaking to prevent levy. (1) The writ may be directed to the sheriff or any constable of the county or the sheriff of any other county and must require ~~him~~ the sheriff or constable to:

(a) attach and safely keep all the property of the defendant in ~~his~~ the county, not exempt from attachment, or ~~so~~ as much ~~thereof~~ of the property as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint; or

(b) if the defendant gives ~~him~~ security by the undertaking of two sufficient sureties in an amount sufficient to satisfy ~~such~~ the demand, besides costs, take ~~such~~ the undertaking.

(2) The undertaking must be to the plaintiff and must be approved in writing on the back ~~thereof~~ of the undertaking by the plaintiff or ~~his~~ the plaintiff's attorney or, upon their refusal, by the justice issuing the writ."

Section 713. Section 27-19-203, MCA, is amended to read:

"27-19-203. Preliminary injunction pending action by public service commission. When the public service commission is conducting an adjudicatory proceeding or formal investigation relating to continuation or interruption of service upon the motion of the consumer counsel or the interested person or ~~his~~ the interested

person's legal representative, a district court may, upon the application of the consumer counsel or the interested person or ~~his~~ the interested person's legal representative, enter a restraining order against any person respondent in the adjudicatory proceeding or investigation. ~~Such a~~ The restraining order may prohibit the respondent and ~~his~~ the respondent's agents, employees, licensees, and assignees from acting in the manner complained of in the proceeding before the commission until the commission has rendered its decision in the matter. The restraining order may include an order to show cause why the order should not become an injunction for the duration of the proceeding before the commission."

Section 714. Section 27-19-315, MCA, is amended to read:

"27-19-315. When restraining order may be granted without notice. A temporary restraining order may be granted without written or oral notice to the adverse party or ~~his~~ the party's attorney only if:

(1) it clearly appears from specific facts shown by affidavit or by the verified complaint that a delay would cause immediate and irreparable injury to the applicant before the adverse party or ~~his~~ the party's attorney could be heard in opposition; and

(2) the applicant or the applicant's attorney certifies to the court in writing the efforts, if any, ~~which that~~ have been made to give notice and the reasons supporting ~~his~~ the applicant's claim that notice should not be required."

Section 715. Section 27-19-318, MCA, is amended to read:

"27-19-318. Application for injunction to be heard without delay. Whenever a temporary restraining order is granted without notice, the application for an injunction must be set for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. At the hearing the party who obtained the temporary restraining order shall proceed with the application for an injunction, or if ~~he~~ the party does not do so, the court or judge shall dissolve the temporary restraining order."

Section 716. Section 27-20-102, MCA, is amended to read:

"27-20-102. When and by whom receiver appointed. A receiver may be appointed by the court in which an action is pending ~~or by the judge thereof~~ when the action is:

(1) ~~in an action~~ by a vendor to vacate a fraudulent purchase of property;₁

(2) by a creditor to subject any property or fund to ~~his~~ the creditor's claim;₁ ~~or~~

(3) between partners or others jointly owning or interested in any property or fund, on the application of

the plaintiff or of any party whose right to or interest in the property or fund or the proceeds ~~thereof~~ of the property or fund is probable; and ~~where~~ when it is shown that the property or fund is in danger of being lost, removed, or materially injured;

~~(2)(4)~~ (4) in an action by a mortgagee for the foreclosure of his the mortgagee's mortgage and sale of the mortgaged property; ~~where~~ and when it ~~appears~~ is shown that the mortgaged property is in danger of being lost, removed, or materially injured or that the condition of the mortgage has not been performed and the property is probably insufficient to discharge the mortgage debt;

~~(3)(5)~~ after judgment, to carry the judgment into effect;

~~(4)(6)~~ after judgment, to dispose of the property according to the judgment or to preserve it during the pendency of an appeal; or

(7) in for proceedings in aid of execution, when an execution has been returned unsatisfied or when the judgment debtor refuses to apply his the judgment debtor's property in satisfaction of the judgment;

~~(5) in all other cases where, before February 1, 1864, receivers have been appointed by the usages of courts of equity."~~

Section 717. Section 27-20-201, MCA, is amended to read:

"27-20-201. Notice of application for appointment before judgment. Notice of an application for the appointment of a receiver in an action before judgment ~~therein~~ in the action must be given to the adverse party unless ~~he~~ the party has failed to appear in the action and the time limited for his the party's appearance has expired or unless it ~~shall appear~~ appears to the court that there is immediate danger that the property or fund will be removed beyond the jurisdiction of the court or lost, materially injured, destroyed, or unlawfully disposed of."

Section 718. Section 27-20-203, MCA, is amended to read:

"27-20-203. Security to cover damages caused by appointment upon ex parte application. If a receiver ~~be~~ is appointed upon an ex parte application, the court, before making the order, may require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages ~~he~~ the defendant may sustain by reason of the appointment of ~~such~~ the receiver and the entry by ~~him~~ the receiver upon his the receiver's duties, ~~in case~~ if the applicant ~~shall have~~ procured ~~such~~ the appointment wrongfully, maliciously, or without sufficient cause; ~~and the~~ The court may, ~~in its discretion,~~ at any time after ~~said~~ the appointment, require an additional undertaking."

Section 719. Section 27-20-301, MCA, is amended to read:

"27-20-301. Oath and undertaking to faithfully discharge duties. Before ~~entering upon his~~ beginning ~~the~~ the duties ~~as receiver~~, the receiver must be sworn to perform ~~them~~ the duties faithfully and shall execute an undertaking, with one or more sureties approved by the court or judge, to ~~such~~ the person and in ~~such sum as~~ an amount that the court or judge may direct, to the effect that ~~he~~ the receiver will faithfully discharge the duties of receiver in the action and obey the orders of the court ~~therein~~ in the action. The court may at any time direct ~~him~~ the receiver to give new bonds with new sureties with the ~~like~~ same effect."

Section 720. Section 27-20-302, MCA, is amended to read:

"27-20-302. Powers of receiver. The receiver has, under the control of the court, the power to:

- (1) bring and defend actions in ~~his~~ the receiver's own name, as receiver;
- (2) take and keep possession of the property;
- (3) receive rents, collect debts, and compound for and compromise the ~~same~~ rents and debts;
- (4) make transfers; and
- (5) generally do ~~such~~ acts respecting the property ~~as~~ that the court may authorize."

Section 721. Section 27-26-203, MCA, is amended to read:

"27-26-203. Form and content of writ. The writ may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed and command ~~such~~ the party, immediately after the receipt of the writ or at some other specified time, to do the act required to be performed or to show cause before the court, at a specified time and place, why ~~he~~ the party has not done so. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why ~~he~~ the party has not done as commanded must be omitted and a return day inserted."

Section 722. Section 27-26-303, MCA, is amended to read:

"27-26-303. Jury trial. (1) If an answer is made ~~which~~ that raises a question as to a matter of fact essential to the determination of the motion and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court or judge may, ~~in its or his discretion~~, order the question to be tried before a jury and postpone the argument until the trial can be had. The question to be tried must be distinctly stated in the order for trial. The order may also direct the jury to assess any damages ~~which~~ that the applicant may have sustained if it the jury finds for ~~him~~ the applicant."

(2) If the proceeding is in the district court or before a district judge, the trial must take place as in other cases. If a jury is required in the supreme court, a jury must be drawn and selected from the jury box of Lewis and Clark County and the clerk of the district court of that county shall place the box in the custody of the clerk of the supreme court for that purpose. The conduct of the trial must be the same as in the district court, and the clerk of the supreme court has the same authority to issue process and enter orders and judgments as the district court clerk has in ~~the~~ similar cases."

Section 723. Section 27-26-402, MCA, is amended to read:

"27-26-402. Judgment for applicant. If judgment is given for the applicant:

- (1) ~~he~~ the applicant may recover the damages ~~which he~~ that the applicant has sustained, as found by the jury or as determined by the court or referees, if a reference was ordered, together with costs;
- (2) an execution may issue for ~~such~~ the damages and costs; and
- (3) a peremptory mandate must be awarded without delay."

Section 724. Section 27-27-103, MCA, is amended to read:

"27-27-103. Form and content of writ. The writ must be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed and command ~~such~~ the party to desist or refrain from further proceedings in the action or matter specified ~~therein~~ in the writ until the further order of the court or judge from which it is issued and to show cause before ~~such~~ the court or judge, at a specified time and place, why ~~such~~ the party should not be absolutely restrained from any further proceedings in ~~such~~ the action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why ~~he~~ the party should not be absolutely restrained, etc., must be omitted and a return day inserted."

Section 725. Section 27-28-101, MCA, is amended to read:

"27-28-101. When proceeding may be instituted for unlawful assertion of authority. A civil action may be brought in the name of the state against:

- (1) a person who usurps, intrudes into, or unlawfully holds or exercises a public office, civil or military, or a franchise within this state or an office in a corporation created by the authority of this state;
- (2) a public officer, civil or military, who does or suffers an act ~~which~~ that, by the provisions of law, works a forfeiture of ~~his~~ office;

(3) an association of persons who act as a corporation within this state without being legally incorporated."

Section 726. Section 27-28-103, MCA, is amended to read:

"27-28-103. When attorney general required to commence an action. The attorney general shall commence an action:

- (1) when directed by the governor; and
- (2) when, upon complaint or otherwise, ~~he~~ the attorney general has good reason to believe that any case specified in 27-28-102 can be established by proof."

Section 727. Section 27-28-104, MCA, is amended to read:

"27-28-104. Upon whose relation action brought -- security for costs. ~~Such~~ The officer may, upon ~~his~~ the officer's own relation, bring any ~~such~~ action, or ~~he~~ the officer may, on leave of the court or a judge ~~thereof~~ in vacation, bring the action upon the relation of another person; ~~and if~~ If the action ~~be~~ is brought under 27-28-101(1), ~~he may require~~ security for costs may be required, to be given as in other cases."

Section 728. Section 27-28-205, MCA, is amended to read:

"27-28-205. Judgment -- unlawful assertion of authority. When a defendant is found guilty of usurping, intruding into, or unlawfully holding or exercising an office, franchise, or privilege, judgment ~~shall~~ must be rendered that ~~such~~ the defendant be ousted and altogether excluded ~~therefrom~~ from the office, franchise, or privilege and that the relator recover his costs."

Section 729. Section 27-28-301, MCA, is amended to read:

"27-28-301. When action may be commenced -- undertaking for security. A person claiming to be entitled to a public office unlawfully held and exercised by another, ~~by himself~~ individually or by an attorney ~~and counselor at law~~, may bring an action ~~therefor~~ for the office in the name of the state, as provided in this chapter. On filing the complaint, ~~such~~ the person shall enter into an undertaking, with two sufficient sureties to be approved by the judge or any judge of the court in which the action is brought, conditioned that ~~such~~ the person will pay any judgment for costs or damages recovered against ~~him~~ the person and all costs and expenses incurred in the prosecution of the action; ~~which~~ The undertaking ~~shall~~ must be filed with the clerk of the court."

Section 730. Section 27-28-302, MCA, is amended to read:

"27-28-302. Contents of complaint. When the action is against a person for usurping an office, the complaint shall must set forth the name of the person who claims to be entitled ~~thereto to the office~~, with an ~~avermment~~ a statement of his the person's right ~~thereto to the office~~."

Section 731. Section 27-28-306, MCA, is amended to read:

"27-28-306. Rights of prevailing party to take office and demand books and papers. If judgment ~~be is~~ rendered in favor of the person ~~averred~~ alleged to be entitled to an office, ~~he~~ the person may, after taking the oath of office and executing any official bond required by law, take upon ~~him~~ the person the execution of the office and ~~he~~ the person shall immediately ~~thereafter~~ upon taking the office demand of the defendant all the books and papers in his the defendant's custody or within his the defendant's power ~~appertaining~~ pertaining to the office from which ~~he~~ the defendant has been ousted."

Section 732. Section 27-28-307, MCA, is amended to read:

"27-28-307. Refusal to turn over books and papers punishable as contempt. If ~~such~~ the defendant ~~refuse~~ refuses or ~~neglect~~ neglects to deliver ~~over~~ any ~~such~~ book or paper pursuant to ~~such~~ the demand in 27-28-306, ~~he shall be deemed~~ the defendant is considered guilty of a contempt of court and shall be fined ~~in any sum~~ an amount not exceeding \$10,000 and imprisoned in the jail of the county until ~~he~~ the defendant complies with the order of the court or is otherwise discharged by due course of law."

Section 733. Section 27-28-308, MCA, is amended to read:

"27-28-308. Subsequent action for damages for usurpation. The person in whose favor judgment is rendered under this part may, at any time within 1 year after the date of ~~such~~ the judgment, bring an action against the party ousted and recover the damages ~~he~~ sustained by reason of ~~such~~ the usurpation."

Section 734. Section 27-28-401, MCA, is amended to read:

"27-28-401. When judgment of ouster rendered. When the action is against a director of a corporation and the court finds that at his the director's election either illegal votes were received or legal votes were rejected, or both, sufficient to change the result, judgment may be rendered that the defendant be ousted and of induction in favor of the person who was entitled to be declared elected at ~~such~~ the election."

Section 735. Section 27-28-506, MCA, is amended to read:

"27-28-506. Refusal to deliver assets or papers to trustees -- punishment for contempt; -- liability.

An officer of ~~such the~~ corporation who refuses or neglects to deliver over any ~~such~~ money or other things pursuant to ~~such the~~ demand ~~shall be deemed~~ is considered guilty of a contempt of court and shall be fined an amount not exceeding \$10,000 and imprisoned in the jail of the proper county until ~~he the officer~~ the officer complies with the order of the court or is otherwise discharged by due course of law; ~~and he shall be~~ The officer is liable to the trustees for the value of all money or other things ~~so~~ refused or neglected to be surrendered, together with all damages that have been sustained by the stockholders and creditors of the corporation, or any of them, in consequence of ~~such the~~ neglect or refusal."

Section 736. Section 27-30-203, MCA, is amended to read:

"27-30-203. When private person may maintain action for public nuisance. A private person may maintain an action for a public nuisance if it is specially injurious to ~~himself~~ that person, but not otherwise."

Section 737. Section 27-30-204, MCA, is amended to read:

"27-30-204. Abatement of public nuisance by public body or officer or injured party. A public nuisance may be abated by any public body or officer authorized ~~thereto~~ by law. ~~Any~~ A person may abate a public nuisance ~~which that~~ is specially injurious to ~~him~~ that person by removing or, if necessary, destroying the thing that constitutes the ~~same~~ nuisance without committing a breach of the peace or doing unnecessary injury."

Section 738. Section 27-30-302, MCA, is amended to read:

"27-30-302. Abatement of private nuisance by injured party. A person injured by a private nuisance may abate it by removing or, if necessary, destroying the thing ~~which that~~ that constitutes the nuisance without committing a breach of the peace or doing unnecessary injury. ~~Where~~ When a private nuisance results from a mere omission of the wrongdoer and cannot be abated without entering upon ~~his~~ the wrongdoer's land, reasonable notice must be given to ~~him~~ the wrongdoer before entering to abate it the nuisance."

Section 739. Section 27-31-101, MCA, is amended to read:

"27-31-101. Petition for change of name of natural person. All applications for change of names must be made to the district court of the county where the person whose name is proposed to be changed resides, by petition signed by ~~such the~~ person and, if ~~such the~~ person is under 18 years of age, by one of the person's

parents, if living, or if both ~~be~~ are dead, then by the person's guardian, and if there ~~be~~ is no guardian, then by some near relative or friend. The petition must specify the place of birth and residence of ~~such~~ the person, ~~his~~ or her the person's present name, the name proposed, and the reason for ~~such~~ the change of name and must, if neither parent of ~~such~~ the person ~~be~~ is living, name as far as known to the petitioner the near relatives of ~~such~~ the person and their place of residence."

Section 740. Section 27-32-101, MCA, is amended to read:

"27-32-101. Who may petition -- where petition filed. For the purpose of having a judicial determination of the date of birth, any citizen of the United States, either natural born or naturalized, may file a petition with the clerk of the district court of the county of ~~his~~ the citizen's residence ~~a petition.~~"

Section 741. Section 27-32-102, MCA, is amended to read:

"27-32-102. Contents of petition. (1) The petition must be duly verified by the petitioner, ~~and must contain the following:~~

———(1) The petition must state:

- (a) that the petitioner is a citizen of the United States;
 - (b) that ~~he~~ the petitioner has resided in the state of Montana for 1 year ~~last past~~ preceding the commencement of the action and in the county in which the action is brought for at least 90 days immediately preceding the commencement of the action;
 - (c) the place of ~~his~~ the petitioner's birth;
 - (d) the names of ~~his~~ the petitioner's parents, together with the place of the birth of each of ~~his~~ parents parent and their address, if they are living;
 - (e) the name and address of each of ~~his~~ the petitioner's brothers and sisters;
 - (f) if the address of either of the parents or of any of the brothers or sisters is not known, then their ~~last known~~ last-known place of address.
- (2) If the petitioner was born outside of the United States, then the petition must state:
- (a) whether ~~his~~ the petitioner's parents came to the United States and, if so, where they came and where they resided or reside;
 - (b) whether ~~they~~ the petitioner's parents or either of them were naturalized within the United States and, if so, when and where ~~such~~ the naturalization took place."

Section 742. Section 27-32-301, MCA, is amended to read:

"27-32-301. Judgment. If the court ~~shall be~~ is satisfied by competent evidence of the sufficiency of the petition that the applicant is a citizen of the United States, that ~~he~~ the applicant has been a citizen of the state of Montana for 1 year ~~last past~~ preceding the filing of the petition and of the county for more than 90 days preceding the filing of the petition, and that the applicant's date of birth is proven, then the court shall render judgment accordingly and that judgment ~~shall~~ must constitute conclusive evidence of the date of the birth of the applicant."

Section 743. Section 28-1-104, MCA, is amended to read:

"28-1-104. Relief from forfeiture. Whenever by the terms of an obligation a party ~~thereto~~ to the obligation incurs a forfeiture or a loss in the nature of a forfeiture by reason of ~~his~~ the party's failure to comply with its provisions, ~~he~~ the party may be relieved ~~therefrom~~ from the obligation upon making full compensation to the other party, except in case of a grossly negligent, willful, or fraudulent breach of duty."

Section 744. Section 28-1-201, MCA, is amended to read:

"28-1-201. General duty of care. Every person is bound, without contract, to abstain from injuring the person or property of another or infringing upon any of ~~his~~ another person's rights."

Section 745. Section 28-1-202, MCA, is amended to read:

"28-1-202. Obligation of one who unilaterally decides to render service. ~~One~~ A person who officiously and without the consent of the real or apparent owner of a thing takes it into ~~his~~ the person's possession for the purpose of rendering service about it must complete ~~such~~ the service and use ordinary care, diligence, and reasonable skill about the ~~same~~ service. ~~He~~ The person is not entitled to any compensation for ~~his~~ the service or expenses, except that ~~he~~ the person may deduct actual and necessary expenses incurred by ~~him~~ the person about ~~such~~ the service from any profits ~~which~~ that the service has caused the thing to acquire for its owner and ~~must~~ shall account to the owner for the residue."

Section 746. Section 28-1-303, MCA, is amended to read:

"28-1-303. Right to contribution from joint debtors. Except as provided in 27-1-703, a party to a joint or joint and several obligation who satisfies more than ~~his~~ that party's share of the claim against all may require a proportionate contribution from all the parties joined with ~~him~~ that party."

Section 747. Section 28-1-405, MCA, is amended to read:

"28-1-405. Condition subsequent defined. A condition subsequent is one referring to a future event upon the happening of which the obligation becomes no longer binding upon the other party if ~~he~~ the other party chooses to ~~avail himself~~ take advantage of the condition."

Section 748. Section 28-1-406, MCA, is amended to read:

"28-1-406. What conditions must be performed before requiring performance by another. Before ~~any~~ a party to an obligation can require another party to perform any act under it, ~~he must~~ the party shall fulfill all conditions precedent ~~thereto~~ to the act imposed upon ~~himself~~ that party and must be able and offer to fulfill all concurrent conditions ~~concurrent so~~ imposed upon ~~him~~ that party on the like fulfillment by the other party, except as provided by 28-1-407."

Section 749. Section 28-1-407, MCA, is amended to read:

"28-1-407. When prior performance of conditions excused. If a party to an obligation gives notice to another, before the latter is in default, that ~~he~~ the party will not perform the ~~same upon his part~~ obligation and does not retract ~~such~~ the notice before the time at which performance upon ~~his~~ that party's part is due, ~~such~~ the other party is entitled to enforce the obligation without previously performing or offering to perform any conditions upon ~~his~~ the other party's part in favor of the ~~former~~ party giving notice."

Section 750. Section 28-1-502, MCA, is amended to read:

"28-1-502. How right of selection lost. If the party having the right of selection between alternative acts does not give notice of ~~his~~ the selection to the other party within the time, if any, fixed by the obligation for that purpose or, if ~~none~~ a time is ~~so~~ not fixed, before the time at which the obligation ought to be performed, the right of selection passes to the other party."

Section 751. Section 28-1-1101, MCA, is amended to read:

"28-1-1101. Extinction of obligation by full performance. Full performance of an obligation by the party whose duty it is to perform it or by any other person on ~~his~~ that party's behalf and with ~~his~~ that party's assent, if accepted by the creditor, extinguishes it."

Section 752. Section 28-1-1104, MCA, is amended to read:

"28-1-1104. Extinction when directions of creditor followed. If a creditor or any one of two or more joint creditors at any time directs the debtor to perform ~~his~~ the debtor's obligations in a particular manner, the obligation is extinguished by performance in that manner even though the creditor does not receive the benefit of ~~such~~ the performance."

Section 753. Section 28-1-1105, MCA, is amended to read:

"28-1-1105. When partial performance extinguishes part of obligation. Partial performance of an indivisible obligation extinguishes a corresponding proportion ~~thereof~~ of the obligation if the benefit of ~~such~~ the performance is voluntarily retained by the creditor, but not otherwise. If ~~such~~ the partial performance is of such a nature that the creditor cannot avoid retaining it without injuring ~~his~~ the creditor's own property, ~~his~~ the retention ~~thereof~~ is not presumed to be voluntary."

Section 754. Section 28-1-1106, MCA, is amended to read:

"28-1-1106. Application of performance when there are several obligations. Whenever a debtor under several obligations to another does an act by way of performance, in whole or in part, ~~which~~ that is equally applicable to two or more of ~~such~~ the obligations, ~~such~~ the performance must be applied as follows:

(1) If, at the time of performance, the intention or desire of the debtor that ~~such~~ the performance should be applied to the extinction of any particular obligation is manifested to the creditor, it must be so applied.

(2) If no ~~such~~ intention or desire is then manifested, the creditor, within a reasonable time after ~~such~~ performance, may apply it toward the extinction of any obligation the performance of which was due to ~~him~~ the creditor from the debtor at the time of ~~such~~ the performance, except that if similar obligations were due to ~~him~~ the creditor, both individually and as a trustee, ~~he must~~ the creditor shall, unless otherwise directed by the debtor, apply the performance to the extinction of all ~~such~~ obligations in equal proportion. An application once made by the creditor cannot be rescinded without the consent of the debtor.

(3) If application is not made as prescribed in subsection (1) or (2) within the time prescribed, the performance must be applied to the extinction of obligations in the following order and, if there is more than one obligation of a particular class, to the extinction of all in that class, ratably:

- (a) first--interest due at the time of the performance;
- (b) second--principal due at that time;
- (c) third--the obligation earliest in date of maturity;
- (d) fourth--an obligation not secured by a lien or collateral undertaking;

(e) fifth--an obligation secured by a lien or collateral undertaking."

Section 755. Section 28-1-1112, MCA, is amended to read:

"28-1-1112. Objections to tender -- waiver. The person to whom a tender is made ~~must~~ shall at the time specify any objection ~~he~~ the person may have to the money, instrument, or property or ~~he~~ the person must be ~~deemed~~ considered to have waived it ~~the objection;~~ and if ~~if~~ the objections ~~be~~ are to the amount of money, the terms of the instrument, or the amount or kind of property, ~~he~~ must ~~the person~~ shall specify the amount, terms, or kind ~~which he~~ that the person requires or be precluded from objecting afterward."

Section 756. Section 28-1-1113, MCA, is amended to read:

"28-1-1113. Creditor's retention of thing ~~which he~~ that creditor refuses to accept. If anything is given to a creditor by way of performance, ~~which he~~ that the creditor refuses to accept as ~~such performance,~~ he ~~the creditor~~ is not bound to return it without demand but, if ~~he~~ the creditor retains it, ~~he~~ the creditor is a gratuitous depositary ~~thereof~~ of the thing."

Section 757. Section 28-1-1204, MCA, is amended to read:

"28-1-1204. Who must make offer of performance. An offer of performance must be made by the debtor or by some person on ~~his~~ the debtor's behalf and with ~~his~~ the debtor's assent."

Section 758. Section 28-1-1206, MCA, is amended to read:

"28-1-1206. Where offer may be made. In the absence of an express provision to the contrary, an offer of performance may be made, at the option of the debtor:

- (1) at any place appointed by the creditor;
- (2) wherever the person to whom the offer ought to be made can be found;
- (3) if ~~such~~ the person cannot, with reasonable diligence, be found within the state and within a reasonable distance from ~~his~~ the person's residence or place of business or if ~~he~~ the person evades the debtor, then at ~~his~~ the person's residence or place of business if the ~~same~~ residence or business can, with reasonable diligence, be found within the state; or
- (4) if this cannot be done, then at any place within this state."

Section 759. Section 28-1-1211, MCA, is amended to read:

"28-1-1211. When offer may be conditional. (1) An offer of performance must be free from any conditions ~~which that~~ the creditor is not bound, ~~on his part,~~ to perform.

(2) When a debtor is entitled to the performance of a condition precedent to or concurrent with performance on ~~his~~ the debtor's part, ~~he~~ the debtor may make ~~his~~ the offer depend upon the due performance of ~~such~~ the condition."

Section 760. Section 28-1-1212, MCA, is amended to read:

"28-1-1212. Objections to mode of offer -- waiver. All objections to the mode of an offer of performance ~~which that~~ the creditor has an opportunity to state at the time to the person making the offer and ~~which that~~ could then be ~~obviated~~ made unnecessary by ~~such~~ the person are waived by the creditor if not then stated. If the objection is to the amount of money, the terms of the instrument, or the amount or kind of property offered, the creditor ~~must~~ shall specify the amount, terms, or kind ~~which he~~ that the creditor requires."

Section 761. Section 28-1-1221, MCA, is amended to read:

"28-1-1221. Title to thing offered. The title to a thing duly offered in performance of an obligation passes to the creditor if the debtor at the time signifies ~~his~~ the debtor's intention to that effect."

Section 762. Section 28-1-1224, MCA, is amended to read:

"28-1-1224. Custody of thing other than money. The person offering a thing other than money by way of performance ~~must~~ shall, if ~~he~~ the person means to treat it as belonging to the creditor, retain it as a depositary for hire until the creditor accepts it or until ~~he~~ the person has given reasonable notice to the creditor that ~~he~~ the person will retain it no longer and, if with reasonable diligence ~~he~~ the person can find a suitable depositary ~~therefor~~ for the thing, until ~~he~~ the person has deposited it with ~~such person~~ the suitable depositary."

Section 763. Section 28-1-1302, MCA, is amended to read:

"28-1-1302. Effect when performance prevented by creditor. If the performance of an obligation ~~be~~ is prevented by the creditor, the debtor is entitled to all the benefits ~~which he~~ that the debtor would have obtained if it the obligation had been performed by both parties."

Section 764. Section 28-1-1303, MCA, is amended to read:

"28-1-1303. Effect when performance prevented by other causes. If full performance of an obligation

is prevented by any cause excusing performance other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which ~~he~~ the debtor would have been entitled upon full performance, according to the benefit ~~which~~ that the creditor receives from the actual performance."

Section 765. Section 28-1-1304, MCA, is amended to read:

"28-1-1304. Effect of refusal to accept performance before offer. A refusal by a creditor to accept performance, made before an offer ~~thereof~~ of performance, is equivalent to an offer and refusal unless, before performance is actually due, ~~he~~ the creditor gives notice to the debtor of ~~his~~ the creditor's willingness to accept ~~it~~ performance."

Section 766. Section 28-1-1504, MCA, is amended to read:

"28-1-1504. When acceptance of novation may be rescinded. When the obligation of a third person or an order upon ~~such~~ the third person is accepted in satisfaction, the creditor may rescind ~~such~~ the acceptance if:

- (1) the debtor prevents ~~such~~ the third person from complying with the order or from fulfilling the obligation;
- (2) at the time the obligation or order is received, ~~such~~ the third person is insolvent and the fact is unknown to the creditor; or
- (3) before the creditor can, with reasonable diligence, present the order to the third person upon whom it is given, ~~he~~ the third person becomes insolvent."

Section 767. Section 28-1-1602, MCA, is amended to read:

"28-1-1602. What claims survive general release. A general release does not extend to claims ~~which~~ that the creditor does not know or suspect to exist in ~~his~~ the creditor's favor at the time of executing the release, which, if known by ~~him~~ the creditor, must have materially affected ~~his~~ the creditor's settlement with the debtor."

Section 768. Section 28-1-1603, MCA, is amended to read:

"28-1-1603. Effect of release of some but not all joint debtors. A release of one of two or more joint debtors does not extinguish the obligation of any of the others unless they are mere guarantors, nor does it affect their rights to contribution from ~~him~~ the released debtor."

Section 769. Section 28-2-202, MCA, is amended to read:

"28-2-202. Contracts of persons entirely without understanding. A person entirely without understanding has no power to make a contract of any kind, but ~~he~~ the person is liable for the reasonable value of things furnished to ~~him~~ the person necessary for ~~his~~ the support of the person or the ~~support of his~~ person's family."

Section 770. Section 28-2-203, MCA, is amended to read:

"28-2-203. Contracts of persons with limited understanding. A conveyance or other contract of a person of unsound mind but not entirely without understanding, made before ~~his~~ the person's incapacity has been judicially determined, is subject to rescission as provided in part 17 of this chapter."

Section 771. Section 28-2-204, MCA, is amended to read:

"28-2-204. When person of unsound mind cannot disaffirm contract. A person of unsound mind cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for ~~his~~ the person's support or that of ~~his~~ the person's family, entered into by ~~him~~ the person when not under the care of a parent or guardian able to provide for ~~him~~ the person or ~~them~~ the person's family."

Section 772. Section 28-2-205, MCA, is amended to read:

"28-2-205. When contract for benefit of third person may be enforced by him third person. A contract made expressly for the benefit of a third person may be enforced by ~~him~~ the third person at any time before the parties ~~thereto~~ to the contract rescind it the contract."

Section 773. Section 28-2-206, MCA, is amended to read:

"28-2-206. Assignment of nonnegotiable written contract. A nonnegotiable written contract for the payment of money or the delivery of personal property may be transferred by endorsement the same as a negotiable instrument. ~~Such~~ The endorsement transfers all the rights of the assignor under the contract to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the endorsement or arising before notice of the assignment is received by ~~him~~ the maker."

Section 774. Section 28-2-405, MCA, is amended to read:

"28-2-405. What constitutes actual fraud. Actual fraud, within the meaning of this part, consists in any

of the following acts committed by a party to the contract or with ~~his~~ the party's connivance with intent to deceive another party ~~thereto~~ to the contract or to induce ~~him~~ the other party to enter into the contract:

- (1) the suggestion as a fact of that which is not true by one who does not believe it to be true;
- (2) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though ~~he~~ the person believes it to be true;
- (3) the suppression of that which is true by one having knowledge or belief of the fact;
- (4) a promise made without any intention of performing it; or
- (5) any other act fitted to deceive."

Section 775. Section 28-2-406, MCA, is amended to read:

"28-2-406. What constitutes constructive fraud. Constructive fraud consists ~~in~~ of:

- (1) any breach of duty ~~which~~ that, without an actually fraudulent intent, gains an advantage to the person in fault or anyone claiming under ~~him~~ the person in fault by misleading another person to ~~his~~ that person's prejudice or to the prejudice of anyone claiming under ~~him~~ that person; or
- (2) any ~~such~~ act or omission ~~as~~ that the law especially declares to be fraudulent, without respect to actual fraud."

Section 776. Section 28-2-407, MCA, is amended to read:

"28-2-407. What constitutes undue influence. Undue influence consists ~~in~~ of:

- (1) the use by one in whom a confidence is reposed by another person or who holds a real or apparent authority over ~~him~~ the other person of ~~such~~ the confidence or authority for the purpose of obtaining an unfair advantage over ~~him~~ the other person;
- (2) taking an unfair advantage of ~~another's~~ another person's weakness of mind; or
- (3) taking a grossly oppressive and unfair advantage of ~~another's~~ another person's necessities or distress."

Section 777. Section 28-2-501, MCA, is amended to read:

"28-2-501. How consent is communicated. (1) Consent can be communicated with effect only by some act or omission of the party contracting by which ~~he~~ the party intends to communicate it or ~~which~~ that necessarily tends to ~~such~~ the communication.

- (2) If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer

is not bound unless ~~they~~ the conditions are conformed to; ~~but~~ However, in other cases, any reasonable and usual mode in conformity with subsection (1) may be adopted."

Section 778. Section 28-2-502, MCA, is amended to read:

"28-2-502. When consent is considered fully communicated. Consent is considered to be fully communicated between the parties as soon as the party accepting a proposal has put ~~his~~ that party's acceptance in the course of transmission to the proposer in conformity with 28-2-501."

Section 779. Section 28-2-512, MCA, is amended to read:

"28-2-512. How proposal revoked. A proposal is revoked by:

(1) the communication of notice of revocation by the proposer to the other party in the manner prescribed by 28-2-501 and 28-2-502 before ~~his~~ the other party's acceptance has been communicated to the ~~former proposer~~;

(2) the lapse of the time prescribed in ~~such~~ the proposal for its acceptance or, if no time is ~~so~~ prescribed, the lapse of a reasonable time without communication of the acceptance;

(3) the failure of the acceptor to fulfill a condition precedent to acceptance; or

(4) the death or serious mental illness of the proposer."

Section 780. Section 28-2-702, MCA, is amended to read:

"28-2-702. Contracts ~~which~~ that violate policy of the law -- exemption from responsibility. All contracts ~~which~~ that have for their object, directly or indirectly, to exempt anyone from responsibility for ~~his~~ the person's own fraud, for willful injury to the person or property of another, or for violation of law, whether willful or negligent, are against the policy of the law."

Section 781. Section 28-2-704, MCA, is amended to read:

"28-2-704. Exception -- sale of goodwill of business. (1) ~~One~~ A person who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business within the areas provided in subsection (2) so long as the buyer or any person deriving title to the goodwill from ~~him~~ the buyer carries on a like business ~~therein~~ in the described areas.

(2) The agreement authorized in subsection (1) may apply in:

(a) the city where the principal office of the business is located;

- (b) the county where the principal office of the business is located;
- (c) a city in any county adjacent to the county in which the principal office of the business is located;
- (d) any county adjacent to the county in which the principal office of the business is located; or
- (e) any combination of the ~~foregoing~~ areas in subsections (2)(a) through (2)(d)."

Section 782. Section 28-2-708, MCA, is amended to read:

"28-2-708. Restraints upon legal proceedings void. Every stipulation or condition in a contract by which any party ~~thereto~~ to the contract is restricted from enforcing ~~his~~ the party's rights under the contract by the usual proceedings in the ordinary tribunals or ~~which that~~ limits the time within which he ~~the party~~ may thus enforce ~~his~~ the party's rights is void. This section does not affect the validity of an agreement enforceable under Title 27, chapter 5."

Section 783. Section 28-2-709, MCA, is amended to read:

"28-2-709. Illegality of agreement to allow another person to confess judgment, accept service of process, or accept default. (1) ~~No~~ A contract in writing by which any promise to pay money is created ~~shall~~ may not contain any provision either empowering any person to enter judgment by confession against any party to the contract or empowering any person as the agent of any party to the contract to either confess judgment, accept service of process, or consent on behalf of ~~such~~ the party to the entry of ~~his~~ the party's default in any proceeding in court upon ~~such~~ the contract. ~~Every such~~ The described provision in ~~any such~~ a contract ~~shall be~~ is illegal and void and ~~shall be~~ is unenforceable in the courts of this state against any party to ~~such~~ the contract.

(2) The term "contract", as used in this section, ~~shall include~~ includes all writings executed contemporaneously with and constituting a part of the same transaction, whether ~~such~~ the writings ~~be~~ are negotiable or nonnegotiable in form."

Section 784. Section 28-2-801, MCA, is amended to read:

"28-2-801. What constitutes good consideration. Any benefit conferred or agreed to be conferred upon the promisor by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered or agreed to be suffered by ~~such~~ the person, other than ~~such as~~ he prejudice that the person is at the time of consent lawfully bound to suffer, as an inducement to the promisor is a good consideration for a promise."

Section 785. Section 28-2-902, MCA, is amended to read:

"28-2-902. Enforcement of contract not in writing through fraud. Where a contract ~~which that~~ is required by law to be in writing is prevented from being put into writing by the fraud of a party ~~thereto~~ to the contract, any other party who is by ~~such the~~ fraud led to believe that it the contract is in writing and acts upon ~~such that~~ belief to his the party's prejudice may enforce it against the fraudulent party."

Section 786. Section 28-2-903, MCA, is amended to read:

"28-2-903. What contracts must be in writing. (1) The following agreements are invalid unless the ~~same agreement~~ or some note or memorandum ~~thereof of the agreement~~ is in writing and subscribed by the party to be charged or his the party's agent:

(a) an agreement that by its terms is not to be performed within a year from the making ~~thereof of the agreement~~;

(b) a special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in 28-11-105;

(c) an agreement made upon consideration of marriage other than a mutual promise to marry;

(d) an agreement for the leasing for a longer period than 1 year or for the sale of real property or of an interest ~~therein in real property~~. ~~Such~~ The agreement, if made by an agent of the party sought to be charged, is invalid unless the authority of the agent is in writing and subscribed by the party sought to be charged.

(e) an agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission.

(2) Evidence of an agreement described in subsections (1)(a) through (1)(d) is not admissible without the writing or secondary evidence of its the writing's contents.

(3) ~~No evidence~~ Evidence is not admissible to charge a person upon a representation as to the credit of a third person unless ~~such the~~ representation or some memorandum ~~thereof of the representation~~ is in writing and either subscribed by or in the handwriting of the party to be charged.

(4) Subsections (1) and (2) do not apply to agreements subject to the Uniform Commercial Code."

Section 787. Section 28-2-906, MCA, is amended to read:

"28-2-906. When written contract takes effect. A contract in writing takes effect upon its delivery to the party in whose favor it is made or to his the party's agent."

Section 788. Section 28-2-1703, MCA, is amended to read:

"28-2-1703. Extinction of executory obligations of contract by destruction, cancellation, or alteration. (1) The intentional destruction, cancellation, or material alteration of a written contract by a party entitled to any benefit under it the contract or with ~~his~~ the party's consent extinguishes all the executory obligations of the contract in ~~his~~ that party's favor against parties who do not consent to the act.

(2) ~~Where~~ When a contract is executed in duplicate, an alteration or destruction of one copy while the other exists is not within the provisions of subsection (1)."

Section 789. Section 28-2-1711, MCA, is amended to read:

"28-2-1711. When party may rescind. A party to a contract may rescind the ~~same~~ contract in the following cases only:

(1) if the consent of the party rescinding or of any party jointly contracting with ~~him~~ the party rescinding was given by mistake or obtained through duress, menace, fraud, or undue influence exercised by or with the connivance of the party as to whom ~~he~~ the party rescinds or of any other party to the contract jointly interested with ~~such~~ the party;

(2) if, through the fault of the party as to whom ~~he~~ the other party rescinds, the consideration for ~~his~~ the obligation of the party at fault fails in whole or in part;

(3) if ~~such~~ the consideration becomes entirely void from any cause;

(4) if ~~such~~ the consideration, before it is rendered to ~~him~~ rescinding party, fails in a material respect from any cause; or

(5) if all the other parties consent."

Section 790. Section 28-2-1713, MCA, is amended to read:

"28-2-1713. How rescission accomplished. Rescission, when not effected by consent, can be accomplished only by the use on the part of the party rescinding of reasonable diligence to comply with the following rules:

(1) ~~He must~~ The rescinding party shall rescind promptly upon discovering the facts ~~which~~ that entitle ~~him~~ the party to rescind if ~~he~~ the party is free from duress, menace, undue influence, or disability and is aware of ~~his~~ the right to rescind.

(2) ~~He must~~ The rescinding party shall restore to the other party everything of value ~~which he~~ that the rescinding party has received from ~~him~~ the other party under the contract or ~~must~~ shall offer to restore ~~the same~~ everything of value, upon condition that ~~such~~ the other party shall do likewise, unless the ~~latter~~ other party is

unable or positively refuses to do so."

Section 791. Section 28-3-306, MCA, is amended to read:

"28-3-306. Interpretation of terms that are ambiguous or were intended in a different sense by different parties. (1) If the terms of a promise are in any respect ambiguous or uncertain, it the promise must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.

(2) When the terms of an agreement have been intended in a different sense by different parties to it the agreement, that sense is to prevail against either party in which ~~he~~ the party supposed the other party understood it; ~~and when~~ If different constructions of a provision are otherwise equally proper, that construction is to be taken ~~which~~ that is most favorable to the party in whose favor the provision was made."

Section 792. Section 28-3-704, MCA, is amended to read:

"28-3-704. Contractual right to attorney fees treated as reciprocal. Whenever, by virtue of the provisions of any contract or obligation in the nature of a contract made and entered into at any time after July 1, 1971, one party to ~~such~~ the contract or obligation has an express right to recover attorney fees from any other party to the contract or obligation in the event the party having that right ~~shall bring~~ brings an action upon the contract or obligation, then in any action on ~~such~~ the contract or obligation all parties to the contract or obligation ~~shall be deemed~~ are considered to have the same right to recover attorney fees and the prevailing party in any ~~such~~ action, whether by virtue of the express contractual right or by virtue of this section, ~~shall be~~ is entitled to recover ~~his~~ reasonable attorney fees from the losing party or parties."

Section 793. Section 28-10-105, MCA, is amended to read:

"28-10-105. What acts agent may perform. (1) An agent may be authorized to do any acts ~~which his~~ that the principal might do, except those to which the ~~latter~~ principal is bound to give ~~his~~ personal attention.

(2) Every act ~~which~~ that, according to this code, may be done by or to any person may be done by or to the agent of ~~such~~ the person for that purpose unless a contrary intention clearly appears."

Section 794. Section 28-10-301, MCA, is amended to read:

"28-10-301. Agent not to exceed actual authority. An agent ~~must~~ may not exceed the limits of ~~his~~ the agent's actual authority as defined by ~~this chapter and parts 5 and 6 of chapter 11 of Title 30, chapter 11, parts~~

5 and 6, and this chapter."

Section 795. Section 28-10-302, MCA, is amended to read:

"28-10-302. Duty to keep principal informed. An agent ~~must~~ shall use ordinary diligence to keep ~~his~~ the agent's principal informed of ~~his~~ the agent's acts in the course of the agency."

Section 796. Section 28-10-401, MCA, is amended to read:

"28-10-401. What authority agent has. An agent has ~~such~~ the authority ~~as~~ that the principal actually or ostensibly confers upon ~~him~~ the agent."

Section 797. Section 28-10-402, MCA, is amended to read:

"28-10-402. Actual authority defined. Actual authority is ~~such as~~ authority that the principal intentionally confers upon the agent or intentionally or by want of ordinary care allows the agent to believe ~~himself to possess~~ that the agent possesses."

Section 798. Section 28-10-404, MCA, is amended to read:

"28-10-404. When and as to whom agent's authority restricted. Every agent has ~~actually such~~ the authority as is ~~defined~~ described by ~~this chapter and parts 5 and 6 of chapter 11 of Title 30, chapter 11, parts 5 and 6, and this chapter~~ unless specially deprived ~~thereof of that authority~~ by ~~his~~ the agent's principal and has even then ~~such~~ the statutorily described authority ostensibly except as to persons who have actual or constructive notice of the restriction upon ~~his~~ the agent's authority."

Section 799. Section 28-10-405, MCA, is amended to read:

"28-10-405. Implied powers of agent. An agent has authority to:

(1) do everything necessary and proper and usual, in the ordinary course of business, for effecting the purpose of ~~his~~ the agency; and

(2) make a representation respecting any matter of fact, except the terms of ~~his~~ the agent's authority, upon which ~~his~~ the right to use ~~his~~ the agent's authority depends and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made."

Section 800. Section 28-10-407, MCA, is amended to read:

"28-10-407. Statutory exceptions to general authority. An authority expressed in general terms, however broad, does not authorize an agent to:

- (1) act in ~~his~~ the agent's own name unless it is the usual course of business to do so;
- (2) define the scope of ~~his~~ the agency; or
- (3) do any act ~~which~~ that a trustee is forbidden to do by Title 72, chapter 34."

Section 801. Section 28-10-408, MCA, is amended to read:

"28-10-408. When agent may disobey instructions. An agent has power to disobey instructions in dealing with the subject of the agency in cases ~~where~~ in which it is clearly for the interest of ~~his~~ the agent's principal that ~~he~~ the agent should do so and there is ~~not~~ insufficient time to communicate with the principal."

Section 802. Section 28-10-409, MCA, is amended to read:

"28-10-409. No authority to defraud principal. An agent can never have authority, either actual or ostensible, to do an act ~~which~~ that is and is known or suspected by the person with whom ~~he~~ the agent deals to be a fraud upon the principal."

Section 803. Section 28-10-501, MCA, is amended to read:

"28-10-501. When agent may delegate powers. An agent, unless specially forbidden by ~~his~~ the principal to do so, can delegate ~~his~~ the agent's powers to another person in any of the following cases and in no others:

- (1) when the act to be done is purely mechanical;
- (2) when ~~it is such as~~ the agent cannot ~~himself~~ and the subagent can lawfully perform the act;
- (3) when it is the usage of the place to delegate ~~such~~ the powers; or
- (4) when ~~such~~ the delegation is specially authorized by the principal."

Section 804. Section 28-10-502, MCA, is amended to read:

"28-10-502. Effect of unauthorized employment of subagent. If an agent employs a subagent without authority, the ~~former~~ agent is a principal and the ~~latter~~ his subagent is the agent's agent and the principal of the ~~former~~ agent has no connection with the ~~latter~~ subagent. A mere agent of an agent is not responsible as such to the principal of the ~~latter~~ agent."

Section 805. Section 28-10-601, MCA, is amended to read:

"28-10-601. Accrual of rights and liabilities to principal. An agent represents ~~his~~ the agent's principal for all purposes within the scope of ~~his~~ the agent's actual or ostensible authority, and all the rights and liabilities ~~which that~~ would accrue to the agent from transactions within ~~such that~~ that limit, if ~~they~~ the transactions had been entered into on ~~his~~ the agent's own account, accrue to the principal."

Section 806. Section 28-10-602, MCA, is amended to read:

"28-10-602. Principal's responsibility for agent's negligence, omissions, and wrongs. (1) Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of ~~his~~ the principal's agent in the transaction of the business of the agency, including wrongful acts committed by ~~such the~~ the agent in and as a part of the transaction of ~~such~~ the business, and for ~~his~~ the agent's willful omission to fulfill the obligations of the principal.

(2) A principal is not responsible for ~~no~~ other wrongs committed by ~~his~~ the principal's agent ~~than~~ except those mentioned in subsection (1) unless ~~he~~ the principal has authorized or ratified ~~them~~ the acts, even though they are committed while the agent is engaged in ~~his~~ the principal's service."

Section 807. Section 28-10-603, MCA, is amended to read:

"28-10-603. When instrument binds principal. An instrument within the scope of ~~his~~ an agent's authority by which an agent intends to bind ~~his~~ the agent's principal does bind ~~him~~ the principal if ~~such that~~ that intent is plainly inferable from the instrument itself."

Section 808. Section 28-10-605, MCA, is amended to read:

"28-10-605. Extent to which principal bound when agent exceeds authority. When an agent exceeds ~~his~~ the agent's authority, ~~his~~ the agent's principal is bound by ~~his~~ the agent's authorized acts only so far as ~~they~~ the authorized acts can be plainly separated from those ~~which that~~ that are unauthorized."

Section 809. Section 28-10-606, MCA, is amended to read:

"28-10-606. Extent to which principal bound by acts under ostensible authority. A principal is bound by acts of ~~his~~ the principal's agent under a merely ostensible authority to those persons only who have in good faith and without ordinary negligence incurred a liability or parted with value upon the faith ~~thereof~~ of the authority."

Section 810. Section 28-10-608, MCA, is amended to read:

"28-10-608. Rights of person who deals with agent without knowledge of agency. ~~One~~ A person who deals with an agent without knowing or having reason to believe that the agent acts as ~~such an agent~~ in the transaction may set off against any claim of the principal arising out of the ~~same~~ transaction all claims ~~which he~~ that the person might have set off against the agent before notice of the agency."

Section 811. Section 28-10-609, MCA, is amended to read:

"28-10-609. Principal's liability when agent given exclusive credit. If exclusive credit is given to an agent by the person dealing with ~~him~~ the agent, ~~his~~ the agent's principal is exonerated by payment or other satisfaction made by ~~him~~ the principal to ~~his~~ the agent in good faith before receiving notice of the creditor's election to hold ~~him~~ the principal responsible."

Section 812. Section 28-10-701, MCA, is amended to read:

"28-10-701. Warranty of authority. ~~One~~ A person who assumes to act as an agent ~~thereby~~ warrants to all who deal with ~~him~~ the person in that capacity that ~~he~~ the person has the authority ~~which he~~ that the person assumes."

Section 813. Section 28-10-702, MCA, is amended to read:

"28-10-702. When agent responsible to third persons as a principal. ~~One~~ A person who assumes to act as an agent is responsible to third persons as a principal for ~~his~~ the acts in the course of ~~his~~ the agency in any of the following cases and in no other:

- (1) when, with ~~his~~ the agent's consent, credit is given to ~~him~~ agent personally in a transaction;
- (2) when ~~he~~ the agent enters into a written contract in the name of ~~his~~ the principal without believing in good faith that ~~he~~ the agent has authority to do so; or
- (3) when ~~his~~ the agent's acts are wrongful in their nature."

Section 814. Section 28-10-703, MCA, is amended to read:

"28-10-703. Responsibility of agent when third person claims property received for principal. If an agent receives anything for the benefit of ~~his~~ the agent's principal ~~to the possession of which~~ that another person is entitled to possess, ~~he must~~ the agent shall, on demand, surrender it to ~~such~~ the person, or so much of it as ~~he~~ the agent has under ~~his~~ the agent's control at the time of demand, on being indemnified for any

advance ~~which he~~ that the agent has made to ~~his~~ the principal, in good faith, on account of the ~~same~~ advance. ~~He~~ The agent is responsible ~~therefor~~ for the thing of benefit if, after ~~such~~ demand, ~~he~~ the agent delivers it to ~~his~~ the principal."

Section 815. Section 28-10-801, MCA, is amended to read:

"28-10-801. Circumstances ~~which that~~ terminate any agency. An agency is terminated as to every person having notice ~~thereof~~ of the termination by:

- (1) the expiration of ~~its~~ the agency's term;
- (2) the extinction of ~~its~~ the agency' subject;
- (3) the death of the agent;
- (4) ~~his~~ the agent's renunciation of the agency; or
- (5) the incapacity of the agent to act as ~~such~~ an agent."

Section 816. Section 28-10-802, MCA, is amended to read:

"28-10-802. Circumstances ~~which that~~ terminate agency not coupled with an interest. Unless the power of the agent is coupled with an interest in the subject of the agency, ~~it~~ the agency is terminated as to every person having notice ~~thereof~~ of the termination by:

- (1) its revocation by the principal;
- (2) ~~his~~ the principal's death; or
- (3) ~~his~~ the principal's incapacity to contract."

Section 817. Section 28-11-103, MCA, is amended to read:

"28-11-103. When separate consideration required. ~~Where~~ When a guaranty is entered into at the same time with the original obligation or with the acceptance of the ~~latter~~ original obligation by the ~~guarantee~~ person making the guaranty and forms with that original obligation a part of the consideration to ~~him~~ the person, no other consideration need exist. In all other cases, there must be a consideration distinct from that of the original obligation."

Section 818. Section 28-11-105, MCA, is amended to read:

"28-11-105. When guaranty considered original obligation and need not be in writing. A promise to answer for the obligation of another in any of the following cases is ~~deemed~~ considered an original obligation

of the promisor and need not be in writing:

(1) ~~where~~ when the promise is made by one who has received property of another upon an undertaking to apply it the property pursuant to ~~such~~ the promise or by one who has received a discharge from an obligation, in whole or in part, in consideration of ~~such~~ the promise;

(2) ~~where~~ when the creditor parts with value or enters into an obligation in consideration of the obligation in respect to which the promise is made, in terms or under circumstances ~~such as to~~ that render the party making the promise the principal debtor and the person in whose behalf it the promise is made ~~his~~ the party's surety;

(3) ~~where~~ when the promise, being for an antecedent obligation of another, is made upon a consideration:

(a) that the party receiving it the promise cancels the antecedent obligation, accepting the new promise as a substitute ~~therefor~~ for the antecedent obligation;

(b) that the party receiving it the promise releases the property of another from a levy; or

(c) beneficial to the promisor, whether moving from either party to the antecedent obligation or from another person;

(4) ~~where~~ when a factor undertakes to sell merchandise for a commission and guarantee the sale;

(5) ~~where~~ when the holder of an instrument for the payment of money upon which a third person is or may become liable to ~~him~~ the holder transfers it the instrument in payment of a precedent debt of ~~his~~ the holder's own or for a new consideration and in connection with ~~such~~ the transfer enters into a promise respecting ~~such~~ the instrument."

Section 819. Section 28-11-108, MCA, is amended to read:

"28-11-108. Continuing guaranty -- definition; -- revocation. (1) A guaranty relating to a future liability of the principal under successive transactions ~~which~~ that either continue ~~his~~ the principal's liability or from time to time renew it after it has been satisfied is called a continuing guaranty.

(2) A continuing guaranty may be revoked at any time by the guarantor in respect to future transactions unless there is a continuing consideration as to ~~such~~ the transactions ~~which he~~ that the guarantor does not renounce."

Section 820. Section 28-11-202, MCA, is amended to read:

"28-11-202. Liability under guaranty of incomplete contract. In a guaranty of a contract the terms of which are not then settled, it is implied that ~~its~~ the guaranty's terms ~~shall be such as~~ will not expose the

guarantor to greater risks than ~~he~~ the guarantor would incur under those terms ~~which~~ that are most common in similar contracts at the place where the principal contract is to be performed."

Section 821. Section 28-11-203, MCA, is amended to read:

"28-11-203. Liability under guaranty of illegal contract or contract void against principal. A guarantor is not liable if the contract of the principal is unlawful, but ~~he~~ the guarantor is liable notwithstanding any mere personal disability of the principal, even though the disability ~~be such as to~~ would make the contract void against the principal."

Section 822. Section 28-11-206, MCA, is amended to read:

"28-11-206. Liability upon guaranty of conditional obligation -- notice of default. ~~Where one~~ If a person guarantees a conditional obligation, ~~his~~ the person's liability is commensurate with that of the principal and ~~he~~ the person is not entitled to notice of the default of the principal unless ~~he~~ the person is unable, by the exercise of reasonable diligence, to acquire information of ~~such~~ the default and the creditor has actual notice ~~thereof~~ of the default."

Section 823. Section 28-11-211, MCA, is amended to read:

"28-11-211. When guarantor exonerated. (1) A guarantor is exonerated, except so far as ~~he~~ the guarantor may be indemnified by the principal, if by any act of the creditor without the consent of the guarantor the original obligation of the principal is altered in any respect or the remedies or rights of the creditor against the principal in respect ~~thereto~~ to the original obligation are in any way impaired or suspended.

(2) A promise by a creditor ~~which~~ that for any cause is void or voidable by ~~him~~ the creditor at ~~his~~ the creditor's option does not alter the obligation or suspend or impair the remedy within the meaning of subsection (1)."

Section 824. Section 28-11-214, MCA, is amended to read:

"28-11-214. Guarantor not exonerated by discharge of principal. A guarantor is not exonerated by the discharge of ~~his~~ the guarantor's principal by operation of law without the intervention or omission of the creditor."

Section 825. Section 28-11-304, MCA, is amended to read:

"28-11-304. Indemnity extended to acts of agents. An agreement to indemnify against the acts of a certain person applies not only to ~~his~~ the person's acts and their consequences but also to those of ~~his~~ the person's agents."

Section 826. Section 28-11-312, MCA, is amended to read:

"28-11-312. When person indemnifying entitled to reimbursement. ~~Where one~~ If a person at the request of another engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, ~~he~~ the person is entitled to be reimbursed in the same manner as a surety for whatever ~~he~~ the person may pay."

Section 827. Section 28-11-316, MCA, is amended to read:

"28-11-316. Duty of person indemnifying to defend. The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the ~~latter~~ person indemnified in respect to the matters embraced by the indemnity, but the person indemnified has the right to conduct ~~such~~ defenses if ~~he~~ the person indemnified chooses to do so. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the ~~latter~~ person indemnified suffered by ~~him~~ the person indemnified in good faith is conclusive in ~~his~~ favor of the person indemnified against the ~~former~~ person indemnifying."

Section 828. Section 28-11-317, MCA, is amended to read:

"28-11-317. When judgment not conclusive against person indemnifying. (1) If the person indemnifying, whether ~~he~~ the person is a principal or a surety in the agreement, does not have reasonable notice of the action or proceeding against the person indemnified or is not allowed to control ~~his~~ the person indemnified's defense, judgment against the ~~latter~~ person indemnified is only presumptive evidence against the ~~former~~ person indemnifying.

(2) A stipulation that a judgment against the person indemnified ~~shall be~~ is conclusive upon the person indemnifying is inapplicable if ~~he~~ the person indemnifying had a good defense upon the merits ~~which that~~ by want of ordinary care ~~he~~ the person indemnified failed to establish in the action."

Section 829. Section 28-11-401, MCA, is amended to read:

"28-11-401. Surety defined. A surety is one who, at the request of another person and for the purpose

of securing to ~~him~~ the other person a benefit, becomes responsible for the performance by the ~~latter~~ other person of some act in favor of a third person or ~~hypothecates~~ pledges property as security ~~therefor~~ for the performance."

Section 830. Section 28-11-402, MCA, is amended to read:

"28-11-402. When apparent principal may show he is a surety. ~~One~~ A person who appears to be a principal, whether by the terms of a written instrument or otherwise, may show that ~~he~~ the person is in fact a surety except as against persons who have acted on the faith of ~~his~~ the person's apparent character of principal."

Section 831. Section 28-11-411, MCA, is amended to read:

"28-11-411. Extent of surety's liability. A surety cannot be held beyond the express terms of ~~his~~ the surety's contract, and if ~~such~~ the contract prescribes a penalty for ~~its~~ breach, ~~he~~ the surety cannot in any case be liable for more than the penalty."

Section 832. Section 28-11-412, MCA, is amended to read:

"28-11-412. Exoneration of surety. A surety is exonerated:

- (1) in like manner with a guarantor;
- (2) to the extent to which ~~he~~ the surety is prejudiced by any act of the creditor ~~which that~~ would naturally prove injurious to the remedies of the surety or inconsistent with ~~his~~ the surety's rights or ~~which that~~ lessens ~~his~~ the surety's security; or
- (3) to the extent to which ~~he~~ the surety is prejudiced by an omission of the creditor, when required by the surety, to do anything ~~which that~~ it is the creditor's duty to do."

Section 833. Section 28-11-414, MCA, is amended to read:

"28-11-414. Application to surety of rights of guarantor. A surety has all the right of a guarantor, whether ~~he~~ the surety becomes personally responsible or not."

Section 834. Section 28-11-415, MCA, is amended to read:

"28-11-415. Power of surety to compel principal to perform. A surety may compel ~~his~~ the surety's principal to perform the obligations when due."

Section 835. Section 28-11-416, MCA, is amended to read:

"28-11-416. When surety may require creditor to pursue remedy. A surety may require ~~his~~ the surety's creditor to proceed against the principal or to pursue any other remedy in ~~his~~ the surety's power which that the surety cannot ~~himself~~ pursue and which that would lighten ~~his~~ the surety's burden, and if ~~in such~~ case the creditor neglects to do so, the surety is exonerated to the extent to which ~~he~~ the surety is ~~thereby~~ prejudiced."

Section 836. Section 28-11-417, MCA, is amended to read:

"28-11-417. Surety's right to reimbursement and contribution. (1) If a surety satisfies the principal obligation or any part ~~thereof~~ of the principal obligation, whether with or without legal proceedings, the principal is bound to reimburse what the surety has disbursed, including necessary costs and expenses, but the surety ~~has no~~ does not have a claim for reimbursement against other persons, even though they may have been benefited by ~~his~~ the surety's act, except as prescribed by subsection (2).

(2) A surety, upon satisfying the obligation of the principal, is entitled to enforce every remedy ~~which that~~ the creditor then has against the principal to the extent of reimbursing what the surety has expended and also to require all ~~his~~ cosureties to contribute ~~thereto~~ to the reimbursement without regard to the order of time in which they became ~~such~~ cosureties."

Section 837. Section 28-11-418, MCA, is amended to read:

"28-11-418. Surety entitled to benefit of security held by creditor or cosurety. A surety is entitled to the benefit of every security for the performance of the principal obligation held by the creditor or by a cosurety at the time of entering into the contract of suretyship or acquired by ~~him~~ the creditor or cosurety afterwards, whether the surety was aware of the security or not."

Section 838. Section 30-2-201, MCA, is amended to read:

"30-2-201. Formal requirements -- statute of frauds. (1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by ~~his~~ the party's authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this ~~paragraph~~ subsection beyond the quantity of goods shown in ~~such~~ the writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient

against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against ~~such~~ the party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable:

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in ~~his~~ the party's pleading, testimony, or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (30-2-606)."

Section 839. Section 30-2-304, MCA, is amended to read:

"30-2-304. Price payable in money, goods, realty, or otherwise. (1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which ~~he~~ that party is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this chapter, but not the transfer of the interest in realty or the transferor's obligations in connection ~~therewith~~ with the transfer."

Section 840. Section 30-2-305, MCA, is amended to read:

"30-2-305. Open price term. (1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if:

(a) nothing is said as to price; or

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price ~~for him to fix~~ to be fixed in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at ~~his~~ the party's option treat the contract as canceled or ~~himself~~ the party may fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account."

Section 841. Section 30-2-308, MCA, is amended to read:

"30-2-308. Absence of specified place for delivery. Unless otherwise agreed:

(a) the place for delivery of goods is the seller's place of business or if ~~he has~~ none, ~~his~~ the seller's residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels."

Section 842. Section 30-2-311, MCA, is amended to read:

"30-2-311. Options and cooperation respecting performance. (1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of 30-2-204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of 30-2-319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where ~~such~~ the specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

(a) is excused for any resulting delay in ~~his~~ that party's own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of ~~his~~ that party's own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods."

Section 843. Section 30-2-312, MCA, is amended to read:

"30-2-312. Warranty of title and against infringement -- buyer's obligation against infringement.

(1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that:

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title ~~in himself~~ or that ~~he~~ the seller is purporting to sell only ~~such~~ the right or title as ~~he~~ the seller or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications."

Section 844. Section 30-2-313, MCA, is amended to read:

"30-2-313. Express warranties by affirmation, promise, description, sample. (1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that ~~he~~ the seller have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty."

Section 845. Section 30-2-316, MCA, is amended to read:

"30-2-316. Exclusion or modification of warranties. (1) Words or conduct relevant to the creation of

an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this chapter on parol or extrinsic evidence (30-2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2):

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty;

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to ~~him~~ the buyer;

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade;

(d) in sales of cattle, hogs, sheep, or horses, there are no implied warranties, as defined in this chapter, that the cattle, hogs, sheep, or horses are free from sickness or disease; and

(e) in sales of any seed for planting (including both botanical and vegetative types of seed, whether certified or not), there are no implied warranties, as defined in this chapter, that the seeds are free from disease, virus, or any kind of pathogenic organisms.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this chapter on liquidation or limitation of damages and on contractual modification of remedy (30-2-718 and 30-2-719)."

Section 846. Section 30-2-318, MCA, is amended to read:

"30-2-318. Third-party beneficiaries of warranties express or implied. A seller's warranty whether express or implied extends to any natural person who is in the family or household of ~~his~~ the buyer or who is a guest in ~~his~~ the buyer's home if it is reasonable to expect that ~~such~~ the person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section."

Section 847. Section 30-2-319, MCA, is amended to read:

"30-2-319. F.O.B. and F.A.S. terms. (1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which:

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this chapter (30-2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at ~~his~~ the seller's own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this chapter (30-2-503);

(c) when under either subsection (1)(a) or (1)(b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at ~~his~~ the seller's own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this chapter on the form of bill of lading (30-2-323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must:

(a) at ~~his~~ the seller's own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (1)(c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this chapter (30-2-311). ~~He~~ The seller may also at ~~his~~ the seller's option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents."

Section 848. Section 30-2-320, MCA, is amended to read:

"30-2-320. C.I.F. and C.&F. terms. (1) The term C.I.F. means that the price includes in a lump sum the

cost of the goods and the insurance and freight to the named destination. The term C.&F. or C.F. means that the price ~~so~~ includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at ~~his~~ the seller's own expense and risk to:

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier, ~~{~~ which may be contained in the bill of lading ~~}~~, showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any endorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C.&F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C.&F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents."

Section 849. Section 30-2-324, MCA, is amended to read:

"30-2-324. "No arrival, no sale" term. Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed:

(a) the seller must properly ship conforming goods and if they arrive by any means ~~he~~ the seller must tender them on arrival but ~~he~~ the seller assumes no obligation that the goods will arrive unless ~~he~~ the seller has caused the nonarrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to

conform to the contract or arrive after the contract time, the buyer may proceed as if there has been casualty to identified goods (30-2-613)."

Section 850. Section 30-2-325, MCA, is amended to read:

"30-2-325. "Letter of credit" term -- "confirmed credit". (1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to the seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on reasonable notification to the buyer require payment directly from ~~him~~ the buyer.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market."

Section 851. Section 30-2-401, MCA, is amended to read:

"30-2-401. Passing of title -- reservation for security -- limited application of this section. Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (30-2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this code. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Chapter on Secured Transactions (Chapter 9A), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes performance with reference to the delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require

the seller to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where the seller delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(4) For transactions involving interstate shipment of cattle or cattle being released from auction yards for interstate shipment the seller may issue a regular title or bill of sale, or give a conditional transfer of title or bill of sale. The conditional transfer of title or bill of sale is fully validated and the title passes when the following conditions are met:

(a) the bank on which the buyer's warrant, check, or draft was drawn notifies the seller, or ~~his~~ the seller's designated bank, that the instrument of payment has cleared the bank for payment; and

(b) a copy of the notification from the buyer's bank is attached to the conditional transfer of title or bill of sale.

(5) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale".

Section 852. Section 30-2-402, MCA, is amended to read:

"30-2-402. Rights of seller's creditors against sold goods. (1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this chapter (30-2-502 and 30-2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against ~~him~~ the creditor a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this chapter shall be deemed to impair the rights of creditors of the seller:

(a) under the provisions of the Chapter on Secured Transactions (Chapter 9A); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction

of or as security for a preexisting claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this chapter constitute the transaction a fraudulent transfer or voidable preference."

Section 853. Section 30-2-403, MCA, is amended to read:

"30-2-403. Power to transfer -- good faith purchase of goods -- "entrusting". (1) A purchaser of goods acquires all title which ~~his~~ the purchaser's transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has ~~such~~ the power even though:

- (a) the transferor was deceived as to the identity of the purchaser;
- (b) the delivery was in exchange for a check which is later dishonored;
- (c) it was agreed that the transaction was to be a "cash sale"; or
- (d) the delivery was procured through fraud punishable as theft under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives ~~him~~ the merchant power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods has been such as to constitute theft under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the chapters on secured transactions (chapter 9A) and documents of title (chapter 7)."

Section 854. Section 30-2-501, MCA, is amended to read:

"30-2-501. Insurable interest in goods -- manner of identification of goods. (1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and ~~he~~ the buyer has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs:

- (a) when the contract is made if it is for the sale of goods already existing and identified;
- (b) if the contract is for the sale of future goods other than those described in ~~paragraph (c)~~ subsection

(1)(c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within 12 months after contracting or for the sale of crops to be harvested within 12 months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in ~~him~~ the seller and where the identification is by the seller alone ~~he~~ the seller may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law."

Section 855. Section 30-2-504, MCA, is amended to read:

"30-2-504. Shipment by seller. Where the seller is required or authorized to send the goods to the buyer and the contract does not require ~~him~~ the seller to deliver them at a particular destination, then unless otherwise agreed ~~he~~ the seller must:

~~(a)~~(1) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

~~(b)~~(2) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

~~(c)~~(3) promptly notify the buyer of the shipment. Failure to notify the buyer under ~~paragraph (c)~~ this subsection or to make a proper contract under ~~paragraph (a)~~ subsection (1) is a ground for rejection only if material delay or loss ensues."

Section 856. Section 30-2-505, MCA, is amended to read:

"30-2-505. Seller's shipment under reservation. (1) Where the seller has identified goods to the contract by or before shipment:

(a) ~~his~~ the seller's procurement of a negotiable bill of lading to ~~his~~ the seller's own order or otherwise reserves in ~~him~~ the seller a security interest in the goods. ~~His~~ The seller's procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a nonnegotiable bill of lading to ~~himself~~ the seller or ~~his~~ the seller's nominee reserves possession of

the goods as security but except in a case of conditional delivery (subsection (2) of 30-2-507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document."

Section 857. Section 30-2-507, MCA, is amended to read:

"30-2-507. Effect of seller's tender -- delivery on condition. (1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to ~~his~~ the buyer's duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, ~~his~~ the buyer's right as against the seller to retain or dispose of them is conditional upon ~~his~~ the buyer making the payment due."

Section 858. Section 30-2-508, MCA, is amended to read:

"30-2-508. Cure by seller of improper tender or delivery -- replacement. (1) Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of ~~his~~ the seller's intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if ~~he~~ the seller seasonably notifies the buyer have a further reasonable time to substitute a conforming tender."

Section 859. Section 30-2-509, MCA, is amended to read:

"30-2-509. Risk of loss in the absence of breach. (1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) if it does not require the seller to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are delivered to the carrier even though the shipment is under reservation (30-2-505);
but

(b) if it does require the seller to deliver them at a particular destination and the goods are there tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) on the buyer's receipt of possession or control of a negotiable document of title covering the goods;

or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after ~~his~~ the buyer's receipt of possession or control of a nonnegotiable document of title or other direction to deliver in a record, as provided in ~~subsection (4)(b) of 30-2-503~~(4)(b).

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on the buyer's receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this chapter on sale on approval (30-2-327) and on effect of breach on risk of loss (30-2-510)."

Section 860. Section 30-2-510, MCA, is amended to read:

"30-2-510. Effect of breach on risk of loss. (1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance ~~he~~ the buyer may to the extent of any deficiency in ~~his~~ the buyer's effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to ~~him~~ the buyer, the seller may to the extent of any deficiency in ~~his~~ the seller's effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time."

Section 861. Section 30-2-602, MCA, is amended to read:

"30-2-602. Manner and effect of rightful rejection. (1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (30-2-603 and 30-2-604):

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful

as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which ~~he~~ the buyer does not have a security interest under the provisions of this chapter (subsection (3) of 30-2-711), ~~he~~ the buyer is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this chapter on seller's remedies in general (30-2-703)."

Section 862. Section 30-2-603, MCA, is amended to read:

"30-2-603. Merchant buyer's duties as to rightfully rejected goods. (1) Subject to any security interest in the buyer (subsection (3) of 30-2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in ~~his~~ the buyer's possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), ~~he~~ the buyer is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding 10% on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages."

Section 863. Section 30-2-604, MCA, is amended to read:

"30-2-604. Buyer's options as to salvage of rightfully rejected goods. Subject to the provisions of ~~the immediately preceding section 30-2-603~~ on perishables if the seller gives no instruction within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to ~~him~~ the seller or resell them for the seller's account with reimbursement as provided in ~~the preceding section 30-2-603.~~ ~~Such~~ The action is not acceptance or conversion."

Section 864. Section 30-2-606, MCA, is amended to read:

"30-2-606. What constitutes acceptance of goods. (1) Acceptance of goods occurs when the buyer:

- (a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that ~~he~~ the buyer will take or retain them in spite of their nonconformity; or
 - (b) fails to make an effective rejection (subsection (1) of 30-2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or
 - (c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by ~~him~~ the seller.
- (2) Acceptance of a part of any commercial unit is acceptance of that entire unit."

Section 865. Section 30-2-607, MCA, is amended to read:

"30-2-607. Effect of acceptance -- notice of breach -- burden of establishing breach after acceptance -- notice of claim or litigation to person answerable over. (1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this chapter for nonconformity.

(3) Where a tender has been accepted:

(a) the buyer must within a reasonable time after ~~he~~ the buyer discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of 30-2-312) and the buyer is sued as a result of such a breach ~~he~~ the buyer must so notify the seller within a reasonable time after ~~he~~ the buyer receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which ~~his seller~~ another party is answerable over:

(a) ~~he~~ the buyer may give ~~his seller~~ the other party written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so ~~he~~ the other party will be bound in any action against ~~him~~ the other party by ~~his~~ the buyer by any determination of fact common to the two litigations, then unless the ~~seller~~ other party after seasonable receipt of the notice does come in and defend ~~he~~ the other party is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of 30-2-312) the original seller may demand in writing that ~~his~~ its buyer turn over to ~~him~~ it control of the litigation including settlement or else be barred from any remedy over and if ~~he~~ it also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after reasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of 30-2-312)."

Section 866. Section 30-2-608, MCA, is amended to read:

"30-2-608. Revocation of acceptance in whole or in part. (1) The buyer may revoke ~~his~~ acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to ~~him~~ the buyer if ~~he~~ the buyer has accepted it:

(a) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of such nonconformity if ~~his~~ the buyer's acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if ~~he~~ the buyer had rejected them."

Section 867. Section 30-2-609, MCA, is amended to read:

"30-2-609. Right to adequate assurance of performance. (1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until ~~he~~ the party receives such assurance may if commercially reasonable suspend any performance for which ~~he~~ the party has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding 30 days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract."

Section 868. Section 30-2-610, MCA, is amended to read:

"30-2-610. Anticipatory repudiation. When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may:

- (a)(1) for a commercially reasonable time await performance by the repudiating party; or
- (b)(2) resort to any remedy for breach (30-2-703 or 30-2-711), even though ~~he~~ the aggrieved party has notified the repudiating party that ~~he~~ it would await the latter's performance and has urged retraction; and
- (c)(3) in either case suspend ~~his own~~ performance or proceed in accordance with the provisions of this chapter on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (30-2-704)."

Section 869. Section 30-2-611, MCA, is amended to read:

"30-2-611. Retraction of anticipatory repudiation. (1) Until the repudiating party's next performance is due ~~he~~ that party can retract ~~his~~ the repudiation unless the aggrieved party has since the repudiation canceled or materially changed ~~his~~ position or otherwise indicated that ~~he considers~~ the repudiation is final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this chapter (30-2-609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation."

Section 870. Section 30-2-612, MCA, is amended to read:

"30-2-612. "Installment contract" -- breach. (1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is nonconforming if the nonconformity substantially impairs the value of that installment and cannot be cured or if the nonconformity is a defect in the required

documents; but if the nonconformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if ~~he~~ the party accepts a nonconforming installment without seasonably notifying of cancellation or if ~~he~~ the party brings an action with respect only to past installments or demands performance as to future installments."

Section 871. Section 30-2-613, MCA, is amended to read:

"30-2-613. Casualty to identified goods. Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (30-2-324) then:

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at ~~his~~ the buyer's option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller."

Section 872. Section 30-2-615, MCA, is amended to read:

"30-2-615. Excuse by failure of presupposed conditions. Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

~~(a)~~(1) Delay in delivery or nondelivery in whole or in part by a seller who complies with ~~paragraphs (b) and (c)~~ subsections (2) and (3) is not a breach of ~~his~~ the seller's duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

~~(b)~~(2) Where the causes mentioned in ~~paragraph (a)~~ subsection (1) affect only a part of the seller's capacity to perform, ~~he~~ the seller must allocate production and deliveries among ~~his~~ its customers but may at ~~his~~ its option include regular customers not then under contract as well as ~~his~~ its own requirements for further manufacture. ~~He~~ The seller may so allocate in any manner which is fair and reasonable.

~~(c)~~(3) The seller must notify the buyer seasonably that there will be delay or nondelivery and, when allocation is required under ~~paragraph (b)~~ subsection (2), of the estimated quota thus made available for the

buyer."

Section 873. Section 30-2-616, MCA, is amended to read:

"30-2-616. Procedure on notice claiming excuse. (1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section ~~he~~ it may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this chapter relating to breach of installment contracts (30-2-612), then also as to the whole:

- (a) terminate and thereby discharge any unexecuted portion of the contract; or
- (b) modify the contract by agreeing to take ~~his~~ its available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding 30 days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except insofar as the seller has assumed a greater obligation under the preceding section."

Section 874. Section 30-2-702, MCA, is amended to read:

"30-2-702. Seller's remedies on discovery of buyer's insolvency. (1) Where the seller discovers the buyer to be insolvent ~~he~~ the seller may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this chapter (30-2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent ~~he~~ the seller may reclaim the goods upon demand made within 10 days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within 3 months before delivery the 10-day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this chapter (30-2-403). Successful reclamation of goods excludes all other remedies with respect to them."

Section 875. Section 30-2-704, MCA, is amended to read:

"30-2-704. Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods. (1) An aggrieved seller under the preceding section may:

(a) identify to the contract conforming goods not already identified if at the time ~~he~~ the seller learned of the breach they are in ~~his~~ the seller's possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner."

Section 876. Section 30-2-706, MCA, is amended to read:

"30-2-706. Seller's resale including contract for resale. (1) Under the conditions stated in 30-2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this chapter (30-2-710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of ~~his~~ an intention to resell.

(4) Where the resale is at public sale:

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (30-2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of ~~his~~ the buyer's security interest, as hereinafter defined (subsection (3) of 30-2-711)."

Section 877. Section 30-2-707, MCA, is amended to read:

"30-2-707. "Person in the position of a seller". (1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of ~~his~~ the principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this chapter withhold or stop delivery (30-2-705) and resell (30-2-706) and recover incidental damages (30-2-710)."

Section 878. Section 30-2-709, MCA, is amended to read:

"30-2-709. Action for the price. (1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price:

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price ~~he~~ the seller must hold for the buyer any goods which have been identified to the contract and are still in ~~his~~ the seller's control except that if resale becomes possible ~~he~~ the seller may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles ~~him~~ the buyer to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (30-2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under the preceding section."

Section 879. Section 30-2-711, MCA, is amended to read:

"30-2-711. Buyer's remedies in general -- buyer's security interest in rejected goods. (1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (30-2-612), the buyer may cancel and whether or not ~~he~~ the buyer has done so may in addition to recovering so much of the price as has been paid:

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for nondelivery as provided in this chapter (30-2-713).

(2) Where the seller fails to deliver or repudiates the buyer may also:

(a) if the goods have been identified recover them as provided in this chapter (30-2-502); or

(b) in a proper case obtain specific performance or recover the goods as provided in this chapter (30-2-716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in ~~his~~ the buyer's possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (30-2-706)."

Section 880. Section 30-2-712, MCA, is amended to read:

"30-2-712. "Cover" -- buyer's procurement of substitute goods. (1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (30-2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar ~~him~~ the buyer from any other remedy."

Section 881. Section 30-2-714, MCA, is amended to read:

"30-2-714. Buyer's damages for breach in regard to accepted goods. (1) Where the buyer has accepted goods and given notification (subsection (3) of 30-2-607) ~~he~~ the buyer may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined

in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered."

Section 882. Section 30-2-717, MCA, is amended to read:

"30-2-717. Deduction of damages from the price. The buyer on notifying the seller of his an intention to do so may deduct all or any part of the damages resulting from any breach of contract from any part of the price still due under the same contract."

Section 883. Section 30-2-718, MCA, is amended to read:

"30-2-718. Liquidation or limitation of damages -- deposits. (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his the buyer's payments exceeds:

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1);₁ or

(b) in the absence of such terms, 20% of the value of the total performance for which the buyer is obligated under the contract or \$500, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes:

(a) a right to recover damages under the provisions of this chapter other than subsection (1);₁ and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach

before reselling goods received in part performance, ~~his~~ the resale is subject to the conditions laid down in this chapter on resale by an aggrieved seller (30-2-706)."

Section 884. Section 30-2-722, MCA, is amended to read:

"30-2-722. Who can sue third parties for injury to goods. Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract:

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, ~~his~~ the party plaintiff's suit or settlement is, subject to ~~his~~ its own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern."

Section 885. Section 30-2-723, MCA, is amended to read:

"30-2-723. Proof of market price -- time and place. (1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (30-2-708 or 30-2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this chapter is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this chapter offered by one party is not admissible unless and until ~~he~~ that party has given the other party such notice as the court finds sufficient to prevent unfair surprise."

Section 886. Section 30-2A-103, MCA, is amended to read:

"30-2A-103. Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires, the following definitions apply:

(a) "Buyer in ordinary course of business" means a person, who in good faith and without knowledge that the sale to the buyer is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but the term does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine; a set of articles, as a suite of furniture or a line of machinery; a quantity, as a gross or carload; or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that is in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed \$25,000.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) the lessor does not select, manufacture, or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods,

provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:

(I) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person;

(II) that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and

(III) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (30-2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(o) "Lessee in ordinary course of business" means a person, who in good faith and without knowledge that the lease to ~~him~~ the person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but the term does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this chapter and the sections in which they appear are:

- (a) "Accessions". 30-2A-310(1).
- (b) "Construction mortgage". 30-2A-309(1)(d).
- (c) "Encumbrance". 30-2A-309(1)(e).
- (d) "Fixtures". 30-2A-309(1)(a).
- (e) "Fixture filing". 30-2A-309(1)(b).
- (f) "Purchase money lease". 30-2A-309(1)(c).

(3) The following definitions in other chapters apply to this chapter:

- (a) "Account". 30-9A-102(1)(b).
- (b) "Between merchants". 30-2-104(3).
- (c) "Buyer". 30-2-103(1)(a).
- (d) "Chattel paper". 30-9A-102(1)(k).
- (e) "Consumer goods". 30-9A-102(1)(w).
- (f) "Document". 30-9A-102(1)(dd).
- (g) "Entrusting". 30-2-403(3).
- (h) "General intangible". 30-9A-102(1)(pp).
- (i) "Good faith". 30-2-103(1)(b).
- (j) "Instrument". 30-9A-102(1)(uu).
- (k) "Merchant". 30-2-104(1).
- (l) "Mortgage". 30-9A-102(1)(ccc).
- (m) "Pursuant to commitment". 30-9A-102(1)(ppp).
- (n) "Receipt". 30-2-103(1)(c).
- (o) "Sale". 30-2-106(1).
- (p) "Sale on approval". 30-2-326.
- (q) "Sale or return". 30-2-326.
- (r) "Seller". 30-2-103(1)(d).

(4) In addition, Title 30, chapter 1, contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 887. Section 30-2A-108, MCA, is amended to read:

"30-2A-108. Unconscionability. (1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made, the court may refuse to enforce the lease contract, it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

(3) Before making a finding of unconscionability under subsection (1) or (2), the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof or of the conduct.

(4) In an action in which the lessee claims unconscionability with respect to a consumer lease:

(a) if the court finds unconscionability under subsection (1) or (2), the court shall award reasonable attorney fees to the lessee;

(b) if the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action ~~he~~ the lessee knew to be groundless, the court shall award reasonable attorney fees to the party against whom the claim is made;

(c) in determining attorney fees, the amount of the recovery on behalf of the claimant under subsections (1) and (2) is not controlling."

Section 888. Section 30-2A-109, MCA, is amended to read:

"30-2A-109. Option to accelerate at will. (1) A term providing that one party or ~~his~~ the party's successor in interest may accelerate payment of performance or require collateral or additional collateral "at will" or "when ~~he~~ the party deems ~~himself~~ itself insecure" or in words of similar import must be construed to mean that ~~he~~ the party has power to do so only if ~~he~~ the party in good faith believes that the prospect of payment or performance is impaired.

(2) With respect to a consumer lease, the burden of establishing good faith under subsection (1) is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised."

Section 889. Section 30-2A-220, MCA, is amended to read:

"30-2A-220. Effect of default on risk of loss. (1) When risk of loss is to pass to the lessee and the time of passage is not stated:

(a) if a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor or, in the case of a finance lease, the supplier until cure or acceptance.

(b) if the lessee rightfully revokes acceptance, ~~he~~ the lessee, to the extent of any deficiency in ~~his~~ its effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor or, in the case of a finance lease, the supplier, to the extent of any deficiency in ~~his~~ its effective insurance coverage, may treat the risk of loss as resting on the lessee for a commercially reasonable time."

Section 890. Section 30-2A-221, MCA, is amended to read:

"30-2A-221. Casualty to identified goods. If a lease contract requires goods identified when the lease contract is made and the goods suffer casualty without fault of the lessee, the lessor, or the supplier before delivery or if the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or 30-2A-219, then:

(1) if the loss is total, the lease contract is avoided; and

(2) if the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at ~~his~~ the lessee's option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor."

Section 891. Section 30-2A-310, MCA, is amended to read:

"30-2A-310. Lessor's and lessee's rights when goods become accessions. (1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4).

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection

(4) but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

(4) The interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) is subordinate to the interest of:

(a) a buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or

(b) a creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(5) When under subsections (2) and (4) or (3) and (4) a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may, on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this chapter or if necessary to enforce ~~his~~ the lessor's or lessee's other rights and remedies under this chapter, remove the goods from the whole, free and clear of all interests in the whole, but ~~he~~ the lessor or lessee must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed to the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation."

Section 892. Section 30-2A-401, MCA, is amended to read:

"30-2A-401. Insecurity -- adequate assurance of performance. (1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable, the insecure party may suspend any performance for which ~~he~~ the insecure party has not already received the agreed return.

(3) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed 30 days after receipt of a demand by the other party.

(4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any

assurance offered must be determined according to commercial standards.

(5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance."

Section 893. Section 30-2A-405, MCA, is amended to read:

"30-2A-405. Excused performance. Subject to 30-2A-404 on substituted performance, the following rules apply:

(1) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with subsections (2) and (3) is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(2) If the causes mentioned in subsection (1) affect only part of the lessor's or the supplier's capacity to perform, ~~he~~ the lessor or supplier shall allocate production and deliveries among ~~his~~ customers but at ~~his~~ the lessor's or supplier's option may include regular customers not then under contract for sale or lease as well as ~~his~~ the lessor's or supplier's own requirements for further manufacture. ~~He~~ The lessor or supplier may so allocate in any manner that is fair and reasonable.

(3) The lessor seasonably shall notify the lessee and, in the case of a finance lease, the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under subsection (2), of the estimated quota thus made available for the lessee."

Section 894. Section 30-2A-504, MCA, is amended to read:

"30-2A-504. Liquidation of damages. (1) Damages payable by either party for default or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to a lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages and such provision does not comply with subsection (1) or if such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this chapter.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (30-2A-525 or 30-2A-526), the lessee is entitled to restitution of any amount by which the sum of ~~his~~

the lessee's payments exceeds:

(a) the amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1); or

(b) in the absence of those terms, 20% of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term or, in the case of a consumer lease, the lesser of such amount or \$500.

(4) A lessee's right to restitution under subsection (3) is subject to offset to the extent the lessor establishes:

(a) a right to recover damages under the provisions of this chapter other than subsection (1) of this section; and

(b) the amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract."

Section 895. Section 30-2A-507, MCA, is amended to read:

"30-2A-507. Proof of market rent -- time and place. (1) Damages based on market rent (30-2A-519 or 30-2A-528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the time of the default.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this chapter is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term that in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this chapter offered by one party is not admissible unless and until ~~he~~ the party has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility."

Section 896. Section 30-2A-511, MCA, is amended to read:

"30-2A-511. Merchant lessee's duties as to rightfully rejected goods. (1) Subject to any security interest of a lessee (30-2A-508(5)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in ~~his~~ the lessee's possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee (subsection (1) of this section) or any other lessee (30-2A-512) disposes of goods, ~~he~~ the lessee is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade or, if there is none, to a reasonable sum not exceeding 10% of the gross proceeds.

(3) In complying with 30-2A-512 or this section, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to 30-2A-512 or this section takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this chapter."

Section 897. Section 30-2A-513, MCA, is amended to read:

"30-2A-513. Cure by lessor of improper tender or delivery -- replacement. (1) If any tender or delivery by the lessor or the supplier is rejected because it is nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if ~~he~~ the lessor or supplier seasonably notifies the lessee."

Section 898. Section 30-2A-531, MCA, is amended to read:

"30-2A-531. Standing to sue third parties for injury to goods. (1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract:

(a) the lessor has a right of action against the third party; and

(b) the lessee also has a right of action against the third party if the lessee:

- (i) has a security interest in the goods;
- (ii) has an insurable interest in the goods; or
- (iii) bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, ~~his~~ the party plaintiff's suit or settlement, subject to ~~his~~ the party plaintiff's own interest, is as a fiduciary for the other party to the lease contract.

(3) Either party with the consent of the other may sue for the benefit of whom it may concern."

Section 899. Section 30-7-302, MCA, is amended to read:

"30-7-302. Through bills of lading and similar documents of title. (1) The issuer of a through bill of lading or other document of title embodying an undertaking to be performed in part by persons acting as its agents or by a performing carrier is liable to any person entitled to recover on the document for any breach by the other person or the performing carrier of its obligation under the document. However, to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by ~~any such~~ that person, ~~he~~ the person is subject with respect to ~~his~~ its own performance while the goods are in ~~his~~ its possession to the obligation of the issuer. ~~His~~ The person's obligation is discharged by delivery of the goods to another ~~such~~ person pursuant to the document; and does not include liability for breach by any other ~~such persons~~ person or by the issuer.

(3) The issuer of a through bill of lading or other document of title described in subsection (1) is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the document occurred:

- (a) the amount it may be required to pay to any person entitled to recover on the document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and
- (b) the amount of any expense reasonably incurred by the issuer in defending any action commenced

by any person entitled to recover on the document for the breach."

Section 900. Section 30-10-204, MCA, is amended to read:

"30-10-204. Registration by coordination. (1) Any security for which a registration statement has been filed under the Securities Act of 1933 or any securities for which filings have been made pursuant to regulation A or regulation E, and amendments ~~thereto~~ to those regulations, of the general rules and regulations of the United States securities and exchange commission, adopted pursuant to ~~subsection (b)~~ of section 3(b) of ~~said the~~ Securities Act of 1933, in connection with the same offering, may be registered by coordination. A registration statement under this section ~~shall~~ must contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) one copy of the prospectus or offering circular and letter of notification filed under the Securities Act of 1933 or the general rules and regulations ~~thereunder~~ under that act, together with all amendments ~~thereto~~ to that act;

(b) the amount of securities to be offered in this state;

(c) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(d) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission;

(e) if the commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) if the commissioner requests, any other information; or copies of any other documents; filed under the Securities Act of 1933;

(g) an undertaking to forward promptly all amendments to the federal registration statement or offering circular and letter of notification, other than an amendment ~~which~~ that merely delays the effective date;

(h) a consent to service of process meeting the requirements of 30-10-208; and

(i) ~~such~~ other information ~~as~~ that the commissioner may require.

(2) A registration statement by coordination under this section automatically becomes effective at the moment the federal registration statement or other filing becomes effective if all the following conditions are satisfied:

(a) no stop order is in effect and no proceeding is pending under 30-10-207;

(b) the registration statement has been on file with the commissioner for at least 10 business days; and

(c) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for 2 business days or ~~such a~~ shorter period ~~as~~ that the commissioner permits by rule or otherwise and the offering is made within those limitations.

(3) The registrant shall promptly notify the commissioner of the date and time when the federal registration statement or other filings became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment ~~which~~ that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(4) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment referred to in subsection (3) ~~of this section~~, the commissioner may enter a denial order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with subsections (2) and (3) ~~of this section~~, if ~~he~~ the commissioner promptly notifies the registrant of the issuance of the order. If the registrant proves compliance with the requirements as to notice and posteffective amendment, the denial order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in subsections (2)(b) and (2)(c) ~~of this section~~. If the federal registration statement or other filing becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement or other filing is expected to become effective, the commissioner shall promptly advise the registrant whether all the conditions are satisfied and whether ~~he then~~ the commissioner contemplates the institution of a proceeding under 30-10-207; ~~but~~ However, this advice by the commissioner does not preclude the institution of ~~such~~ a proceeding at any time."

Section 901. Section 30-10-205, MCA, is amended to read:

"30-10-205. Registration by qualification. (1) Any security may be registered by qualification. A registration statement under this section ~~shall~~ must contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) with respect to the issuer and any significant subsidiary: its name, address, form of organization, the

state or foreign jurisdiction and date of its organization, the general character and location of its business, and a description of its physical properties and equipment;

(b) with respect to every director and officer of the issuer or person occupying a similar status or performing similar functions: ~~his~~ the person's name, address, and principal occupation for the past 5 years, the amount of securities of the issuer held by ~~him~~ the person as of a specified date within 90 days of the filing of the registration statement, the remuneration paid to all ~~such~~ listed persons in the aggregate during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, ~~(together with all predecessors, parents, and subsidiaries);~~

(c) with respect to any person not named in subsection (1)(b) ~~of this section~~ owning of record, or beneficially if known, 10% or more of the outstanding shares of any class of equity security of the issuer: the information specified in subsection (1)(b) ~~of this section~~ other than ~~his~~ the person's occupation;

(d) with respect to every promoter not named in subsection (1)(b) ~~of this section~~, if the issuer was organized within the past 3 years: the information specified in subsection (1)(b) ~~of this section~~, any amount paid to ~~him~~ the promoter by the issuer within that period or intended to be paid to ~~him~~ the promoter, and the consideration for any ~~such~~ payment;

(e) the capitalization and long-term debt, ~~(on both a current and a pro forma basis),~~ of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, ~~(whether in the form of cash, physical assets, services, patents, goodwill, or anything else),~~ for which the issuer or any subsidiary has issued any of its securities within the past 2 years or is obligated to issue any of its securities;

(f) the kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price and any variation ~~therefrom~~ from the offering price at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions; the estimated aggregate underwriting and selling discounts, commissions, and other promotional fees, ~~(including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering);~~ the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering; the name and address of every underwriter and every recipient of a promotional fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any ~~such~~ agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities ~~which that~~ are to be offered otherwise than through an underwriter;

(g) the estimated cash proceeds to be received by the issuer from the offering, the purposes for which

the proceeds are to be used by the issuer, the amount to be used for each purpose, the amounts of any funds to be raised from other sources to achieve the purposes stated and the sources of ~~any such~~ the additional funds, and, if any part of the proceeds is to be used to acquire any property, (including goodwill), otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price;

(h) a description of any stock options or other security options outstanding or to be created in connection with the offering, together with the amount of any ~~such~~ options held or to be held by every person required to be named in subsection (1)(b), (1)(c), (1)(d), (1)(e), or (1)(g) and by any person who holds or will hold 10% or more in the aggregate of any ~~such~~ options;

(i) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(j) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission, a description of any pending litigation or proceeding to which the issuer is a party and ~~which~~ that materially affects its business or assets, (including any such litigation or proceeding known to be contemplated by governmental authorities);

(k) a copy of any prospectus or circular intended as of the effective date to be used in connection with the offering;

(l) a specimen or copy of the security being registered, a copy of the issuer's articles of incorporation and bylaws as currently in effect, and a copy of any indenture or other instrument covering the security to be registered;

(m) a signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered;

(n) a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement, a profit and loss statement and analysis of surplus for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than 3 years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements ~~which~~ that would be required if that business were the registrant;

(o) a consent to service of process meeting the requirements of 30-10-208; and

(p) ~~such~~ other information ~~as~~ that the commissioner may require.

(2) In the case of a nonissuer distribution, information may not be required under this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be

made or can be furnished by them without unreasonable effort or expense.

(3) A registration statement by qualification under this section becomes effective when the commissioner so orders. The commissioner may require as a condition of registration under this section that a prospectus containing any designated part of the information specified in this section be sent or given to each person to whom an offer is made before or concurrently with:

(a) the first written offer made to ~~him (otherwise than~~ the person, by means of ~~of other than~~ a public advertisement), by or for the account of the issuer or any other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by ~~him~~ the underwriter or broker-dealer as a participant in the distribution;

(b) the confirmation of any sale made by or for the account of any such person;

(c) payment pursuant to any such sale; or

(d) delivery of the security pursuant to any such sale, whichever first occurs, but the commissioner shall accept for use under ~~any such~~ the requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations ~~thereunder~~ implementing that act."

Section 902. Section 30-10-208, MCA, is amended to read:

"30-10-208. Consent to service of process -- manner of service. (1) Every applicant for registration as a broker-dealer, investment adviser, salesperson, or investment adviser representative under parts 1 through 3 of this chapter and every issuer ~~which that~~ proposes to register and offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the commissioner, in ~~such a form as~~ he that the commissioner prescribes, an irrevocable consent appointing the commissioner and ~~his~~ the commissioner's successors in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or ~~its or his~~ the applicant's successor, executor, or administrator ~~which that~~ arises under parts 1 through 3 of this chapter or any rule or order ~~hereunder~~ under parts 1 through 3 of this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent.

(2) Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless:

(a) the plaintiff, who may be the commissioner, in a suit, action, or proceeding instituted by ~~him~~ the plaintiff, ~~forthwith~~ sends timely notice of the service and a copy of the process by certified or registered mail to the defendant or respondent at ~~its or his~~ the defendant's or respondent's last address on file with the

commissioner; and

(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within ~~such~~ any further time ~~as~~ that the court allows."

Section 903. Section 30-10-306, MCA, is amended to read:

"30-10-306. Criminal liabilities. (1) Any person who willfully violates any provision of parts 1 through 3 of this chapter except 30-10-302, who willfully violates any rule or order under parts 1 through 3 of this chapter, or who willfully violates 30-10-302 knowing the statement made to be false or misleading in any material respect shall upon conviction be fined not more than \$5,000 or imprisoned not more than 10 years, or both; ~~however~~ However, ~~in the event if~~ the person ~~so~~ convicted has been previously convicted of a felony in any way involving securities, imprisonment ~~hereunder~~ for not less than 1 year ~~shall be~~ is mandatory. ~~No~~ An indictment or information may not be returned under parts 1 through 3 of this chapter more than 8 years after the alleged violation; ~~however~~ However, the time limitation period may be extended allowing commencement of a prosecution within 1 year after the date the commissioner or other prosecuting officer becomes aware of the violation.

(2) The commissioner may refer ~~such~~ evidence ~~as~~ that may be available concerning violations of parts 1 through 3 of this chapter or of any rule or order ~~hereunder~~ under parts 1 through 3 of this chapter to the attorney general or the proper prosecuting attorney, who may in ~~his~~ the prosecutor's discretion, with or without ~~such~~ a reference, institute the appropriate criminal proceedings under parts 1 through 3 of this chapter.

(3) ~~Nothing in parts~~ Parts 1 through 3 of this chapter ~~limits~~ do not limit the power of the state to punish any person for any conduct ~~which~~ that constitutes a crime."

Section 904. Section 30-10-307, MCA, is amended to read:

"30-10-307. Civil liabilities -- limitations on actions. (1) Any person who offers or sells a security in violation of 30-10-202 or offers or sells a security by means of fraud or misrepresentation is liable to the person buying the security from ~~him~~ the offeror or seller, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at 10% ~~per annum~~ a year from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if ~~he~~ the buyer no longer owns the security. Damages are the amount that would be recoverable upon a tender less:

- (a) the value of the security when the buyer disposed of it; and
- (b) interest at 10% ~~per annum~~ a year from the date of disposition.

(2) Every person who directly or indirectly controls a seller liable under subsection (1), every partner, officer, or director (or person occupying a similar status or performing similar functions) or employee of ~~such a~~ the seller, and every broker-dealer or salesperson who participates or materially aids in the sale is liable jointly and severally with and to the same extent as the seller if the nonseller knew, or in the exercise of reasonable care could have known, of the existence of the facts by reason of which the liability is alleged to exist. There ~~shall~~ must be contribution among the several liable persons ~~so liable~~.

(3) Any tender specified in this section may be made at any time before entry of judgment. A cause of action under this statute survives the death of any person who might have been a plaintiff or a defendant. ~~No A~~ person may not sue under this section if:

(a) if the buyer has received a written offer, at a time when ~~he~~ the buyer owned the security, to refund the consideration paid, together with interest at 10% ~~per annum~~ a year from the date of payment, less the amount of any income received on the security and ~~he~~ the buyer failed to accept the offer within 30 days of its receipt; or

(b) if the buyer has received a written offer at a time when ~~he~~ the buyer did not own the security in the amount that would be recoverable under subsection (1) upon a tender less:

- (i) the value of the security when the buyer disposed of it; and
- (ii) interest at 10% ~~per annum~~ a year from the date of disposition.

(4) ~~No A~~ person who has made or engaged in the performance of any contract in violation of any provision of parts 1 through 3 of this chapter or any rule or order ~~hereunder~~ under parts 1 through 3 of this chapter or who has acquired any purported right under ~~any such~~ the contract with knowledge of the facts by reason of which its making or performance was in violation may not base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of parts 1 through 3 of this chapter or any rule or order ~~hereunder~~ adopted under parts 1 through 3 of this chapter is void as against public policy and in the public interest.

(5) (a) ~~No An~~ action may not be maintained under this section to enforce any liability founded on a violation of 30-10-202 unless it is brought within 2 years after the violation occurs.

(b) ~~No An~~ action may not be maintained under this section to enforce any liability founded on fraud or misrepresentation unless it is brought within 2 years after discovery of the fraud or misrepresentation on which the liability is founded or after ~~such the~~ the discovery should have been made by the exercise of reasonable diligence.

(c) ~~In no event may an~~ An action may not be maintained under this section to enforce any liability founded on fraud or misrepresentation unless it is brought within 5 years after the transaction on which the action

is based."

Section 905. Section 30-11-106, MCA, is amended to read:

"30-11-106. Agreement to sell and buy. An agreement to sell and buy is a contract by which ~~one a~~ person engages to transfer the title to a certain thing to another, who engages to accept the ~~same thing~~ same thing from ~~him~~ the seller and to pay a price ~~therefor~~ for the thing."

Section 906. Section 30-11-109, MCA, is amended to read:

"30-11-109. Usual When usual common-law covenants required by such contracts, ~~when~~. An agreement on the part of a seller of real property to give the usual covenants binds ~~him~~ the seller to insert in the grant covenants of "seisin", "quiet enjoyment", "further assurance", "general warranty", and "against encumbrances"."

Section 907. Section 30-11-110, MCA, is amended to read:

"30-11-110. Form of covenants. The covenants mentioned in 30-11-109 must be in substance as follows:

"The party of the first part covenants with the party of the second part that the ~~former~~ party of the first part is now seized in fee simple of the property granted; that the ~~latter~~ party of the second part shall enjoy the ~~same property~~ same property without any lawful disturbance; that the ~~same property~~ same property is free from all encumbrances; that the party of the first part and all persons acquiring any interest in the ~~same property~~ same property through or for ~~him~~ the party of the first part will, on demand, execute and deliver to the party of the second part, at the expense of the ~~latter~~ party of the second part, any further assurance of the ~~same property~~ same property that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the ~~said~~ property against every person lawfully claiming the ~~same property~~ same property."

Section 908. Section 30-11-111, MCA, is amended to read:

"30-11-111. Contract for sale of real property. ~~No~~ An agreement for the sale of real property or of any interest ~~therein in real property~~ in real property is ~~not~~ not valid unless the ~~same agreement~~ same agreement, or some note or memorandum ~~thereof of the agreement~~ thereof, ~~be is~~ is in writing and subscribed by the party to be charged or ~~his~~ the party's agent ~~thereunto~~ authorized in writing; ~~but~~ However, this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance ~~thereof of the agreement~~ thereof."

Section 909. Section 30-11-113, MCA, is amended to read:

"30-11-113. Sale equivalent to exchange. The provisions of the sections on sale apply to exchanges. Each party has the rights and obligations of a seller as to the thing ~~which he~~ that the party gives and of a buyer as to that which ~~he~~ the party takes."

Section 910. Section 30-11-114, MCA, is amended to read:

"30-11-114. Warranty of money. On an exchange of money, each party ~~thereby~~ warrants the genuineness of the money given by ~~him~~ the party."

Section 911. Section 30-11-201, MCA, is amended to read:

"30-11-201. When a seller must act as a depositary. After personal property has been sold and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that ~~he must~~ the seller shall keep the property, without charge, until the buyer has had a reasonable opportunity to remove it."

Section 912. Section 30-11-202, MCA, is amended to read:

"30-11-202. When seller may resell. If a buyer of personal property does not pay for it according to contract and it remains in the possession of the seller after payment is due, the seller may rescind the sale; or may enforce ~~his~~ the seller's lien for the price; in the manner prescribed by the law on liens."

Section 913. Section 30-11-203, MCA, is amended to read:

"30-11-203. Delivery on demand. ~~One~~ A person who sells personal property, whether it was in ~~his~~ the person's possession at the time of sale or not, ~~must shall~~ put it into a condition fit for delivery and deliver it to the buyer within a reasonable time after demand, unless ~~he~~ the person has a lien ~~thereon~~ on the property."

Section 914. Section 30-11-205, MCA, is amended to read:

"30-11-205. Expense of transportation. ~~One~~ A person who sells personal property ~~must shall~~ bring it to ~~his~~ the person's own door or ~~other~~ another convenient place for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer."

Section 915. Section 30-11-206, MCA, is amended to read:

"30-11-206. Notice of election as to delivery. When either party to a contract of sale has an option as

to the time, place, or manner of delivery, ~~he must~~ the party shall give the other party reasonable notice of ~~his~~ the party's choice; ~~and if he~~ If the party does not give ~~such~~ notice within a reasonable time, ~~his~~ the right of option is waived."

Section 916. Section 30-11-207, MCA, is amended to read:

"30-11-207. Transportation. If a seller agrees to send the thing sold to the buyer, ~~he must~~ the seller shall follow the directions of the ~~latter~~ buyer as to the manner of sending or it will be at ~~his~~ the seller's own risk during its transportation. If ~~he~~ the seller follows ~~such~~ the directions or if, in the absence of special directions, ~~he~~ the seller uses ordinary care in forwarding the thing, it is at the risk of the buyer."

Section 917. Section 30-11-211, MCA, is amended to read:

"30-11-211. Warranty of title to personal property. ~~One~~ A person who sells or agrees to sell personal property as ~~his~~ the person's own ~~thereby~~ warrants that ~~he~~ the person has a good and unencumbered title ~~thereto~~ to the property."

Section 918. Section 30-11-213, MCA, is amended to read:

"30-11-213. Warranty when seller knows that buyer relies on his seller's statements. ~~One~~ A person who sells or agrees to sell personal property knowing that the buyer relies upon ~~his~~ the person's advice or judgment ~~thereby~~ warrants to the buyer that neither the seller nor any agent employed by ~~him~~ the seller in the transaction knows the existence of any fact concerning the thing sold ~~which that~~ would, to ~~his~~ the seller's knowledge, destroy the buyer's inducement to buy."

Section 919. Section 30-11-215, MCA, is amended to read:

"30-11-215. Manufacturer's warranty against latent defects. ~~One~~ A person who sells or agrees to sell an article of ~~his~~ the person's own manufacture ~~thereby~~ warrants it the article to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture and also that ~~neither he nor~~ the person or the person's agent in ~~such~~ the manufacture has not knowingly used improper materials ~~therein~~ in the manufacture."

Section 920. Section 30-11-220, MCA, is amended to read:

"30-11-220. Warranty on sale of written instrument. ~~One~~ A person who sells or agrees to sell an

instrument purporting to bind anyone to the performance of any act ~~thereby~~ warrants that ~~he has no~~ the person ~~does not have~~ knowledge of any facts ~~which that~~ tend to prove it the instrument worthless, such as the insolvency of any of the parties ~~thereto where~~ when that is material, the extinction of its obligations, or its invalidity for any cause."

Section 921. Section 30-11-221, MCA, is amended to read:

"30-11-221. Warranty on sale of goodwill. ~~One~~ A person who sells the goodwill of a business ~~thereby~~ warrants that ~~he~~ the person will not endeavor to draw off any of the customers."

Section 922. Section 30-11-223, MCA, is amended to read:

"30-11-223. Effect of general warranty. A general warranty does not extend to defects inconsistent ~~therewith~~ with the warranty of which the buyer was ~~then~~ aware or ~~which that~~ were ~~then~~ easily discernible by ~~him~~ the buyer without the exercise of peculiar skill, but ~~it~~ the warranty extends to all other defects."

Section 923. Section 30-11-302, MCA, is amended to read:

"30-11-302. Obligation to keep merchandise in full view. Any merchant ~~shall have~~ has the right to request any individual on ~~his~~ the merchant's premises to place or keep in full view any merchandise ~~such that~~ the individual may have removed, or ~~which that~~ the merchant has reason to believe ~~he~~ the individual may have removed, from its place of display or elsewhere, whether for examination, purchase, or for any other purpose. ~~No~~ A merchant ~~shall~~ may not be criminally or civilly liable for slander, false arrest, or otherwise on account of having made such a request."

Section 924. Section 30-11-502, MCA, is amended to read:

"30-11-502. Sale by auction. (1) In a sale by auction of goods by lot, each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer ~~se~~ announces the sale by the fall of the hammer or other customary manner. ~~Where~~ When a bid is made while the hammer is falling in acceptance of a prior bid, the auctioneer may ~~in his discretion~~ reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) ~~Such a~~ An auction sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve, the auctioneer may withdraw the goods at any time until ~~he~~ the auctioneer announces

completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless ~~no~~ a bid is not made within a reasonable time. In either case a bidder may retract ~~his~~ a bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures ~~such~~ a bid and notice has not been given that liberty for ~~such~~ the bidding is reserved, the buyer may ~~at his option~~ avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection does not apply to any bid at a forced sale."

Section 925. Section 30-11-503, MCA, is amended to read:

"30-11-503. Sale under written conditions. When a sale by auction is made upon written or printed conditions, those conditions cannot be modified by any oral declaration of the auctioneer except those for ~~his~~ the auctioneer's own protection."

Section 926. Section 30-11-504, MCA, is amended to read:

"30-11-504. Auctioneer's memorandum of sale. When property is sold by auction, an entry made by the auctioneer in ~~his~~ the sale book at the time of the sale specifying the name of the person for whom ~~he~~ the auctioneer sells, the thing sold, the price, the terms of sale, and the name of the buyer binds both the parties in the same manner as if made by ~~themselves~~ the parties."

Section 927. Section 30-11-508, MCA, is amended to read:

"30-11-508. Auctioneer -- authority and bond. ~~Any~~ A citizen of this state may become an auctioneer and be authorized to sell real or personal property at public auction in any county in this state after giving a bond in accordance with the provisions of this part for the faithful performance of ~~his~~ the citizen's duties."

Section 928. Section 30-11-510, MCA, is amended to read:

"30-11-510. Bond and sureties -- approval -- filing. (1) Bond must be payable to the state, with one or more sureties, in the sum of \$5,000 and approved by the county clerk of the county in which the auctioneer resides and filed in ~~his~~ the clerk's office.

(2) If the auctioneer is not a resident, the bond ~~shall~~ must be filed with the county clerk of the county of this state in which ~~he~~ the auctioneer carries on ~~his~~ the auctioneer's principal auction business."

Section 929. Section 30-11-511, MCA, is amended to read:

"30-11-511. Auctioneers ex officio. (1) In any county without an auctioneer, the sheriff or a constable ~~thereof~~ is ex officio auctioneer and is permitted to sell any property at public auction.

(2) ~~He~~ The sheriff or constable is liable on ~~his~~ the sheriff's or constable's official bond for any delinquency as the ex officio auctioneer."

Section 930. Section 30-11-512, MCA, is amended to read:

"30-11-512. Assistant -- who may act and when. (1) An auctioneer, in the event of inability to attend an auction by reason of sickness, the performance of a duty imposed ~~upon him~~ by law, or during a temporary absence from the city or county within which ~~he~~ the individual is auctioneer, may employ an agent or employee to hold the auction in ~~his~~ the auctioneer's name and behalf.

(2) The employee shall file with the county clerk of the county an affidavit swearing to faithfully perform the duties of auctioneer.

(3) An auctioneer may employ a crier at any sale, for whose acts ~~he shall be~~ the auctioneer is responsible."

Section 931. Section 30-11-513, MCA, is amended to read:

"30-11-513. Auctioneers to designate one place of business -- partners. (1) An auctioneer shall designate in writing with the county clerk one place at which ~~he~~ the auctioneer will conduct auctions within any city.

(2) ~~He~~ The auctioneer shall designate in the same document ~~his~~ any partners, ~~if any~~, in the business.

(3) ~~He~~ The auctioneer may not offer goods for sale at a place other than that designated unless the goods are in their original packages, are bulky and usually sold in warehouses, or are usually sold on public streets."

Section 932. Section 30-11-514, MCA, is amended to read:

"30-11-514. Penalty. A person convicted of violating a provision of this part shall be fined no more than \$500 or imprisoned in the county jail for a term not to exceed 6 months, or both. In addition ~~he~~ the person shall be liable for damages incurred by any aggrieved party by reason of ~~such~~ the violation."

Section 933. Section 30-11-601, MCA, is amended to read:

"30-11-601. Factor defined. A factor is an agent who, in the pursuit of an independent calling, is employed by another person to sell property for ~~him~~ that person and is vested by the ~~latter person~~ with the possession or control of the property or authorized to receive payment therefor for the property from the purchaser."

Section 934. Section 30-11-602, MCA, is amended to read:

"30-11-602. Obedience required from factor. A factor ~~must~~ shall obey the instructions of ~~his~~ the factor's principal to the same extent as any other employee, notwithstanding any advances ~~he~~ the factor may have made to ~~his~~ the principal upon the property consigned to ~~him~~ the factor, except that if the principal forbids ~~him~~ the factor to sell at the market price, ~~he~~ the factor may, nevertheless, sell for ~~his~~ the factor's reimbursement, after giving to ~~his~~ the principal reasonable notice of ~~his~~ the factor's intention to do so and of the time and place of sale, and proceeding in all respects as a pledgee."

Section 935. Section 30-11-603, MCA, is amended to read:

"30-11-603. Sales on credit. A factor may sell property consigned to ~~him~~ the factor on ~~such credit as~~ that is usual but, having once agreed with the purchaser upon the terms of credit, may not extend ~~it~~ the terms."

Section 936. Section 30-11-604, MCA, is amended to read:

"30-11-604. Liability of factor under guaranty commission. A factor who charges ~~his~~ the principal with a guaranty commission upon a sale ~~thereby~~ assumes absolutely to pay the price when it falls due as if it were a debt of ~~his~~ the factor's own and not as a mere guarantor for the purchaser. ~~He~~ The factor does not ~~thereby~~ assume any additional responsibility for the safety of ~~his~~ the remittance of the proceeds."

Section 937. Section 30-11-605, MCA, is amended to read:

"30-11-605. Principal's consent needed to relieve factor from liability. A factor who receives property for sale under a general agreement or usage to guarantee the sales or the remittance of the proceeds cannot ~~relieve himself~~ be relieved from responsibility ~~therefor~~ from the sale or remittance without the consent of ~~his~~ the factor's principal."

Section 938. Section 30-11-606, MCA, is amended to read:

"30-11-606. Authority of factor. In addition to the authority of agents in general, a factor has actual

authority for ~~his~~ the principal, unless specially restricted, to:

- (1) insure property consigned to ~~him~~ the factor uninsured;
- (2) sell on credit anything entrusted to ~~him~~ the factor for sale, except ~~such things as~~ that it is contrary to usage to sell on credit, but not to pledge, mortgage, or barter the ~~same~~ things; and
- (3) delegate ~~his~~ the factor's authority to ~~his~~ the factor's partner or servant but not to any person in an independent employment."

Section 939. Section 30-11-607, MCA, is amended to read:

"30-11-607. Ostensible authority. A factor has ostensible authority to deal with the property of ~~his~~ the principal as ~~his~~ the factor's own in transactions with persons not having notice of the actual ownership."

Section 940. Section 30-11-703, MCA, is amended to read:

"30-11-703. Excepted inventory. The following inventory is not subject to the repurchase requirements of 30-11-702:

- (1) any repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or wet-charge batteries;
- (2) any repair part that is in a broken or damaged package;
- (3) any single repair part that is priced as a set of two or more items;
- (4) any repair part that because of its condition is not resalable as a new part without repackaging or reconditioning;
- (5) any inventory for which the retailer is unable to furnish evidence satisfactory to the wholesaler, manufacturer, or distributor of title, free and clear of all claims, liens, and encumbrances;
- (6) any inventory the retailer desires to keep, if ~~he~~ the retailer has a contractual right to do so;
- (7) any inventory item other than a repair part that is not in essentially new, unused, undamaged, and complete condition;
- (8) any repair part that is not in new, unused, or undamaged condition;
- (9) any inventory item, other than a repair part, that has been stocked for 36 months or more prior to notice of termination of the contract;
- (10) any inventory that was ordered by the retailer after the date of notification of termination of the contract; and
- (11) any inventory that was acquired from any source other than the wholesaler, manufacturer, or

distributor."

Section 941. Section 30-11-713, MCA, is amended to read:

"30-11-713. Remedy as supplemental. (1) The provisions of this part are supplemental to any agreement between:

- (a) the retailer and wholesaler, manufacturer, or distributor governing the inventory; or
- (b) the wholesaler and manufacturer or distributor governing the inventory.

(2) The retailer or wholesaler may elect to pursue either ~~his~~ contract remedies or the remedy provided in 30-11-702. An election to pursue ~~his~~ contract remedies does not bar the retailer's or wholesaler's right to the remedy provided in 30-11-702 ~~as~~ with regard to any inventory not covered by contract."

Section 942. Section 30-11-806, MCA, is amended to read:

"30-11-806. Procedure to determine right to succeed. (1) A designated family member or designated successor who receives notice of the grantor's refusal to honor ~~his~~ the family member's or successor's succession to the ownership and operation of the dealership may, within the 60-day period provided for in 30-11-805, file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The grantor shall establish good cause for refusal to honor the succession to ownership.

(3) The franchise agreement must continue in effect until the final determination of the issues raised in the complaint.

(4) If the grantor prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7."

Section 943. Section 30-11-807, MCA, is amended to read:

"30-11-807. Written designation of succession unaffected. Sections 30-11-804 through 30-11-809 do not preclude a dealer from designating any person as ~~his~~ the dealer's successor by written instrument filed with the grantor."

Section 944. Section 30-12-202, MCA, is amended to read:

"30-12-202. Specific powers and duties of department -- rules. (1) The department shall adopt from time to time reasonable rules for the enforcement of parts 1 through 5, ~~which~~ and the rules have the effect of law.

These rules may include:

- (a) schedules of fees for testing and certification;
- (b) standards of net weight, measure, or count and reasonable standards of fill for any commodity in package form;
- (c) rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by the department in the discharge of its official duties;
- (d) exemptions from the sealing or marking requirements of 30-12-209 with respect to weights and measures of a character or size that sealing or marking would be inappropriate, impracticable, or damaging to the apparatus involved; and
- (e) rules governing the voluntary registration of ~~servicemen~~ service providers and service agencies.

(2) ~~These~~ The rules ~~shall~~ described in subsection (1) must include specifications, tolerances, and other technical requirements for weights and measures subject to inspection and testing under 30-12-205, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those:

- (a) that are not accurate;
 - (b) that are not reasonably permanent in their adjustment or will not repeat their indications correctly;
- or
- (c) that facilitate the perpetration of fraud.

(3) The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, together with amendments ~~thereto~~ to the specifications, as recommended by the national institute of standards and technology and published in national institute of standards and technology Handbook 44 and supplements ~~thereto~~ to that handbook or in any publication revising or superseding Handbook 44, are the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices of this state, except ~~insofar~~ as specifically modified, amended, or rejected by a rule issued by the department.

(4) An apparatus is considered to be "correct" when it conforms to all applicable requirements adopted as specified in this section. Other apparatus are considered to be "incorrect".

Section 945. Section 30-12-205, MCA, is amended to read:

"30-12-205. General testing. (1) When not otherwise provided by law, the department may inspect and

test ~~to ascertain if they are correct~~ all weights and measures kept, offered, or exposed for sale to determine if they are correct.

(2) The department, within a 12-month period or less frequently if in accordance with a schedule issued by it, and as often as it considers necessary, shall inspect and test, to ascertain if they are correct, all weights and measures commercially used:

(a) in determining the weight, measurement, or count of commodities or things sold or offered or exposed for sale on the basis of weight, measure, or ~~of~~ count; or

(b) in computing the basic charge or payment for services rendered on the basis of weight, measure, or ~~of~~ count.

(3) With respect to single-service devices designed to be used commercially only once and to be then discarded and with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, tests may be made on representative samples of the devices. The lots of which the samples are representative ~~shall~~ must be held to be correct or incorrect upon the basis of the results of the inspections and tests on the samples.

(4) An itinerant peddler or hawker using weights and measures shall register ~~his~~ the peddler's or hawker's name and address with the department, ~~in order~~ so that his the peddler's or hawker's equipment can be tested in accordance with the provisions of this law."

Section 946. Section 30-12-211, MCA, is amended to read:

"30-12-211. Duty of owners of incorrect apparatus. (1) Weights and measures that have been rejected under the authority of the department ~~shall~~ remain subject to the control of the department until suitable repair or disposition of them has been made as required by this section.

(2) The owner of rejected weights and measures shall correct them within 30 days or a longer period ~~as that~~ may be authorized by the department.

(3) ~~In place of this~~ Instead of correction, the owner may dispose of ~~them~~ the weights and measures, but only in a manner specifically authorized by the department.

(4) Weights and measures that have been rejected may not again be used commercially until they have been officially reexamined and found to be correct, ~~or~~ until specific written permission for that use is issued by the department, or until the rejection tag has been removed and the rejected device has been repaired and placed in service by a person properly registered to perform those acts under a rule issued by the department for the registration of weights and measures ~~servicemen~~ service providers and service agencies."

Section 947. Section 30-12-406, MCA, is amended to read:

"30-12-406. Bulk deliveries sold in terms of weight and delivered by vehicle. (1) When a vehicle delivers to an individual purchaser a commodity in bulk and the commodity is sold in terms of weight units, the delivery ~~shall~~ must be accompanied by a duplicate delivery ticket with the following information clearly stated in ink or by means of other indelible marking equipment and in clarity equal to type or printing:

- (a) the name and address of the vendor;
- (b) the name and address of the purchaser; and
- (c) the net weight of the delivery expressed in pounds.

(2) If the net weight is derived from determinations of gross and tare weights, the gross and tare weights must also ~~shall~~ be stated in terms of pounds. One of these tickets ~~shall~~ must be retained by the vendor, and the other ~~shall~~ must be delivered to the purchaser at the time of delivery of the commodity or ~~shall~~ must be surrendered on demand to the department. If the department desires to retain it as evidence, it shall issue a weight slip in place of the ticket for delivery to the purchaser. If the purchaser ~~himself~~ carries away ~~his~~ the purchase, the vendor ~~shall be~~ is only required ~~only~~ to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to ~~him~~ the purchaser."

Section 948. Section 30-12-504, MCA, is amended to read:

"30-12-504. Offenses and penalties. (1) A person may not:

(a) use or possess for the purpose of using for a commercial purpose specified in 30-12-205, sell, offer or expose for sale or hire, or possess for the purpose of selling or hiring an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure;

(b) use or possess for the purpose of current use for a commercial purpose specified in 30-12-205 a weight or measure that does not bear a seal or mark specified in 30-12-209; unless that weight or measure has been exempted from testing by 30-12-205 or by a rule of the department issued under 30-12-202 or unless the device has been placed in service as provided by a rule of the department issued under 30-12-202. A person using weighing or measuring devices subject to parts 1 through 5 ~~must~~ shall report to the department, in writing, the number and location of the weighing or measuring device and ~~must~~ shall promptly report the installation of any new weighing or measuring device.

(c) dispose of a rejected or condemned weight or measure in a manner contrary to law or rule;

(d) remove from a weight or measure, contrary to law or rule, any tag, seal, or mark placed on it by the appropriate authority;

(e) sell or offer or expose for sale less than the quantity ~~he~~ the person represents of a commodity, thing, or service;

(f) take more than the quantity ~~he~~ the person represents of a commodity, thing, or service when, as buyer, ~~he~~ the person furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined;

(g) keep for the purpose of sale, advertise or offer or expose for sale, or sell a commodity, thing, or service in a condition or manner contrary to law or rule;

(h) use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position ~~which~~ that may reasonably be assumed by a customer;

(i) violate a provision of parts 1 through 5 or of the rules adopted under parts 1 through 5 for which a specific penalty is not prescribed.

(2) A person who violates; or who knowingly allows an employee or agent to violate; this section is guilty of a misdemeanor and upon a first conviction shall be fined not less than \$20 or more than \$200 or imprisoned for not more than 3 months or both fined and imprisoned. Upon a second or subsequent conviction, ~~he~~ the person shall be fined not less than \$50 or more than \$500 or imprisoned for not more than 1 year or both fined and imprisoned."

Section 949. Section 30-13-131, MCA, is amended to read:

"30-13-131. Product of the mind -- ownership. The author of any product of the mind, whether it is an invention, a composition in letters or art, or a design, with or without delineation or other graphical representation, has an exclusive ownership ~~therein~~ of the product and in the representation or expression ~~thereof~~ which of the product that continues ~~so~~ as long as the product and the representations or expressions ~~thereof~~ of the product made by ~~him~~ the author remain in ~~his~~ the author's possession."

Section 950. Section 30-13-133, MCA, is amended to read:

"30-13-133. Transfer. The owner of any product of the mind or of any representation or expression ~~thereof~~ of a product of the mind may transfer ~~his~~ the owner's interest in the ~~same~~ product."

Section 951. Section 30-13-135, MCA, is amended to read:

"30-13-135. Subsequent inventor or author. If the owner of a product of the mind does not make it the product public, any other person subsequently and originally producing the same thing has the same right therein in the product as the prior author, which is exclusive to the same extent against all persons except the prior author or those claiming under ~~him~~ the prior author."

Section 952. Section 30-13-216, MCA, is amended to read:

"30-13-216. Evidentiary effect of certificates and documents of secretary of state. All certificates issued by the secretary of state in accordance with the provisions of this part and all copies of documents filed in ~~his~~ the secretary of state's office in accordance with the provisions of this part when certified by ~~him~~ shall the secretary of state must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated ~~therein~~ in the certificate or document."

Section 953. Section 30-13-218, MCA, is amended to read:

"30-13-218. Execution constituting affirmation -- penalty -- warning. (1) The execution of any document required to be filed with the secretary of state under this part constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated ~~therein~~ in the document are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by ~~him~~ the secretary of state under this part."

Section 954. Section 30-14-112, MCA, is amended to read:

"30-14-112. Assurance of compliance. In the administration of this part, the department may accept an assurance of voluntary compliance with respect to any method, act, or practice considered to be ~~violative~~ in violation of this part from any person who has engaged or was about to engage in any ~~such~~ method, act, or practice. Any ~~such~~ assurance ~~shall~~ must be in writing and be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has ~~his~~ a principal place of business or the district court of Lewis and Clark County. Assurance of voluntary compliance is not an admission of violation for any purpose. Matters ~~thus~~ closed may at any time be reopened by the department for further proceedings in the public interest, pursuant to 30-14-111."

Section 955. Section 30-14-113, MCA, is amended to read:

"30-14-113. Investigative demand. (1) When it appears to the department that the person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this part or when the department believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this part, the department may execute in writing and cause to be served upon any person who is believed to have information, documentary material, or physical evidence relevant to the alleged or suspected violation an investigative demand, ~~requiring~~

The demand requires such the person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which ~~he~~ the person has knowledge or to appear and testify or to produce relevant documentary material or physical evidence for examination, at ~~such a~~ a reasonable time and place as may be stated in the investigative demand, concerning the advertisement, sale, or offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation.

(2) At any time before the return date specified in an investigative demand or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date or to modify or set aside the demand, stating good cause, may be filed in the district court of the county in which the person served with the demand resides or has ~~his~~ a principal place of business or in the district court of Lewis and Clark County."

Section 956. Section 30-14-114, MCA, is amended to read:

"30-14-114. Department authority. To accomplish the objectives and to carry out the duties prescribed by this part, the department, in addition to other powers conferred upon it by this part, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe forms, and ~~promulgate~~ adopt rules as may be necessary, ~~which rules shall that~~ that have the force of law; ~~provided that none of~~ However, the powers conferred by this part may not be used for the purpose of compelling any natural person to furnish testimony or evidence ~~which that~~ that might tend to incriminate ~~him~~ the person or subject ~~him~~ the person to a penalty or forfeiture. Information obtained pursuant to the powers conferred by this part ~~shall~~ may not be made public or disclosed by the department or its employees beyond the extent necessary for law enforcement purposes in the public interest."

Section 957. Section 30-14-132, MCA, is amended to read:

"30-14-132. Powers of receiver -- proof of damages -- jurisdiction. (1) When a receiver is appointed

by the court pursuant to this part, ~~he~~ the receiver has the power to sue for, collect, receive, and take into ~~his~~ possession all goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description derived by means of any practice declared to be illegal and prohibited by this part, including property with which ~~such~~ the property has been mingled if it cannot be identified in kind because of ~~such~~ the commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds ~~thereof~~ of the property under the direction of the court.

(2) Any person who has suffered damages as a result of the use or employment of any unlawful practice and submits proof to the satisfaction of the court that ~~he~~ the person has in fact been damaged may participate with general creditors in the distribution of the assets to the extent ~~he~~ the person has sustained out-of-pocket losses.

(3) In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court.

(4) The court has jurisdiction of all questions arising in the proceedings and may make orders and judgments as may be required."

Section 958. Section 30-14-203, MCA, is amended to read:

"30-14-203. Persons responsible. Any person who, either as director, officer, or agent of any business or as agent of any person, assists or aids, directly or indirectly, in a violation of this part is responsible ~~therefor~~ for the violation equally with the person or business for whom or for which ~~he~~ the person acts."

Section 959. Section 30-14-204, MCA, is amended to read:

"30-14-204. Proof of intent. In an injunction proceeding or in the prosecution of a person acting as an officer, director, or agent, it is sufficient to allege and prove the unlawful intent of the person or business for whom or for which ~~he~~ the person acts."

Section 960. Section 30-14-213, MCA, is amended to read:

"30-14-213. Sales excepted. Sections 30-14-209, 30-14-210, and 30-14-212 do not apply to any sale made:

(1) in closing out in good faith the owner's stock or any part ~~thereof~~ of the stock for the purpose of discontinuing ~~his~~ the owner's trade in any article of commerce;

(2) of seasonal goods;

- (3) in good faith of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public ~~thereof~~;
- (4) when the goods are damaged or deteriorated in quality and notice is given to the public ~~thereof~~;
- (5) by an officer acting under the orders of any court;
- (6) in a good faith endeavor to meet the legal prices of a competitor selling the same article of commerce in the same locality or trade area; or
- (7) to the state of Montana or any of its institutions."

Section 961. Section 30-14-221, MCA, is amended to read:

"30-14-221. Investigations. (1) The department, for the purpose of conducting hearings and investigations ~~which that~~ in the opinion of the department are necessary and proper for the exercise of the powers vested in it ~~the department~~ by this part, shall at all reasonable times have access to any evidence concerning a person being investigated or proceeded against that relates to any matter under investigation or in question and the right to copy ~~such~~ the evidence. The department may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the department or before its duly authorized agent conducting the investigation. An agent, duly authorized by the department for those purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. The attendance of witnesses and the production of evidence may be required from any place in this state at any designated place of hearing.

(2) Upon application by the department in a case of ~~contumacy or~~ refusal to obey a subpoena issued to a person, a district court of this state, within the district where the inquiry is carried on or where a person guilty of ~~contumacy or~~ refusal to obey is found, resides, or transacts business, has jurisdiction to issue to that person an order requiring ~~him~~ the person to appear before the department or its duly authorized agent and to produce evidence if so ordered or to give testimony regarding the matter under investigation. Failure to obey the order of the court may be punished by the court as a contempt.

(3) A person may not be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the department on the ground that the testimony or evidence required of ~~him~~ the person may tend to incriminate ~~him~~ the person or subject ~~him~~ the person to a penalty or forfeiture; ~~but no~~ However, compelled testimony or evidence or any information directly or indirectly derived from ~~such~~ testimony or evidence may not be used against the witness in any criminal prosecution. ~~Nothing in this~~ This section prohibits ~~prohibits~~ does not prohibit the department from granting immunity from

prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the department determines, in its sole discretion, that the ends of justice would be served ~~thereby~~ by granting immunity. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena."

Section 962. Section 30-14-303, MCA, is amended to read:

"30-14-303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Blind bidding" means bidding, negotiating, offering terms, making an invitation to bid, or agreeing to terms for the purpose of entering into a license agreement prior to a trade screening of the motion picture that is the subject of the agreement.

(2) "Distributor" means any person engaged in the business of renting, selling, or licensing motion pictures to exhibitors.

(3) "Exhibitor" means any person engaged in the business of operating a theater in this state.

(4) "License agreement" means any contract between a distributor and an exhibitor for the exhibition of a motion picture by the exhibitor in this state.

(5) "Market area" means either a city in Montana or a city in any of the 11 western states that prohibits blind bidding.

(6) "Theater" means any establishment in which motion pictures are exhibited regularly to the public for a charge.

(7) "Trade screening" means the showing of a motion picture by a distributor in the market area. ~~Such~~ The showing ~~shall~~ must be open to any exhibitor interested in exhibiting the motion picture, and ~~such~~ the exhibitor or ~~his~~ the exhibitor's buying agency ~~will~~ must be notified of ~~such~~ the trade screening."

Section 963. Section 30-14-402, MCA, is amended to read:

"30-14-402. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

(2) "Misappropriation" means:

(a) acquisition of a trade secret of another by a person who knows or has reason to know that the trade

secret was acquired by improper means; or

(b) disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the trade secret;

(ii) at the time of disclosure or use, knew or had reason to know that ~~his~~ the person's knowledge of the trade secret was:

(A) derived from or through a person who had ~~utilized~~ used improper means to acquire it;

(B) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(C) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) before a material change of ~~his~~ the person's position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(3) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(4) "Trade secret" means information or computer software, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(a) derives independent economic value, actual or potential, from not being generally known to; and not being readily ascertainable by proper means by; other persons who can obtain economic value from its disclosure or use; and

(b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

Section 964. Section 30-14-504, MCA, is amended to read:

"30-14-504. Buyer's right to cancel -- time allowed -- notice -- return of goods. (1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, the buyer or any other person obligated for any part of the purchase price may cancel a personal solicitation sale until midnight of the third business day after the day on which the buyer has signed an agreement or offer to purchase relating to ~~such~~ the sale, provided that in the case of a personal solicitation sale made by telephone, the buyer may cancel at any time prior to ~~his~~ the buyer's signing of an agreement or offer to purchase relating to ~~such~~ the sale.

(2) Cancellation occurs when written notice of cancellation is given to the seller.

(3) Notice of cancellation, if given by mail, is considered given when deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation need not take the form prescribed and ~~shall be~~ is sufficient if it indicates the

intention of the buyer not to be bound.

(5) A personal solicitation sale may not be canceled if, in the case of goods, the goods cannot be returned to the seller in substantially the same condition as when received by the buyer."

Section 965. Section 30-14-505, MCA, is amended to read:

"30-14-505. Notice of right to cancel. (1) The seller shall furnish the buyer a notice ~~which~~ that contains the statement set forth in subsection (1)(a) or a statement as prescribed by federal trade commission rule governing door-to-door sales and printed in capital and lowercase letters of not less than 10-point boldfaced type with the seller's name and business address and the statement set forth in subsection (1)(b):

(a) YOU MAY CANCEL THIS SALE WITHIN THREE BUSINESS DAYS.

If you decide within 3 days that you want to cancel the sale, tear off and mail the bottom of this card. To cancel, the card must be mailed BY CERTIFIED MAIL within 3 days after you sign the contract.

(date)

(b) CONTRACT CANCELED

I hereby cancel this sale.

(Buyer's signature)

(2) Until the seller has complied with this section, the buyer or any other person obligated for any part of the purchase price may cancel the personal solicitation sale by notifying the seller in any manner and by any means of ~~his~~ the intention to cancel; ~~provided, however~~ However, ~~that~~ failure to mail the cancellation by certified mail does not nullify the cancellation as long as the cancellation is mailed within the prescribed time period. The period prescribed by 30-14-504 ~~shall begin~~ begins to run from the time the seller complies with this section."

Section 966. Section 30-14-507, MCA, is amended to read:

"30-14-507. Redelivery of goods. (1) Except as provided by 30-14-506(4), within a reasonable time after a personal solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale but need not tender at any place other than ~~his~~ the buyer's residence. If the seller fails to demand possession of ~~such~~ the goods within a reasonable time after cancellation or revocation, the goods ~~shall~~ become the property of the buyer without obligation to pay for them. For the purpose of this section, 40 days ~~shall be~~ is presumed to be a reasonable time.

(2) The buyer shall take reasonable care of the goods in ~~his~~ the buyer's possession both before cancellation or revocation and for a reasonable time ~~thereafter~~ after cancellation or revocation, during which time

the goods are otherwise at the seller's risk, and ~~such~~ the goods must be returned in substantially the same condition as received."

Section 967. Section 30-14-1112, MCA, is amended to read:

"30-14-1112. Limitations on remedies. (1) A consumer may not bring an action under 30-14-1111 after the date on which ~~his~~ the consumer's obligations in connection with the agreement are scheduled to be finally performed.

(2) ~~No~~ A seller, lessor, or lender is not liable under 30-14-1111 if a good faith attempt is made to comply with requirements of 30-14-1103.

(3) Noncompliance with the requirements of 30-14-1103 does not make a consumer transaction void or voidable if it is otherwise legal, nor may a consumer raise noncompliance as a defense to an obligation to perform in connection with the transaction.

(4) In a class action brought under 30-14-1111, the seller, lessor, or lender is liable under 30-14-1111 for not more than \$10,000 plus actual damages.

(5) In any individual transaction, if there is more than one consumer who is party to a single-consumer contract, only one award of statutory damages may be made for that transaction.

(6) ~~No~~ A consumer may not bring an action under this part on a contract if the consumer was represented at the signing of the contract by an attorney.

(7) Punitive damages may not be assessed in an action brought under this part."

Section 968. Section 31-1-101, MCA, is amended to read:

"31-1-101. Loan of money -- what constitutes. A loan of money is a contract by which ~~one~~ a person delivers a sum of money to another person and the ~~latter~~ other person agrees to return at a future time a sum equivalent to that which ~~he~~ the other person borrowed. A loan for mere use is governed by the law on loan for use."

Section 969. Section 31-1-108, MCA, is amended to read:

"31-1-108. Penalty for usury -- action to recover excessive interest. (1) The taking, receiving, reserving, or charging a rate of interest greater than is allowed by 31-1-107 ~~shall~~ must be deemed considered a forfeiture of a sum double the amount of interest ~~which~~ that the note, bill, or other evidence of debt carries or ~~which~~ that has been agreed to be paid ~~thereon~~ on the note, bill, or other evidence of debt.

(2) When a greater rate of interest has been paid, the person by whom it has been paid, ~~his~~ the person's heirs, assigns, executors, or administrators may recover from the person, firm, or corporation taking, receiving, reserving, or charging ~~same interest~~ a sum double the amount of interest ~~so~~ paid, provided that ~~such~~ the action ~~shall~~ must be brought within 2 years after the payment of ~~said~~ the interest, and provided that, before any suit may be brought to recover ~~such~~ the usurious interest, the party bringing suit ~~must make~~ makes written demand for return of ~~said~~ the interest ~~so~~ paid."

Section 970. Section 31-1-212, MCA, is amended to read:

"31-1-212. Investigations and complaints. (1) The department may make those investigations it considers necessary, and to the extent necessary for this purpose, it may examine a licensee or any other person and may compel the production of relevant books, records, accounts, and documents.

(2) A retail buyer having reason to believe that this part relating to ~~his~~ the buyer's retail installment contract has been violated may file with the department a written complaint setting forth the details of the alleged violation, and the department, upon receipt of the complaint, may inspect the pertinent books, records, letters, and contracts of the licensee and retail seller involved."

Section 971. Section 31-1-222, MCA, is amended to read:

"31-1-222. Denial, suspension, or revocation of licenses. (1) Renewal of a license originally granted under 31-1-221 may be denied or a license may be suspended or revoked by the department on the following grounds:

(a) material misstatement of fact in the application for license;

(b) willful failure to comply with any provision of this part relating to retail installment contracts;

(c) defrauding any retail buyer to the buyer's damage;

(d) fraudulent misrepresentation, circumvention, or concealment by the licensee through subterfuge or device of any of the material particulars or the nature ~~thereof~~ of those particulars required to be stated or furnished to the retail buyer under this part.

(2) If a licensee is a partnership, association, or corporation, it is sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed association or corporation or any member of a licensed partnership has acted or failed to act so as to provide cause for suspending or revoking a license to that party as an individual. Each licensee is responsible for the acts of ~~his~~ the licensee's employees while acting as ~~his~~ the licensee's agent; if the licensee after actual knowledge of the acts retained the benefits,

proceeds, profits, or advantage accruing from the acts or otherwise ratified the acts.

(3) (a) A license may not be denied, suspended, or revoked except after hearing. The department shall give the licensee at least 10 days' written notice, in the form of an order to show cause, of the time and place of the hearing by certified mail addressed to the licensee's principal place of business in this state. The notice ~~shall~~ must contain the grounds of complaint against the licensee.

(b) An order suspending or revoking a license ~~shall~~ must recite the grounds upon which it is based. The order ~~shall~~ must be entered upon the records of the department and is not effective until 30 days after written notice has been forwarded by certified mail to the licensee at ~~his~~ the licensee's principal place of business.

(c) ~~No~~ A revocation, suspension, or surrender of a license ~~impairs~~ does not impair or ~~affects~~ affect the obligation of a lawful retail installment contract acquired previously by the licensee."

Section 972. Section 31-1-231, MCA, is amended to read:

"31-1-231. Requirements of retail installment contracts. (1) Each retail installment contract ~~shall~~ must be in writing, signed by both the buyer and the seller, and completed as to all essential provisions prior to the signing of the contract by the buyer. However, if a retail installment transaction is a sale of goods other than a motor vehicle where ~~no~~ title, lien, or other security interest is not retained or taken by the seller, then the retail installment contract ~~need~~ is not required to be contained in a single document. In ~~such~~ that case, if the contract is contained in more than one document, then one ~~such~~ document may be an original document executed by the retail buyer applicable to purchases of goods or services to be made by the retail buyer from time to time, and in ~~such~~ that case ~~such~~ the document, together with the sales slip, account book, or other written statement relating to each purchase, ~~shall~~ must set forth all of the information required by this section and ~~shall constitute~~ constitutes the retail installment contract for each ~~such~~ purchase.

(2) The printed portion of the contract, other than instructions for completion, ~~shall~~ must be in at least 8-point type. The contract ~~shall~~ must contain the following notice in a size equal to at least 10-point bold type:

"1. Notice to the buyer. Do not sign this contract before you read it or if it contains any blank spaces.
2. You are entitled to an exact copy of the contract you sign.
3. Under the law, you have the right to pay off in advance the full amount due and to obtain a partial refund of the finance charge."

(3) If the contract covers the sale of a motor vehicle, it ~~shall~~ must also contain, in a size equal to at least 10-point bold type, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included if that is the case.

(4) The contract ~~shall~~ must contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer, and a description of the goods sold or services furnished or to be furnished and ~~shall~~ must clearly state and describe any collateral security taken for the buyer's obligation.

(5) The contract ~~shall~~ must contain the following items:

- (a) the cash sale price of the goods or services;
- (b) the amount of the buyer's downpayment and whether made in money or goods or partly in money and partly in goods, including a brief description of the goods traded in;
- (c) the difference between items in subsections (5)(a) and (5)(b);
- (d) the amount, if any, included for insurance and other benefits if a separate charge is made ~~therefor~~ for insurance and other benefits, specifying the types of coverage and benefits;
- (e) the amount of official fees;
- (f) the principal balance, which is the sum of items in subsections (5)(c) through (5)(e);
- (g) the amount of the finance charge;
- (h) the total amount of the time balance, stated as one sum in dollars and cents, which is the sum of items in subsections (5)(f) and (5)(g), payable in installments by the buyer to the seller;
- (i) the number of installments;
- (j) the amount of each installment; and
- (k) the due date or period of installments.

(6) The items in subsection (5) need not be stated in the sequence or order set forth, and additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

(7) ~~No~~ A retail installment contract may not be signed by any party ~~thereto~~ when it contains blank spaces to be filled in after it has been signed, except that if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted in the contract after its execution. The buyer's written acknowledgment, conforming to the requirements of 31-1-232, of delivery of a copy of a contract ~~shall~~ must, in any action or proceeding by or against a holder of the contract without knowledge to the contrary when ~~he~~ the holder purchases the contract, be conclusive proof:

- (a) of ~~such~~ the delivery;
- (b) that the contract when signed did not contain any blank spaces except as ~~herein~~ provided in this subsection (7); and

(c) of compliance with 31-1-231 through 31-1-236.

(8) If a retail installment transaction is subject to the federal Truth in Lending Act, (15 U.S.C. 1601-1667e), the seller may, instead of complying with the requirements of subsections (2) through (7), comply with all ~~such~~ requirements of the federal law. A seller who complies with the federal requirements is subject only to the provisions of subsection (1) of this section."

Section 973. Section 31-1-232, MCA, is amended to read:

"31-1-232. Buyer's right of rescission. The seller shall deliver to the buyer or mail to ~~him~~ the buyer at his the address shown in the contract a copy of the contract, signed by the seller. Until the seller ~~does so~~ delivers or mails the contract, a buyer who has not received delivery of the goods or been furnished the services ~~shall have~~ has the right to rescind ~~his~~ the agreement and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract or, if ~~such~~ the goods cannot be returned, the value ~~thereof~~ of the goods. Any acknowledgment by the buyer of delivery of a copy of the contract ~~shall~~ must be in a size equal to at least 10-point bold type and, if contained in the contract, ~~shall~~ must appear directly above the buyer's signature."

Section 974. Section 31-1-234, MCA, is amended to read:

"31-1-234. Transfer of equity -- fee. A buyer may transfer ~~his~~ the buyer's equity in the goods at any time to another person upon agreement by the holder, but ~~in such event~~ the holder of the contract ~~shall be~~ is entitled to a transfer of equity fee ~~which shall~~ that may not exceed \$50."

Section 975. Section 31-1-236, MCA, is amended to read:

"31-1-236. Notice and receipt of payment. (1) Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under ~~such~~ the contract. A buyer ~~shall~~ must be given a written receipt for any payment when made in cash.

(2) After payment of all sums for which the buyer is obligated under a contract and upon written demand made by the buyer, the holder shall deliver or mail to the buyer, at ~~his last known~~ the buyer's last-known address, one or more good and sufficient instruments to acknowledge payment in full and shall release all security in the goods or in any collateral security."

Section 976. Section 31-1-243, MCA, is amended to read:

"31-1-243. Refinancing retail installment contract. The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or installments or defer payment or payments or renew or restate the unpaid time balance of ~~such the~~ the contract, the amount of the installments, and the time schedule ~~therefor~~ for the installments and may collect for ~~such the~~ the extension, deferment, renewal, or restatement a refinance charge. The holder may compute the refinance charge on the unpaid time balance to be extended, deferred, renewed, or restated by adding to ~~such the~~ the unpaid time balance the cost for any insurance and other benefits incidental to the refinancing plus any accrued delinquency and collection charges, after deducting any refund ~~which that~~ that may be due the buyer as for a prepayment pursuant to 31-1-242 at the rate of the finance charge specified in 31-1-241. If all unpaid installments are deferred for not more than 2 months, the holder may ~~at his election~~ charge and collect for ~~such the~~ the deferment an amount equal to the difference between the refund required for prepayment in full under 31-1-242 as of the scheduled due date of the first deferred installment and the refund required for prepayment in full as of 1 month prior to ~~said the~~ the date, times the number of months in which ~~no a~~ a scheduled payment is not made."

Section 977. Section 31-1-304, MCA, is amended to read:

"31-1-304. Restrictions upon assignment of wages or salary. ~~No~~ An assignment of ~~his or her~~ wages or salary by any employee or wage earner to any wage broker for ~~his or her~~ the employee's or wage earner's benefit ~~shall be~~ is not valid or enforceable, ~~nor shall any and an~~ and an employer or debtor may not recognize or honor ~~such the~~ the assignment for any purpose whatever; unless ~~it be~~ the assignment is for a fixed and definite part or all of the wages or salary ~~therefore~~ earned."

Section 978. Section 31-1-305, MCA, is amended to read:

"31-1-305. Interest on loans -- amount and computation. ~~No~~ A wage broker ~~shall~~ may not ask, demand, or receive, either as compensation or interest or in any other manner, directly or indirectly, any compensation or interest for the use of money advanced or loaned by ~~him~~ the wage broker to any employee or wage earner in excess of 12% ~~per annum~~ a year. ~~Said~~ The compensation or rate of interest ~~shall~~ must be computed upon the amount actually advanced to and received by the employee or wage earner and ~~shall~~ must include all commissions or compensation whatsoever to the wage broker or any other person for making or procuring ~~said the~~ the loan."

Section 979. Section 31-1-402, MCA, is amended to read:

"31-1-402. Pawnbroker to keep register. (1) Every pawnbroker or junk dealer ~~must~~ shall keep a register, in which must be entered a description of every article pawned to ~~him~~ or purchased by ~~him~~ the pawnbroker or junk dealer, with:

- (a) the date of the pawning or purchasing;
- (b) date when the article must be redeemed;
- (c) the name of the person by whom the ~~same~~ article was pawned or by whom purchased; and
- (d) the amount loaned ~~thereon~~ on or paid ~~therefor~~ for the article.

(2) In case of the sale of any article pawned or pledged, the pawnbroker or junk dealer ~~must~~ shall enter upon ~~said~~ the register:

- (a) the name of the purchaser;
- (b) the time of the sale; and
- (c) the price paid ~~therefor~~ for the article.

(3) The register must always be open to inspection and examination of any peace officer or other persons."

Section 980. Section 31-1-502, MCA, is amended to read:

"31-1-502. Periodic statement to be furnished to debtor. (1) A seller may charge the late payment charge provided for in 31-1-501 only if ~~he~~ the seller promptly supplies the buyer with a statement as of the end of each monthly period; or other regular period agreed upon by the seller and the buyer; in which there is any unpaid balance. ~~Such~~ The statement ~~shall~~ must recite the following:

- (a) the percentage amount of the late payment charge that will be charged beginning 30 days after the obligation is incurred;
- (b) the unpaid balance at the beginning or end of the period;
- (c) an identification of any amounts debited to the buyer's account during the period;
- (d) the payments made by the buyer to the seller during the period;
- (e) the amount of the late payment charge and also the percentage annual simple interest equivalent of ~~such~~ the amount; and
- (f) a legend to the effect that the buyer may at any time pay the total unpaid balance.

(2) The items need not be stated in the sequence or order set forth in subsection (1). Additional items may be included to explain the computations made in determining the amount to be paid by the buyer."

Section 981. Section 31-2-102, MCA, is amended to read:

"31-2-102. Creditor defined. A creditor is ~~one~~ a person in whose favor an obligation exists, by reason of which ~~he~~ the person is or may become entitled to the payment of money."

Section 982. Section 31-2-103, MCA, is amended to read:

"31-2-103. Contracts of debtor are valid. In the absence of fraud, every contract of a debtor is valid against all ~~his~~ the debtor's creditors, existing or subsequent, who have not acquired a lien on the property affected by ~~such~~ the contract."

Section 983. Section 31-2-104, MCA, is amended to read:

"31-2-104. Payments in preference. A debtor may pay one creditor in preference to another or may give to one creditor security for the payment of ~~his~~ the creditor's demand in preference to another."

Section 984. Section 31-2-105, MCA, is amended to read:

"31-2-105. Relative rights of different creditors. ~~Where~~ When a creditor is entitled to resort to each of several funds for the satisfaction of ~~his~~ the creditor's claim and another person has an interest in or is entitled as a creditor to resort to some but not all of ~~them~~ the funds, the ~~latter~~ the other person may require the ~~former~~ creditor to seek satisfaction from those funds to which the ~~latter~~ has no such other person does not have a claim; so far as it can be done without impairing the right of the ~~former~~ creditor to complete satisfaction and without doing injustice to third persons."

Section 985. Section 31-2-201, MCA, is amended to read:

"31-2-201. When debtor may execute assignment. An insolvent debtor may, in good faith, execute an assignment of property to one or more assignees in trust for the satisfaction of ~~his~~ the debtor's creditors, in conformity to with the provisions of this part, subject, ~~however,~~ to the provisions of this code relative to trusts and fraudulent transfers and to the restrictions imposed by law upon assignments by special partnerships, corporations, or other specific classes or persons."

Section 986. Section 31-2-202, MCA, is amended to read:

"31-2-202. Insolvency -- what constitutes. A debtor is insolvent, within the meaning of this part, when ~~he~~ the debtor is unable to pay ~~his~~ the debtor's debts from ~~his~~ the debtor's own means as they become due."

Section 987. Section 31-2-203, MCA, is amended to read:

"31-2-203. Certain transfers not affected. The provisions of this part do not prevent a person residing in another state or country from making there, in good faith and without intent to evade the laws of this state, a transfer of property situated within it; ~~the other state or territory. nor do they~~ This part does not affect the power of a person, although insolvent and within this state, to transfer property to a particular creditor for the purpose of paying or securing the whole or a part of a debt owing to ~~such~~ the creditor, whether in ~~his~~ the person's own right or otherwise."

Section 988. Section 31-2-204, MCA, is amended to read:

"31-2-204. What debts may be secured. An assignment for the benefit of creditors may provide for any subsisting liability of the assignor ~~which he~~ that the assignor might lawfully pay, whether absolute or contingent."

Section 989. Section 31-2-205, MCA, is amended to read:

"31-2-205. Preference given for wages. In all assignments of property made by any person, association, partnership, chartered company, or corporation to trustees or assignees on account of inability of the assignor at the time of the assignment to pay ~~his~~ the assignor's debts or in proceedings in insolvency, the wages of the miners, mechanics, ~~salesmen~~ salespersons, servants, clerks, or laborers employed by ~~such~~ the assignor for services rendered within 4 months immediately previous to ~~such~~ the assignment, not to exceed the actual amount owed for each person, are preferred claims and must be paid by ~~such~~ the trustees or assignees before any other creditor of ~~such~~ the assignor."

Section 990. Section 31-2-209, MCA, is amended to read:

"31-2-209. Assignment -- when void. An assignment for the benefit of creditors is void against any creditor of the assignor not assenting ~~thereto~~ to the assignment in the following cases:

- (1) if it ~~it~~ the assignment gives a preference dependent upon any condition or contingency or with any power of revocation reserved;
- (2) if it ~~it~~ the assignment tends to coerce any creditor to release or compromise ~~his~~ the creditor's demand;
- (3) if it ~~it~~ the assignment provides for the payment of any claim known by the assignor to be false or fraudulent or for the payment of more upon any claim than is known to be justly due from the assignor;
- (4) if it ~~it~~ the assignment reserves any interest in the assigned property or in any part ~~thereof~~ of the property to the assignor or for ~~his~~ the assignor's benefit; before all existing debts are paid;

(5) if ~~it~~ the assignment confers upon the assignee any power ~~which that~~, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust;

(6) if ~~it~~ the assignment exempts ~~him~~ the assignor from liability for neglect of duty or misconduct;

(7) if ~~it~~ the assignment violates 72-34-105."

Section 991. Section 31-2-210, MCA, is amended to read:

"31-2-210. The instrument of assignment. (1) An assignment for the benefit of creditors must be in writing and subscribed by the assignor or by ~~his~~ the assignor's agent ~~thereto~~ authorized by writing.

(2) ~~it~~ The assignment must be acknowledged or proved and certified in the mode prescribed by the law on recording transfers of real property and recorded as required by 31-2-215 and 31-2-216, but recording in one county constitutes a compliance with ~~the last-mentioned sections~~ 31-2-215 and 31-2-216.

(3) The assignment must be accompanied by the affidavit of the assignor and assignee that ~~such~~ the assignment is made in good faith, for the benefit of the creditors of the assignor, and without any design to hinder, delay, or defraud ~~such~~ the creditors.

(4) The assent of the assignee, subscribed and acknowledged by ~~him~~ the assignee, must appear in writing ~~embraced~~ contained in or at the end of or endorsed upon the assignment before the ~~same~~ assignment is recorded and, if separate from the assignment, must be duly acknowledged."

Section 992. Section 31-2-212, MCA, is amended to read:

"31-2-212. Assignee takes subject to rights of third parties. An assignee for the benefit of creditors is not to be regarded as a purchaser for value and has no greater rights than ~~his~~ the assignor has in respect to things in action transferred by the assignment."

Section 993. Section 31-2-214, MCA, is amended to read:

"31-2-214. Verification of inventory -- when assignee required to file -- inspection of assignor's books and papers. (1) An affidavit must be made by every person executing an assignment for the benefit of creditors, to be annexed to and filed with the inventory mentioned in 31-2-213, to the effect that the ~~same~~ affidavit is in all respects just and true; according to the best of ~~such~~ the assignor's knowledge and belief.

(2) (a) ~~in case such~~ If the assignor ~~shall omit~~ omits, ~~neglect~~ neglects, or ~~refuse~~ refuses to make and deliver ~~such~~ the inventory within the required 20 days ~~required~~, the assignee named in ~~such~~ the assignment shall, within 30 days after the required date ~~thereof~~, cause to be made and delivered to the judge of the district court

of the county where ~~such the~~ assignment is recorded ~~such the~~ inventory as ~~above required~~ described in subsection (1), insofar as ~~he the~~ assignee can.

(b) For ~~such the~~ purpose of subsection (2)(a), ~~said the~~ judge shall, at any time upon the application of ~~such the~~ assignee, compel by order ~~such the~~ delinquent assignor and any other person to appear before ~~him the~~ judge and disclose, upon oath, any knowledge or information ~~he the~~ assignor or person may possess necessary to the proper making of ~~such the~~ inventory.

(c) The assignee shall verify the inventory ~~so~~ made by ~~him the~~ assignee to the effect that the ~~same~~ inventory is in all respects just and true to the best of ~~his the~~ assignee's knowledge and belief.

(3) ~~In case~~ If the assignee ~~shall be~~ is unable to make and file ~~such the~~ inventory within 30 days, the district judge may, upon application upon oath showing ~~such the~~ inability, allow ~~him~~ ~~such the~~ assignee further time as ~~shall be~~ necessary, not exceeding 60 days.

(4) If the assignee fails to make and file ~~such the~~ inventory within ~~said~~ 30 days or ~~such the~~ further time ~~as that~~ may be allowed, the district judge shall require, by order, the assignee ~~forthwith~~ to appear before ~~him the~~ judge and show cause why ~~he the~~ assignee should not be removed. Any person interested in the trust estate may apply for ~~such the~~ order and demand ~~such the~~ removal.

(5) The books and papers of ~~such the~~ delinquent assignor ~~shall~~ must at all times be subject to the inspection and examination of any creditor. The district judge is authorized by order to require ~~such the~~ debtor or assignee to allow ~~such the~~ inspection or examination. Disobedience to ~~such an~~ inspection order is a contempt, and obedience to ~~such the~~ order may be enforced by attachment.

(6) The inventory ~~shall~~ must be filed by ~~said the~~ district judge in the office of the clerk of ~~said the~~ county in which ~~said the~~ assignment is recorded."

Section 994. Section 31-2-215, MCA, is amended to read:

"31-2-215. Recording assignment and filing inventory. An assignment for the benefit of creditors must be recorded and the inventory required by 31-2-213 must be filed with the county clerk of the county in which the assignor resided at the date of the assignment or, if ~~he the~~ assignor did not ~~then~~ reside in this state at that time, with the clerk of the county in which ~~his the~~ assignor's principal place of business was ~~then~~ situated or, if ~~he the~~ assignor ~~had did~~ not ~~then~~ have a residence or place of business in this state, with the clerk of the county in which the principal part of the assigned property was ~~then~~ situated at the time of the assignment."

Section 995. Section 31-2-220, MCA, is amended to read:

"31-2-220. Management, disposal, and conversion of estate. (1) Until the inventory and affidavit required by 31-2-213 and 31-2-214 have been made and filed and the assignee has given bond as required by 31-2-219, the assignee for the benefit of creditors has no authority to dispose of the estate or convert it to the purposes of the trust.

(2) ~~But in case~~ However, if the assignor ~~shall fail~~ fails to present ~~such the~~ the inventory within the required 20 days ~~required~~, then the assignee, before the 10 days ~~shall~~ have elapsed, may apply to ~~said the~~ the district judge by verified petition for leave to file a provisional bond until ~~such the~~ the time ~~as he~~ that the assignor may be able to present the inventory as ~~herein~~ provided in this section.

(3) The district judge shall, in the case ~~provided~~ described in 31-2-214, and may also at any time on the petition of one or more creditors showing misconduct or incompetency of the assignee or on petition of the assignee ~~himself~~, showing sufficient reason ~~therefor~~, and after due notice of not less than 5 days to the assignor, assignee, surety, and ~~such~~ other persons as such that the judge may prescribe:

(a) remove or discharge the assignee and appoint one or more assignees in his the former assignee's place; and

(b) order an accounting of the assignee ~~se~~ removed or discharged.

(4) The district judge may:

(a) enjoin ~~said the~~ the assignee from interfering with the assignor's estate and make provision by order for the safe custody of the ~~same~~ estate; and

(b) enforce obedience to ~~such the~~ the injunction and orders by attachment.

(5) Upon ~~his~~ discharge, upon ~~his own~~ the former assignee's application, ~~such the former~~ the former assignee's bond ~~shall~~ must be canceled and discharged.

(6) The new assignee shall give a bond, ~~to~~ which must be approved as required.

(7) The district judge ~~shall have~~ has power by order to:

(a) require or allow any inventory or schedule filed to be corrected or amended;

(b) require and compel, from time to time, supplemental inventories or schedules to be made and filed within ~~such the~~ the time ~~as he shall prescribe~~ that the judge prescribes; and

(c) enforce obedience to ~~such the~~ the orders by attachment."

Section 996. Section 31-2-221, MCA, is amended to read:

"31-2-221. Notice to creditors to present claims. (1) The judge may, upon the petition of the assignee, authorize ~~him~~ the assignee to advertise for creditors to present to ~~him~~ the assignee their claims, with the vouchers

~~therefor~~ for the claims, duly verified, on or before a day to be specified in ~~such~~ the advertisement, not less than 10 days from the publication ~~thereof,~~ which The advertisement or notice ~~shall~~ must be published in one newspaper, to be designated by the judge as most likely to give notice to the persons to be served, at least once and ~~such~~ any additional times ~~as~~ that the judge may direct. The last publication ~~shall~~ must be at least 1 week prior to the date specified.

(2) ~~Said~~ The verified claims of creditors ~~shall~~ must set forth whether any and, if so, what securities are held for ~~such~~ the claims and whether any and, if so, what payments have been made ~~thereon~~ on the claims."

Section 997. Section 31-2-224, MCA, is amended to read:

"31-2-224. Power of court. The court ~~shall have~~ has power to:

(1) authorize the business of the assignor to be conducted for a limited period by assignee, if necessary in the best interests of the estate, and allow additional compensation for ~~such~~ the services;

(2) reopen estates when it appears they were closed before being fully administered and for that purpose to appoint another assignee who will take title to the property not administered;

(3) direct upon the final settlement of the estate that the assignee pay to the lawful creditors their proportionate dividend, notwithstanding that their claim has not been presented in accordance with the notice sent out by the assignee, provided that 4 months have not elapsed since the first publication of notice to creditors;

(4) approve the final report and discharge the assignee and ~~his~~ the assignee's surety from all further liabilities upon matters included in the accounting to creditors appearing and to creditors not having appeared after due citation or not having presented their claims after due advertisement."

Section 998. Section 31-2-225, MCA, is amended to read:

"31-2-225. When further security required. The district judge may, upon ~~his~~ the judge's own motion or upon the application of any party in interest and on ~~such~~ notice ~~as he~~ that the judge may direct to be given to the assignor, assignee, and surety, require further security to be given whenever, in ~~his~~ the judge's judgment, the security afforded by the bond on file is not adequate."

Section 999. Section 31-2-229, MCA, is amended to read:

"31-2-229. Assignees protected for acts done in good faith. An assignee for the benefit of creditors ~~is~~ may not ~~to~~ be held liable for ~~his~~ acts; done in good faith in the execution of the trust; merely for the reason that the assignment is afterwards adjudged void."

Section 1000. Section 31-2-329, MCA, is amended to read:

"31-2-329. Insolvency. (1) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's property at a fair valuation and the debtor is generally not paying ~~his~~ the debtor's debts as they become due.

(2) Property under this section does not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this part."

Section 1001. Section 31-2-333, MCA, is amended to read:

"31-2-333. Transfers fraudulent as to present and future creditors. (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) with actual intent to hinder, delay, or defraud any creditor of the debtor; or
(b) without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that ~~he~~ the debtor would incur, debts beyond ~~his~~ the debtor's ability to pay as they became due.

(2) In determining actual intent under subsection (1)(a), consideration may be given, among other factors, to whether:

(a) the transfer or obligation was to an insider;
(b) the debtor retained possession or control of the property transferred after the transfer;
(c) the transfer or obligation was disclosed or concealed;
(d) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(e) the transfer was of substantially all the debtor's assets;

(f) the debtor absconded;

(g) the debtor removed or concealed assets;

(h) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

- (i) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (j) the transfer occurred shortly before or shortly after a substantial debt was incurred; or
- (k) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor."

Section 1002. Section 31-3-102, MCA, is amended to read:

"31-3-102. Definitions and rules of construction. (1) Definitions and rules of construction set forth in this section are applicable for the purposes of this part.

(2) The term "consumer" means an individual.

(3) (a) The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living ~~which~~ that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

- (i) credit or insurance to be used primarily for personal, family, or household purposes;
- (ii) employment purposes; or
- (iii) other purposes authorized under 31-3-111.

(b) The term does not include:

- (i) any report containing information solely as to transactions or experiences between the consumer and the person making the report;
- (ii) any authorization or approval of a specific extension of credit, directly or indirectly, by the issuer of a credit card or similar device; or
- (iii) any report in which a person who has been requested by a third party to make a specific extension of credit, directly or indirectly, to a consumer conveys ~~his~~ the consumer's decision with respect to ~~such~~ the request; if the third party advises the consumer of the name and address of the person to whom the request was made and ~~such~~ that person makes the disclosures to the consumer required under 31-3-131.

(4) The term "consumer reporting agency" means any person ~~which~~ that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(5) The term "employment purposes", when used in connection with a consumer report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

(6) The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(7) The term "investigative consumer report" means a consumer report or portion ~~thereof~~ of a consumer report in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom ~~he~~ the consumer is acquainted or who may have knowledge concerning any ~~such~~ items of information. However, ~~such~~ the information ~~shall~~ may not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when ~~such~~ the information was obtained directly from a creditor of the consumer or from the consumer.

(8) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

(9) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity."

Section 1003. Section 31-3-113, MCA, is amended to read:

"31-3-113. Disclosure of investigative consumer reports. (1) A person may not procure or cause to be prepared or distribute an investigative consumer report on any consumer unless:

(a) it is clearly and accurately disclosed to the consumer that an investigative consumer report, including information as to ~~his~~ the consumer's character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made and ~~such~~ the disclosure is made in a writing mailed or otherwise delivered to the consumer not later than 3 days after the date on which the report was first requested and includes a statement informing the consumer of ~~his~~ the right to request the additional disclosures provided for under subsection (2) ~~of this section~~; or

(b) the report is to be used for employment purposes for which the consumer applied.

(2) Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt

by ~~him~~ the person of the disclosure required by subsection (1)(a), make a complete and accurate disclosure of the nature, scope, and substance of the investigation requested. This disclosure ~~shall~~ must be made in a writing and must be mailed or otherwise delivered to the consumer not later than 5 days after the date on which the request for ~~such~~ the disclosure was received from the consumer or ~~such~~ the report was first requested, whichever is ~~the latter~~ later.

(3) ~~No~~ A person may not be held liable for any violation of subsection (1) or (2) ~~of this section~~ if ~~he~~ the person shows by a preponderance of the evidence that at the time of the violation ~~he~~ the person maintained reasonable procedures to ~~assure~~ ensure compliance with subsection (1) or (2)."

Section 1004. Section 31-3-114, MCA, is amended to read:

"31-3-114. Compliance procedures. (1) Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of 31-3-112 and 31-3-113 and to limit the furnishing of consumer reports to the purposes listed under 31-3-111. These procedures ~~shall~~ must require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by ~~such~~ the prospective user prior to furnishing ~~such~~ the user a consumer report. ~~No~~ A consumer reporting agency may not furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in 31-3-111.

(2) Whenever a consumer reporting agency prepares a consumer report, it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates, and it shall maintain a record of all persons using the information and the source of each piece of information.

(3) When gathering information, a consumer reporting agency shall notify any person who furnishes information that ~~he~~ the person is liable to suit if the information is false or furnished with malice or willful intent to injure the consumer."

Section 1005. Section 31-3-121, MCA, is amended to read:

"31-3-121. Disclosures to governmental agencies. Notwithstanding the provisions of 31-3-111, a consumer reporting agency may furnish identifying information respecting any consumer, limited to ~~his~~ the consumer's name, address, former addresses, places of employment, or former places of employment, to a

governmental agency."

Section 1006. Section 31-3-123, MCA, is amended to read:

"31-3-123. Conditions of disclosure to consumer. (1) A consumer reporting agency shall make the disclosures required under 31-3-122 during normal business hours and on reasonable notice.

(2) The disclosures required under 31-3-122 ~~shall~~ must be made to the consumer:

(a) in person if ~~he~~ the consumer appears in person and furnishes proper identification; or

(b) by telephone if ~~he~~ the consumer has made a written request, with proper identification for telephone disclosure, and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(3) Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to ~~him~~ the consumer pursuant to 31-3-122.

(4) The consumer ~~shall~~ must be permitted to be accompanied by one other person of ~~his~~ the consumer's choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in ~~such~~ the other person's presence."

Section 1007. Section 31-3-131, MCA, is amended to read:

"31-3-131. Requirements on users of consumer reports. (1) Whenever credit or insurance for personal, family, or household purposes or employment involving a consumer is denied or the charge for ~~such~~ the credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall ~~so~~ advise the consumer against whom ~~such~~ the adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

(2) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for ~~such~~ the credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of ~~such~~ the information shall, within a reasonable period of time, upon the consumer's written request for the reasons for ~~such~~ the adverse action received within 60 days after the consumer learned of ~~such~~ the adverse action, disclose the nature of the information to the consumer. The user of ~~such~~ the information shall clearly and accurately disclose to the consumer ~~his~~ the right to make ~~such~~ the written request at the time ~~such~~ the adverse action is

communicated to the consumer.

(3) ~~He~~ A person may not be held liable for any violation of this section if ~~he~~ the person shows by a preponderance of the evidence that at the time of the alleged violation ~~he~~ the person maintained reasonable procedures to ~~assure~~ ensure compliance with the provisions of subsections (1) and (2)."

Section 1008. Section 32-1-206, MCA, is amended to read:

"32-1-206. Disqualification of board member -- when. ~~Any~~ A board member ~~shall disqualify himself~~ must be disqualified from acting upon any matter in which ~~he~~ the member or any bank or financial institution in which ~~he~~ the member has a direct or indirect interest is involved, competitively or otherwise."

Section 1009. Section 32-1-403, MCA, is amended to read:

"32-1-403. Penalty for transacting business without certificate. (1) A person, firm, company, partnership, or corporation, domestic or foreign, advertising that ~~he~~ the person or ~~it~~ entity is receiving or accepting money or savings and issuing notes or certificates of deposit for them or advertising that ~~he~~ the person or ~~it~~ entity is transacting the business of a bank, savings bank, or trust company or making use of an office sign at the place where the business is transacted, having on it an artificial or corporate name or other words indicating that the place or office is the place or office of a bank, savings bank, or trust company or that deposits are received there or payments made on check or that interest is paid on deposits or that certificates of deposit, either with or without interest, are being issued or that any other form of banking business is transacted, and a person, firm, company, partnership, or corporation, domestic or foreign, using or circulating any letterheads, billheads, blank notes, blank receipts, certificates, or circulars or any written or printed or partly written and partly printed paper whatever, having on it an artificial or corporate name or advertising that the business is the business of a bank, savings bank, or trust company, must have the proper capital stock paid in and set aside for the purpose of transacting that business and must have received from the department, as provided for in this chapter, a certificate to do a banking business.

(2) A person, firm, company, partnership, or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state \$100 a day for every day or part of a day during which the violation continues.

(3) Upon action brought by the department, the court may issue an injunction restraining a person, firm, company, partnership, or corporation from further violating any provision of this section and may enter a further order or decree as equity and justice require.

(4) A person, firm, company, partnership, or corporation doing any of the things or transacting any of the

business defined in this section ~~must~~ shall transact that business according to the provisions of the Bank Act, and the department may examine the accounts, books, papers, cash, and credits of that person, firm, company, partnership, or corporation, domestic or foreign, in order to ascertain whether that person, firm, company, partnership, or corporation has violated or is violating any provisions of this section."

Section 1010. Section 32-1-421, MCA, is amended to read:

"32-1-421. Investment of capital of savings banks. (1) The term "savings bank" as used in this section means any bank organized to do the business specified in 32-1-106.

(2) (a) At least one-half of the paid-in capital of a savings bank and one-half of the whole amount deposited in the savings bank must be invested in bonds or other securities of the United States or any of the states of the United States or any county, city, town, or school district of this state on which interest is regularly payable or federal land bank bonds or loaned on unencumbered real estate worth at least double the amount to be secured.

(b) The remainder may be invested in bonds or securities listed in subsection (2)(a) or in approved personal securities. However, a loan may not be made on personal securities of less than two responsible persons or collateral security to be approved by the directors, and a loan upon personal security may not be made to any person or partnership to an amount exceeding \$10,000.

(c) Investments in United States government obligations permitted under subsection (2)(a) or (2)(b) may be made either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, (15 U.S.C. 80a-1 through 80a-64), ~~as amended~~; if:

(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

(3) A president, vice president, director, or other officer or ~~servant~~ employee of a savings bank may not directly or indirectly borrow any of the funds of the bank or of its deposits or in any manner use the ~~same funds~~ or deposits in ~~his~~ the person's private affairs or business. A director may not receive any pay, salary, or emolument until the interest ~~as~~ that the directors have determined to allow depositors has been provided for in accordance with the regulations of the corporation.

(4) The real estate that the corporation may lawfully purchase, hold, and convey is the real estate that

is:

- (a) necessary for the proper transaction of its business, not exceeding in value \$50,000;
 - (b) mortgaged to it in good faith for money loaned pursuant to this chapter or given as security for money loaned or advanced;
 - (c) purchased at the sale on judgment or decree obtained or rendered on money loaned or advanced.
- (5) Savings banks organized under the provisions of this chapter may not purchase, hold, or convey real estate in any other case or for any other purpose than is specified in subsection (4) and may not buy or sell any personal property, except ~~such as~~ personal property that may be necessary for the proper transaction of its business or ~~as that~~ that may have been pledged, mortgaged, or assigned to it to secure money loaned or advanced."

Section 1011. Section 32-1-451, MCA, is amended to read:

"32-1-451. Statement of capital, resources, and liabilities. ~~No~~ A bank or officer ~~thereof shall~~ of a bank ~~may not~~ advertise in any manner or publish any statement of the capital authorized or subscribed unless ~~it~~ the ~~bank or he officer~~ advertises and publishes in connection therewith with the advertisement the amount of capital actually paid up. ~~No~~ A bank ~~shall~~ may not publish a statement of its resources or liabilities in connection with those of any other bank; unless ~~such~~ the ~~statement shall show~~ shows the resources and liabilities of each bank separately."

Section 1012. Section 32-1-463, MCA, is amended to read:

"32-1-463. Sale of securities by officer to bank. (1) ~~No~~ A director, officer, employee, or controlling stockholder of any bank ~~shall~~ may not, directly or indirectly, for ~~his own~~ the person's account, for ~~himself~~ the person, or as the partner or agent of others sell or transfer or cause to be sold or transferred to the bank of which ~~he~~ the person is a director, officer, employee, or controlling stockholder any note or bond secured by any mortgage or trust deed on real estate or any contract arising from the sale of real estate, in which ~~such~~ the director, officer, employee, or controlling stockholder is personally or financially interested, without a vote of the majority of the board of ~~such~~ the bank, duly noted upon the minutes of the meeting at which ~~such~~ the transaction is decided upon; ~~which~~ The minutes ~~shall~~ must be signed by a majority of the board.

(2) Any director, officer, employee, or controlling stockholder of any bank who knowingly violates or consents to the violation of this provision ~~shall be~~ is guilty of a felony."

Section 1013. Section 32-1-466, MCA, is amended to read:

"32-1-466. Purchase of obligation of bank by officer. ~~No~~ A director, officer, agent, or other employee of any bank ~~shall~~ may not, directly or indirectly, for ~~his~~ the person's own personal benefit, purchase, ~~or~~ sell, or be interested in the purchase or sale of any obligation of ~~said~~ the bank or of any of the assets of ~~said~~ the bank for a sum less than ~~shall appear~~ the amount that appears upon the face of the obligation or obligations ~~so~~ purchased or sold. Every person violating the provisions of this section shall, in addition to the general penalties of this chapter, forfeit to the state twice the nominal amount or face value of ~~such~~ the obligations or assets ~~so~~ purchased or sold."

Section 1014. Section 32-1-471, MCA, is amended to read:

"32-1-471. Penalty for unlawful hypothecation of property received. Any officer or employee of any bank doing business in this state who, except in the manner authorized by law or the contract of the parties, ~~hypothecates~~, pledges, or in any way alienates any notes, stocks, bonds, mortgages, securities, or any other property coming into ~~his~~ the officer's or employee's hands or into the possession of the bank as collateral, for safekeeping or in any other manner, and to which the bank has not acquired full title, is guilty of theft and upon conviction ~~thereof~~ shall be punished as for other felonies."

Section 1015. Section 32-1-474, MCA, is amended to read:

"32-1-474. False statement to obtain loan. ~~Whoever shall make any~~ A person who makes a statement, knowing it to be false, for the purpose of obtaining for ~~himself~~ for that person or for any other person, firm, corporation, or association a loan of money from any bank or for the purpose of gaining an extension of time ~~of~~ for the payment of any debt due ~~such~~ the bank shall be punished by a fine of not more than \$1,000 or by imprisonment in the county jail for not more than 1 year, or both."

Section 1016. Section 32-1-506, MCA, is amended to read:

"32-1-506. Assessment on capital stock to make good impairment. (1) When the department determines that an impairment of capital exists in a bank, it may, ~~in its discretion~~, notify the board of directors of the bank by written notice that the impairment exists, stating the amount ~~thereof~~ of the impairment in dollars and percentage of the capital stock, and it may, ~~in its discretion~~, order the board to make good the impairment within 90 days from date of the notice.

(2) The board of directors shall, upon receipt of notice, convene and pass a resolution reciting the receipt of the notice of impairment and calling a special meeting of the stockholders of the bank in the manner provided

in their bylaws.

(3) The stockholders at the meeting shall pass a resolution reciting the facts of receipt of notice from the department, notice of impairment, and notice of meeting and assessing themselves by assessing the stock of record, ~~payment~~ Payment of which ~~the~~ assessment must be made within the time limit specified by the department ~~as provided~~ in notice of impairment.

(4) If there is any stock remaining on which the assessment is not paid as provided in this section, ~~# the stock~~ or a part of it ~~as the stock that~~ is necessary to pay the assessment ~~shall~~ must be sold by the board of directors, acting through the cashier or secretary of the bank, at public or private sale, as appears best for all concerned, not less than 30 days after the day fixed for payment of assessment. Notice of the time and place of the sale ~~shall~~ must be given by certified ~~or registered~~ mail to the stockholders by the board through its cashier or secretary at least 10 days prior to the sale. A sale of stock as provided in this section causes an absolute cancellation of the outstanding certificate or certificates evidencing the stock ~~so~~ sold and makes them void in the hands of the stockholder or ~~his~~ the stockholder's assigns or pledgees. A new certificate ~~shall~~ must be issued by the bank to the purchaser for the number of shares purchased, and a new certificate must be issued to the stockholder of record and delivered to ~~him~~ the stockholder or any pledgee or assignee of the stock for the remaining shares, if any. The record of the original certificate sold ~~shall~~ must be marked canceled on the books of the bank, and that record is prima facie evidence of the regularity of the proceedings for the sale of the stock.

(5) If a bank fails to make good its capital impairment upon demand of the department, as provided in this section, the department may immediately take charge of that bank and proceed to liquidate it as in the case of insolvency.

(6) If the stock does not sell for enough to pay the assessment on it, the board of directors may sue in the name of the corporation to collect the deficiency from the stockholder of record whose stock has been sold for the assessment."

Section 1017. Section 32-1-510, MCA, is amended to read:

"32-1-510. Penalty for maliciously declaring bank insolvent. If, as a result of malice or for personal gain, an employee or agent of the department declares a bank insolvent, ~~he~~ the employee or agent is subject to a fine not exceeding \$1,000 or imprisonment in the county jail not exceeding 1 year, or both, and shall forfeit ~~his~~ the employee's or agent's office."

Section 1018. Section 32-1-535, MCA, is amended to read:

"32-1-535. Claims -- partial payments -- assignments. (1) The department need not await the expiration of the time allowed for filing claims, as fixed in the notice to the creditors, for the payment of dividends. ~~It~~ The department may, ~~in its discretion and~~ if under the circumstances of the particular case it considers it expedient and safe, at any time after taking possession of the bank and prior to the expiration of the period fixed for filing of claims; ~~and if it has on hand in cash sufficient funds over and above~~ in excess of the expenses of liquidation, make pro rata distribution to any class of creditors ~~next~~ entitled to distribution; in the order of priority fixed in this chapter; ~~making that~~ The department shall make a payment to the creditors as they appear on the books and records of the bank and after determining the priority and basing its apportionment on the amount shown to be due by the books and records.

(2) At any time after the expiration of the date fixed for the presentation of claims against the bank and from time to time ~~thereafter~~ after that date when, in its discretion, there are sufficient funds available, the department shall, after making proper provisions for the payment of expenses of liquidation, declare and pay dividends to all creditors of the bank pro rata in the order of their priority. If, after the time fixed for presentation of claims against the bank has expired, it appears that a person, prior to the expiration of the period or at any other time, has been paid more than the pro rata amount due ~~him~~ the person as compared with the amounts ~~then~~ paid to other creditors, nothing more may be paid to that creditor until the payment made to other creditors places them on equal footing.

(3) In calculating dividends, all disputed claims and deposits ~~shall~~ must be taken into account and the amount of dividends upon the disputed claims or deposits ~~shall~~ must be held by the department until the validity of those claims or deposits has been finally determined.

(4) Claims against a bank in process of liquidation may be assigned in whole or in part subject to the approval of the department. Assignments of claims are binding upon the department only after they have been filed and allowed by the department and are subject to the payment of the assignor's liabilities to the bank. An assignment ~~shall~~ must be made by filing written notice, signed by the original claimant, with the department or person in charge of the bank. ~~No assigned~~ Assigned claims may not be offset against obligations due the bank. A check or draft drawn against a bank closed or taken possession of by the department, whether issued before or after closing, may not be recognized as a claim against the bank or as an assignment of any amount, whether protested or not protested."

Section 1019. Section 32-1-807, MCA, is amended to read:

"32-1-807. Transfer of fiduciary relationships from affiliated banks to subsidiary trust companies.

(1) Upon any subsidiary trust company being duly authorized to commence the business for which it is organized, ~~such the~~ subsidiary trust company may file its verified application in the district court of the county in which its main office is located requesting that it be substituted, except as may be expressly excluded in ~~such the~~ application, in every fiduciary capacity for each of its affiliated banks specified in the application, and each ~~such~~ specified affiliated bank shall join in ~~such the~~ application. ~~Such The~~ application ~~shall must~~ indicate the county ~~wherein in which~~ the main office of each affiliated bank joining in the application is located and ~~shall must~~ designate each fiduciary account existing at the date ~~thereof of the application~~ with respect to which ~~such the~~ subsidiary trust company requests substitution, but fiduciary capacities in other cases need not be listed. ~~Such The~~ application ~~shall must~~ additionally set forth, with regard to each existing fiduciary account designated ~~therein in the application~~, the name and address last known to the applicant of each person entitled to mailed notice of hearing ~~thereon on the application~~, ~~to-wit including~~:

(a) in the case of an existing fiduciary account ~~which that~~ may be revoked, terminated, or amended, each person who, alone or together with others, is empowered to revoke, terminate, or amend the ~~same account~~;

(b) in the case of an existing fiduciary account with respect to which any person other than a court has the power to remove the corporate fiduciary, each person who, alone or together with others, is empowered to remove the corporate fiduciary;

(c) in the case of an existing fiduciary account ~~which that~~ is an estate of a deceased person or ~~which that~~ is a guardianship or conservatorship, to the clerk of the court in which ~~such the~~ estate, guardianship, or conservatorship matter is pending;

(d) in the case of an existing fiduciary account not described in ~~any of the foregoing~~ subsections (1)(a) ~~through (1)(c)~~, to each income beneficiary of ~~such the~~ account and to each beneficiary who, ~~were such if the~~ account terminated at the date of the application respecting ~~such the~~ account, would be entitled to share in distributions of income or principal ~~thereof of the account~~; and

(e) in the case of any existing fiduciary account ~~wherein for which~~ an affiliated bank specified in the application is acting with a cofiduciary, to each ~~such~~ cofiduciary at ~~his last known~~ the cofiduciary's last-known address.

(2) When ~~any such an~~ application ~~shall have~~ has been filed, the clerk of the court where the application is filed shall make an order fixing a date and time for hearing ~~thereon on the application~~ and give notice ~~thereof of the hearing~~ as ~~hereinafter~~ provided in this section. The clerk of court shall cause a copy of ~~such the~~ notice to be published at least once a week for 3 successive weeks preceding the hearing date; ~~the~~ The first ~~such~~ publication ~~to must~~ be at least 25 days preceding the hearing date; ~~such publication to be~~ in a newspaper of

general circulation published in each county in which the main office of an affiliated bank specified in the application is located or, ~~if in any case there be no such a general circulation newspaper is not published in that county,~~ then in a newspaper of general circulation published in a contiguous county. In addition, at least 25 days preceding the hearing date, the clerk of the court shall cause a copy of ~~such the~~ notice to be mailed by first-class mail to each person identified in the application as being entitled to mailed notice under the provisions of this part, at ~~his~~ the person's address last known to the applicant as set forth in the application.

(3) The notice to be published and mailed with respect to each ~~such~~ application ~~shall~~ must state the time and place of the hearing ~~thereon on the application,~~ the name of the subsidiary trust company ~~which that~~ has filed the application, the name of each affiliated bank ~~which that~~ has joined in ~~such the~~ application, that the application requests that the subsidiary trust company be substituted in every fiduciary capacity for each of its affiliated banks specified in the application, and that any person beneficially interested in any affected fiduciary account may appear on or before the date of hearing and file ~~his~~ the person's written objection to ~~such the~~ substitution ~~as to such for the~~ affected fiduciary account, and ~~such the~~ notice ~~shall~~ must refer to ~~such the~~ application for further particulars.

(4) On or before the date and time of hearing ~~any such on the~~ application, any person beneficially interested in any fiduciary account ~~as to for~~ which substitution of the subsidiary trust company is requested may appear and file an objection to substitution and ~~shall be is~~ entitled to be heard with respect to ~~such the~~ objection.

(5) On ~~such the~~ date of hearing, upon finding that due notice has been given as required by this part and upon finding that the subsidiary trust company has been duly authorized to commence the business for which it is organized by the department or the comptroller of the currency if the subsidiary trust company is a national banking association, the district court shall enter an order substituting the subsidiary trust company in every fiduciary capacity for each of its specified affiliated banks, ~~excepting except~~ as may be otherwise specified in the application and ~~excepting except for~~ fiduciary capacities in any account with respect to which an objection has been filed pursuant to this section. Upon entry of ~~such the~~ order, the subsidiary trust company ~~shall~~ must, without further act, be substituted in every ~~such~~ fiduciary capacity. ~~Such The~~ substitution may be made a matter of record in any county of this state by filing a certified copy of the order of substitution in the office of the clerk of any district court in this state or by filing a certified copy of ~~such the~~ order in the office of the clerk and recorder of any county in this state, ~~to be by such officer recorded and indexed in like~~ The clerk and recorder shall record and index the order in the same manner and with like the same effect as other orders and decrees of court are recorded and indexed.

(6) Each designation, in a will or other instrument ~~heretofore or hereafter executed,~~ of a bank as fiduciary

~~shall be deemed~~ is considered a designation of the subsidiary trust company substituted for ~~such the~~ bank pursuant to this section except ~~where such~~ when the will or other instrument is executed after ~~such the~~ substitution and expressly negates the application of this section. Any grant in ~~any such a~~ will or other instrument of any discretionary power ~~shall be deemed~~ is considered conferred upon the subsidiary trust company ~~deemed~~ designated as the fiduciary pursuant to this section.

(7) A bank shall account jointly with the subsidiary trust company ~~which that~~ has been substituted as fiduciary for ~~such the~~ bank pursuant to this section for the accounting period during which the subsidiary trust company is initially ~~se~~ substituted. Upon substitution pursuant to this section, the bank shall deliver to the subsidiary trust company all assets held by the bank as fiduciary, (except assets held for accounts with respect to which there has been no substitution pursuant to this section), and upon ~~such the~~ substitution, all ~~such of the~~ assets ~~shall~~ become the property of the subsidiary trust company without the necessity of any instrument of transfer or conveyance."

Section 1020. Section 32-1-808, MCA, is amended to read:

"32-1-808. Transfer of fiduciary relationships between affiliated banks. (1) Any bank ~~which that~~ has received approval pursuant to 32-1-806 to maintain a trust office in the same building with the main office of any affiliated bank may file its verified application in the district court of the county in which its main office is located requesting that it be substituted, except as may be expressly excluded in ~~such the~~ application, in every fiduciary capacity for ~~such the~~ affiliated bank, and ~~such the~~ affiliated bank shall join in ~~such the~~ application. ~~Such The~~ application ~~shall must~~ indicate the county ~~wherein in which~~ the main office of ~~such the~~ affiliated bank is located and ~~shall must~~ designate each fiduciary account existing at the date ~~thereof of application~~ with respect to which the applicant bank requests substitution, but fiduciary capacities in other cases need not be listed. ~~Such The~~ application ~~shall must~~ additionally set forth, with regard to each existing fiduciary account designated ~~therein in~~ the application, the name and address last known to the applicant of each person entitled to mailed notice of hearing ~~thereon on the application~~, who ~~shall must~~ be those persons specified in ~~subsections (1)(a) through (1)(e)~~ of 32-1-807(1)(a) through (1)(e).

(2) When ~~any such an~~ application has been filed, the clerk of the court where the application is filed shall make an order fixing a date and time for hearing ~~thereon on the application~~ and shall cause notice ~~thereof of the~~ hearing to be given by publication and mailing in the manner required by 32-1-807.

(3) The notice to be published and mailed ~~with respect to for~~ each application ~~shall must~~ state the time and place of the hearing ~~thereon on the application~~, the name of the bank ~~which that~~ has filed the application,

the name of the affiliated bank ~~which that~~ has joined in ~~such the~~ application, that the application requests that the applicant bank to be substituted in every fiduciary capacity for the affiliated bank specified in the application, and that any person beneficially interested in any affected fiduciary account may appear on or before the date of hearing and file ~~his a~~ written objection to ~~such the~~ substitution ~~as to such for the~~ affected fiduciary account, and ~~such the~~ notice ~~shall must~~ refer to ~~such the~~ application for further particulars.

(4) On or before the date and time of hearing ~~any such on the~~ application, any person beneficially interested in any fiduciary account ~~as to for~~ which substitution of the applicant bank is requested may appear and file objection to the substitution and ~~shall be is~~ entitled to be heard with respect to ~~such the~~ objection.

(5) On ~~such the~~ date of hearing, upon finding that ~~due~~ notice has been given as required by this part and upon finding that the applicant bank has received the requisite approval from the department or the comptroller of the currency if the applicant bank is a national banking association, the district court shall enter an order substituting the applicant bank in every fiduciary capacity for the affiliated bank designated in the application; ~~excepting except~~ as may be otherwise specified in the application and ~~excepting except for~~ fiduciary capacities in any account with respect to which an objection has been filed pursuant to this section. Upon entry of ~~such the~~ order, the applicant bank ~~shall must~~, without further act, be substituted in every ~~such~~ fiduciary capacity. ~~Such The~~ substitution may be made a matter of record in any county of this state by filing a certified copy of the order of substitution in the office of the clerk of any district court in this state or by filing a certified copy of ~~such the~~ order in the office of the clerk and recorder of any county in this state, ~~to be by such officer recorded and indexed in like~~ The appropriate clerk shall record and index the order in the same manner and with ~~like the same~~ effect as other orders and decrees of court are recorded and indexed.

(6) Each designation, in a will or other instrument ~~heretofore or hereafter executed~~, of a bank as fiduciary ~~shall be deemed is considered~~ a designation of the applicant bank substituted for ~~such the~~ bank pursuant to this section except ~~where such when the~~ will or other instrument is executed after ~~such the~~ substitution and expressly negates the application of this section. Any grant in ~~any such a~~ will or other ~~such~~ instrument of any discretionary power ~~shall be deemed is considered~~ conferred upon the applicant bank ~~deemed~~ designated as the fiduciary pursuant to this section.

(7) A bank shall account jointly with the applicant bank ~~which that~~ has been substituted as fiduciary for ~~such the~~ bank pursuant to this section for the accounting period during which the applicant bank is initially ~~so~~ substituted. Upon substitution pursuant to this section, the affiliated bank for which substitution has been made shall deliver to ~~such the~~ applicant bank all assets held by ~~such the~~ affiliated bank as fiduciary, ~~(except assets held for accounts with respect of which there has been no substitution pursuant to this section)~~, and upon ~~such the~~

substitution, all ~~such of the~~ assets ~~shall~~ become the property of ~~such the~~ applicant bank without the necessity of any instrument of transfer or conveyance."

Section 1021. Section 32-1-903, MCA, is amended to read:

"32-1-903. Informal conferences -- time for application. Within 15 days after service of the notice of charges, either the institution or department may request an informal conference to discuss the charges and the possible disposition of ~~them~~ the charges without a formal hearing process. The conference ~~shall~~ must be carried out in accordance with the provisions of 2-4-603. Upon a proper showing, the director ~~in his discretion~~ may withdraw charges and proceedings for a cease and desist order."

Section 1022. Section 32-1-905, MCA, is amended to read:

"32-1-905. Notice of intention to remove board member or officer or to prohibit participation -- suspension. (1) The director may serve upon a board member or officer of an institution a written notice of intention to remove ~~him~~ the member or officer from office whenever the director has reasonable cause to believe that:

(a) the board member or officer has:

(i) committed any violation of law involving dishonesty or breach of trust;

(ii) violated a cease and desist order ~~which~~ that has become final;

(iii) engaged or participated in any unsafe or unsound practice in connection with the institution; or

(iv) committed or engaged in any act, omission, or practice ~~which~~ that constitutes a breach of ~~his~~ the member's or officer's fiduciary duty as a board member or officer of the institution; and

(b) the institution has suffered or will probably suffer substantial financial loss or other damage or the interest of its depositors could be seriously prejudiced by reason of the violation, practice, or breach of fiduciary duty involving personal dishonesty on the part of ~~such the~~ board member or officer.

(2) Whenever in the opinion of the director any board member or officer of an institution has, by conduct or practice with respect to another institution or business organization ~~which~~ that has resulted in substantial financial loss or other damage to that institution or business organization, evidenced ~~his~~ the member's or officer's personal disability and unfitness to continue as a board member or officer of the institution; and whenever the director has reasonable cause to believe that any other person participating in the conduct of the affairs of an institution has, by conduct or practice with respect to ~~such the~~ institution, another institution, or other business organization ~~which~~ that has resulted in substantial financial loss or other damage to the institution or business

organization, evidenced ~~his~~ the person's personal disability and unfitness to participate in the conduct of the affairs of ~~such the~~ institution, the director may serve upon the board member, officer, or other person a written notice of intention to remove ~~such the~~ person from office or to prohibit ~~his the person's~~ further participation in any manner in the conduct of the affairs of the institution.

(3) A notice of intention to remove a board member, officer, or other person from office or to prohibit ~~his the member's, officer's, or person's~~ participation in the conduct of the affairs of an institution ~~shall~~ must contain a statement of the facts constituting grounds ~~therefor for the removal or prohibition;~~ and ~~shall~~ must fix a time and place at which a hearing will be held ~~thereon on the removal or prohibition.~~ The hearing ~~shall~~ must be held not earlier than 30 days or later than 60 days after the date of service of the notice; unless an earlier or later date is set by the director at the request of the board member, officer, or other person and for good cause shown.

(4) Unless the board member, officer, or other person appears at the hearing in person or by a duly authorized representative, ~~he shall~~ the member, officer, or person must be considered to have consented to the issuance of an order of removal or prohibition. In the event of consent or if upon the record made at the hearing the director finds that any of the grounds specified in the notice have been established by the preponderance of the evidence, the director may issue ~~such~~ orders of suspension, removal from office, or prohibition from participation in the conduct of the affairs of the institution as ~~he~~ the director considers appropriate. The order becomes effective 30 days after service upon the institution and the board member, officer, or other person concerned, except in the case of an order issued upon consent, which becomes effective at the time specified ~~therein in the order.~~ The order remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the director or a reviewing court."

Section 1023. Section 32-1-906, MCA, is amended to read:

"32-1-906. Informal conferences -- time for application. Within 15 days after service of the notice of charges, either the board member, officer, or other person may request an informal conference to discuss the charges and the possible disposition of ~~them the charges~~ without a formal hearing process. The conference ~~shall~~ must be carried out in accordance with the provisions of 2-4-603. Upon a proper showing, the director ~~in his discretion~~ may withdraw charges and proceedings for a cease and desist order."

Section 1024. Section 32-1-907, MCA, is amended to read:

"32-1-907. Suspension or prohibition effective upon service -- stay. (1) With respect to any board member or officer of an institution or any other person to whom notice is sent pursuant to 32-1-905, if the director

considers it necessary for the protection of the institution or the interests of its depositors that the board member, officer, or other person be suspended from office or prohibited from further participation in any manner in the conduct of the affairs of the institution, the director may serve upon ~~such the~~ board member, officer, or other person a written notice suspending ~~him~~ the member, officer, or person from office or prohibiting ~~him~~ the member, officer, or person from further participation in any manner in the conduct of the affairs of the institution. The notice ~~shall must~~ contain a statement of the facts constituting grounds for the order and ~~shall must~~ fix a time, not later than 10 days from the date of the service of the notice, at which a hearing will be held to afford the board member, ~~or officer, or other person~~ the opportunity to respond. The suspension or prohibition is effective upon service of the notice and unless stayed by a court in proceedings authorized by subsection (2) ~~of this section shall remain~~ remains in effect until the completion of the administrative proceedings pursuant to the notice served under 32-1-904, until ~~such the~~ time ~~as that~~ the director dismisses the charges specified in ~~such the~~ notice, or until the order of removal or prohibition ~~which that~~ is issued against the board member, officer, or other person becomes effective. Copies of the notice ~~shall must~~ also be served upon the institution of which the person is a director or officer or in the conduct of whose affairs ~~he~~ the person has participated.

(2) Within 10 days after the hearing provided for in subsection (1) ~~of this section~~, the board member, officer, or other person may apply to the district court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon the board member, officer, or other person under 32-1-904. The court has jurisdiction to stay the suspension or prohibition."

Section 1025. Section 32-1-908, MCA, is amended to read:

"32-1-908. Felony charges -- suspension or prohibition. (1) Whenever any board member or officer of an institution or other person participating in the conduct of the affairs of an institution is charged in any information, indictment, warrant, or complaint authorized by a county, state, or federal authority with the commission of or participation in a felony involving dishonesty or breach of trust, the director by written notice served upon the board member, officer, or other person may suspend ~~him~~ that individual from office or prohibit ~~him~~ that individual from further participation in any manner in the conduct of the affairs of the institution. Suspension is effective upon service upon the individual. The notice ~~shall must~~ contain a statement of the facts constituting grounds for the order and ~~shall must~~ fix a place and time, not later than 10 days from the date of the notice, at which a hearing will be held to afford the board member, ~~or officer, or other person~~ the opportunity to respond. A copy of the notice ~~shall must~~ also be served upon the institution. The suspension or prohibition

remains in effect until the information, indictment, warrant, or complaint is finally disposed of or until terminated by the director.

(2) Within 10 days after the hearing provided for in subsection (1) ~~of this section~~, the board member, officer, or other person may apply to the district court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the criminal proceedings initiated by the information, indictment, warrant, or complaint. The court has jurisdiction to stay the suspension or prohibition.

(3) If a judgment of conviction with respect to the offense is entered against the board member, officer, or other person and at ~~such the time as that~~ the judgment is not subject to further appellate review, the director may issue and serve upon the board member, officer, or other person an order removing ~~him~~ that individual from office or prohibiting ~~him~~ that individual from further participation in any manner in the conduct of the affairs of the institution except with the consent of the director. A copy of the order ~~shall~~ must also be served upon the institution, ~~whereupon and upon receipt~~ the board member or officer ~~shall cease~~ ceases to be a board member or officer of the institution. A finding of not guilty or other disposition of the charge does not preclude the director from ~~hereafter~~ instituting proceedings to suspend or remove the board member, officer, or other person from office or to prohibit further participation in the affairs of the institution pursuant to 32-1-905 or 32-1-906."

Section 1026. Section 32-1-910, MCA, is amended to read:

"32-1-910. Hearings -- decision -- review, modification, termination or stay of orders. (1) ~~Any A~~ hearing provided for in this part ~~shall~~ must be conducted in accordance with the provisions of the Montana Administrative Procedure Act. The hearing ~~shall~~ must be private unless the director, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After the hearing and within 90 days after the director has notified the parties that the case has been submitted ~~to him~~ for final decision, ~~he~~ the director shall render ~~his a~~ a decision, which ~~shall~~ must include findings of fact upon which ~~his~~ the decision is ~~predicated~~ based, and shall issue and serve upon each party to the proceeding an order consistent with the provisions of this section.

(2) Any party to the hearing or any person required by an order issued under this part to cease and desist from any of the violations or practices stated ~~therein~~ in the order or any person suspended, removed, or prohibited from participation in the conduct of the affairs of an institution may obtain a review of any order, other than a consent order, ~~which~~ The review ~~shall~~ must be pursuant to the Montana Administrative Procedure Act. Unless a petition for review is timely filed as provided in the Montana Administrative Procedure Act, the director,

at any time, upon ~~such~~ notice and in ~~such a~~ manner ~~as he~~ that the director considers proper, may modify, terminate, or set aside the order. Upon the timely filing of a petition for review, the director may modify, terminate, or set aside the order with the permission of the court."

Section 1027. Section 32-2-108, MCA, is amended to read:

"32-2-108. Purchase of obligations of association by officer. ~~No~~ A director, officer, agent, or other employee of any building and loan association ~~shall~~ may not, directly or indirectly, for ~~his~~ the person's own personal benefit, purchase or be interested in the purchase of any obligation of ~~said~~ the association for a ~~less~~ lesser sum than ~~shall appear~~ appears upon the books of ~~such~~ the association to be the value ~~thereof~~ of the obligation. Every person violating the provisions of this section shall for each offense forfeit to the state three times the face value of any ~~such~~ obligation ~~so~~ purchased."

Section 1028. Section 32-2-109, MCA, is amended to read:

"32-2-109. Purchase of assets of association by officer. ~~No~~ An officer, director, agent, or other employee of any association ~~shall~~ may not, directly or indirectly, for ~~his~~ the person's own personal benefit, purchase or be interested in the purchase of any of the assets of any building and loan association for a ~~less~~ lesser sum than the book value ~~thereof~~ of the assets. Every person violating any provision of this section shall for each offense forfeit to the state twice the nominal value of any ~~such~~ assets ~~so~~ purchased."

Section 1029. Section 32-2-209, MCA, is amended to read:

"32-2-209. Notice of meetings. (1) At least 30 days prior to any annual or special meeting of any association, a notice stating the time and place of the meeting ~~shall~~ must be deposited in the post office at the principal place of business of ~~such~~ the association, directed to each member or stockholder at ~~his~~ the member's or stockholder's address; as the ~~same~~ address appears at the time on the books of the association; and, when ~~so~~ deposited, postage prepaid, ~~shall be deemed~~ is considered a legal and sufficient notice of any meeting.

(2) In addition ~~thereto~~ to the notice in subsection (1), notice may be given by four consecutive weekly publications in a newspaper published in the county where the association has its principal place of business. ~~Such~~ The publication ~~shall be~~ is complete on the day of the fourth publication.

(3) In notices of special meetings there ~~shall~~ must be attached to and accompanying ~~such~~ the notice a statement of any matter or matters to be considered at ~~said~~ the meeting.

(4) All members or stockholders of the association ~~shall be~~ are entitled to vote at the meetings in person

or by proxy."

Section 1030. Section 32-2-210, MCA, is amended to read:

"32-2-210. Proxies. At least once every year the board of directors of every building and loan association shall, by resolution, cause the secretary of ~~such~~ the association to mail to every member or stockholder of ~~such~~ the association a blank form of proxy, and the member or stockholder may withdraw ~~his~~ a former proxy and substitute ~~another in its stead~~ a new proxy for the former proxy. ~~Every~~ A proxy ~~shall continue~~ continues in force and ~~be~~ is binding upon the member or stockholder until ~~such~~ the proxy is revoked or another proxy is substituted."

Section 1031. Section 32-2-212, MCA, is amended to read:

"32-2-212. Requirements of transfer in certain cases. When a certificate of stock or a savings account in a building and loan association is owned by persons residing out of the state or is lost, the president, secretary, or directors of ~~such~~ the association, before entering any transfer of ~~such~~ the stock or account on its books or before issuing a new certificate ~~therefor~~ to the transferee or owner, may require from the attorney or agent of the owner or from the person claiming under the transfer an affidavit or other evidence that the owner was alive at the date of the transfer or that the original certificate is lost and has not been assigned or transferred. ~~and~~ The president, secretary, or directors may also require from the attorney, agent, or claimant a bond of indemnity, with a surety or sureties satisfactory to the officers of ~~such~~ the association, to protect ~~such~~ the association against any liability to the owner, assignee, or transferee of ~~such~~ the shares or account or the legal representatives of the owners of ~~such~~ the shares or account, in case of ~~his or her~~ the owner's death before the transfer, and also to protect the association against any liability accruing or resulting by reason of ~~said~~ the lost or original certificate being ~~thereafter~~ presented to it. If the affidavit or other evidence or bond is not furnished when required as ~~herein~~ provided in this section, neither the association nor any officer ~~thereof shall be~~ of the association is liable for refusing to enter the transfer on the books of the association."

Section 1032. Section 32-2-232, MCA, is amended to read:

"32-2-232. Organization of mutual associations. The incorporators of a mutual association shall appoint one of their number as ~~chairman~~ presiding officer of the incorporators, and ~~he~~ the presiding officer shall procure from a surety company or other surety acceptable to the department a surety bond in an amount no less than the sum of the amount subscribed by the incorporators and the amount of the expense fund described in

32-2-233. The bond ~~shall~~ must name the department as obligee and ~~shall~~ must be delivered to ~~it~~ the department. The bond ~~shall~~ must ~~assure~~ ensure the safekeeping of the funds described and their delivery to the association after the issuance of a certificate of incorporation and after bonding of the officers of the corporation. In the event of failure to complete organization, the bond ~~shall~~ assure must ensure the return of the amounts collected to the respective subscribers or their assigns, less reasonable expenses, which ~~shall~~ must be deducted from the expense fund. The incorporators, before a certificate of incorporation is issued, shall pay to the ~~chairman~~ presiding officer in cash, labor, or services actually performed an aggregate amount of at least \$500,000, including that part of the original subscription paid by the ~~chairman~~ presiding officer, as subscriptions to the savings accounts of the proposed association."

Section 1033. Section 32-2-233, MCA, is amended to read:

"32-2-233. Expense fund for mutual association. (1) In addition to their subscriptions to savings accounts, the incorporators shall create an expense fund of not less than one-half of the minimum amount of savings account subscriptions required to be paid in under this chapter. The expense fund ~~shall~~ must be used to pay the expenses of organizing the association, and its operating expenses may be paid from the fund until ~~such the time as~~ that its net income is sufficient to pay ~~such the earnings as~~ that may be declared and paid or credited to its savings account holders from sources available for payment of earnings. Before a certificate of incorporation is issued, the incorporators shall deposit to the credit of the ~~chairman~~ presiding officer of the incorporators the amount of the expense fund, in cash. The amounts contributed to the expense fund by the incorporators ~~shall~~ may not constitute a liability of the association except as otherwise provided.

(2) Contributions made by the incorporators and others to the expense fund may be repaid pro rata from the net income of the association after provision for statutory reserves and declaration of earnings of not less than 2% on savings accounts. If the association is liquidated before contributions to the expense fund have been repaid, any contributions to the expense fund remaining unexpended ~~shall~~ must be repaid to the contributors pro rata; after the payment of the expenses of liquidation, creditors, and withdrawal value of all savings accounts. The books of the association ~~shall~~ must reflect the expense fund. The contributors to the expense fund ~~shall~~ must be paid earnings on the amounts paid in by them at the times earnings are regularly distributed to savings account holders; and for this purpose, the contributions ~~shall~~ must in all respects be considered as savings accounts of the association."

Section 1034. Section 32-2-241, MCA, is amended to read:

"32-2-241. Organization of capital stock associations. The incorporators of a capital stock association shall appoint one of their number as ~~chairman~~ presiding officer of the incorporators, and the ~~chairman~~ presiding officer shall procure from a surety company or other surety acceptable to the department a surety bond in an amount at least equal to the sum of the amount of capital stock contributions and the additional amounts described in 32-2-242. The bond ~~shall~~ must name the department as obligee and ~~shall~~ must be delivered to it the department. The bond ~~shall assure~~ must ensure the safekeeping of the funds described and their delivery to the association after the issuance of the certificate of incorporation and the bonding of the officers. In the event of the failure to complete organization, the bond ~~shall assure~~ must ensure the return of the amounts collected to the respective subscribers or their assigns, less reasonable expenses, which ~~shall~~ must be deducted from the paid-in surplus. Before a certificate of incorporation is issued, the subscribers shall pay to the ~~chairman~~ presiding officer, in cash, labor, or services actually performed, the capital of ~~such~~ the association. The capital ~~shall~~ must be the sum of the par or initially stated value of all shares of voting capital stock. Each share of capital stock ~~shall entitle~~ entitles the holder of the share to one vote. The minimum required capital is \$500,000."

Section 1035. Section 32-2-245, MCA, is amended to read:

"32-2-245. Purchase of stock of deceased stockholder. An association may purchase its capital stock from the personal representative of a deceased stockholder upon the written approval of the department. Upon obtaining written approval, an association may contract with a living stockholder for a purchase of ~~his~~ the stock upon ~~his~~ the stockholder's death. ~~Any such~~ The purchase ~~shall~~ must be for a price and upon ~~such~~ terms and conditions ~~as that~~ may be agreed upon by the association and the stockholder or personal representative. The purchase of a deceased stockholder's stock may not reduce the net worth accounts of the association to an amount less than required by law or by any approved insurer of the association's savings accounts. An association agreeing with a stockholder to purchase ~~his~~ the capital stock upon ~~his~~ the stockholder's death may purchase insurance on the life of the stockholder to fund or partially fund ~~such~~ the purchase. Any stock purchased under this section may be resold by the association at a price and upon ~~such~~ terms and conditions ~~as that~~ the board of directors may approve, or may be retired. If the stock is to be resold, the association shall file notice with the department disclosing the price, terms, and conditions of the proposed resale."

Section 1036. Section 32-2-254, MCA, is amended to read:

"32-2-254. Conversion of mutual to capital stock association -- mandatory plan requirements. The following requirements are mandatory in any plan of conversion from the mutual form to a capital stock form of

organization:

(1) Each savings account holder ~~shall~~ must receive a withdrawable account of the same general class in the converted association equal in amount and time tenure to ~~his~~ the holder's withdrawable account in the converting association. ~~No~~ A payment may not be required from the account holder for this change of accounts.

(2) The plan ~~shall~~ must specify the aggregate dollar amount of voting capital stock and the total number of shares to be issued to accomplish the conversion. The distribution of the stock ~~shall~~ must be in accordance with subsection (3).

(3) All voting capital stock issued by the association to accomplish a conversion ~~shall~~ must be subscribed and fully paid for in cash, labor, or services actually performed in the conversion process and may not be eligible, either directly or indirectly, as security for a loan or other credit advance to facilitate its own purchase. Each account holder ~~must have~~ has the right for a period of 60 days to purchase a proportionate share of the stock at a price equal to the initial stated value ~~thereof~~ of the stock. Any stock remaining unsubscribed ~~shall~~ must, during the succeeding 60-day period, be offered for sale to those savings account holders of record who have purchased their proportionate share during the initial period. Any stock remaining unsubscribed may be offered for sale to others or transferred to others in consideration for labor or services actually performed in the conversion process.

(4) The record date for determining savings account holders' rights to distribution under subsection (3) ~~shall~~ must be set by the converting association's board of directors but may not be less than 120 days prior to the date of approval of the conversion plan by the directors.

(5) The conversion plan ~~shall~~ must make specific provision with respect to the surplus, reserves, undivided profits, and capital stock of the converted association, specifying types of accounts, amounts, priorities, any voting rights, and how ~~such~~ the accounts are to be disposed of or retained.

(6) The plan ~~shall~~ must contain ~~such~~ other information and be in the form that is required by the department to enable it to make a determination of whether:

- (a) the plan is fair and equitable;
- (b) the interests of the applicant, members or stockholders, savings account holders, and the public are adequately protected; and
- (c) the converting applicant has complied with the requirements of 32-2-251 through 32-2-257."

Section 1037. Section 32-2-255, MCA, is amended to read:

"32-2-255. Conversion of capital stock to mutual association -- mandatory plan requirements. The following requirements are mandatory in any plan of conversion from the capital stock form to a mutual form of

association:

(1) Each savings account holder ~~shall~~ must receive a withdrawable account of the same general class in the converted association equal in amount and time tenure to ~~his~~ the holder's withdrawable account in the converting association. ~~No~~ A payment may ~~not~~ be required from the account holder for this change of accounts.

(2) The conversion plan ~~shall~~ must specify how and in what amount the return of capital to each class of stockholder in the form of an exchange of stock for savings accounts ~~shall~~ will be effectuated.

(3) The plan ~~shall~~ must provide for the allocation of voting rights to the holders of savings accounts and the manner in which ~~such~~ the rights may be exercised.

(4) The plan ~~shall~~ must make specific provision with respect to the surplus, reserves, undivided profits, and capital stock of the converted association, specifying types of accounts, amounts, priorities, any voting rights, and how ~~such~~ the accounts ~~shall~~ will be disposed of or retained.

(5) The plan ~~shall~~ must contain ~~such~~ other information and be in the form that is required by the department to enable it to make a determination of whether:

- (a) the plan is fair and equitable;
- (b) the interests of the applicant, members or stockholders, savings account holders, and the public are adequately protected; and
- (c) the converting applicant has complied with the requirements of 32-2-251 through 32-2-257."

Section 1038. Section 32-2-307, MCA, is amended to read:

"32-2-307. Reports and examinations by department confidential. (1) An employee or agent of the department who fails to keep secret the facts and information obtained in the course of an examination or by reason of ~~his~~ the employee's or agent's official position, except when the public duty of that officer requires ~~him~~ the officer to report upon or take official action regarding the affairs of the association ~~so~~ examined, or who willfully makes a false official report as to the conditions of the association ~~shall~~ must be removed from office and shall be fined not more than \$500 or imprisoned in the penitentiary not less than 2 years or more than 5 years, or both.

(2) ~~Nothing in this~~ This section prevents ~~prevents~~ does not prevent the proper exchange of information relating to building and loan associations and their business with the representatives of building and loan departments of other states, but in ~~no case shall~~ the private business or affairs of an individual, association, or company may not be disclosed."

Section 1039. Section 32-2-401, MCA, is amended to read:

"32-2-401. Powers and duties of building and loan associations. A building and loan association may:

- (1) have continual succession by its corporate name;
- (2) sue and be sued in any court;
- (3) make and use a common seal and alter it at pleasure;
- (4) appoint those officers or agents the business of the corporation requires and pay them suitable compensation;
- (5) enter into obligations or contracts essential to the transaction of its ordinary affairs or for the purposes of the corporation;
- (6) issue stock to stockholders and savings certificates to members on the terms and conditions the articles of incorporation and bylaws provide;
- (7) assess and collect from members interest on loans at the times and in the amount provided for in the articles of incorporation and bylaws;
- (8) permit members to withdraw all or part of their savings at the times and upon the terms as the articles of incorporation and bylaws may provide;
- (9) cancel savings certificates upon which all credits have been withdrawn or upon which loans have been canceled or savings upon which ~~no~~ payments have not been made for a period of 6 months, by returning to the members all credits, if any, and reissue the certificates as new savings certificates;
- (10) issue savings certificates to minors and permit them to be withdrawn as other savings certificates. The receipt by the minor is a valid acquittance if ~~his~~ the minor's rights have been fully secured to ~~him~~ the minor.
- (11) acquire, hold, encumber, and convey ~~that~~ real estate and personal property that is necessary for the transaction of its business or necessary to enforce or protect its securities;
- (12) borrow money, only when necessary and not exceeding 20% of its assets, except when borrowing from the federal home loan bank as provided in 32-2-405, and issue its promissory note for the loan;
- (13) make loans to members on the security of the savings accounts of the association and also on their notes secured by first mortgages on improved real estate, including suburban homes or farm lands but not on mining property, for not to exceed 75% of the actual value of the real estate and upon the terms and conditions ~~which~~ that may be provided in the articles of incorporation and bylaws;
- (14) cancel those loans and release the securities on those terms that the board of directors may provide;
- (15) invest the money of the association in accordance with 32-2-406;

(16) loan money to other building and loan associations;

(17) make distribution of all interest and dividends earned after payment of expenses and setting aside a sum for the contingent funds as provided in this chapter;

(18) amend its articles of incorporation by changing the name, place of business, ~~the~~ or number of directors, ~~and increase or decrease~~ or by increasing or decreasing the capital stock; and provide for its own continual succession by a majority vote of its directors. However, those amendments are of no effect until approved by the department.

(19) dissolve the corporation in accordance with the provisions of this chapter;

(20) provide, by articles of incorporation and bylaws adopted or amended by its board of directors, for the proper exercise of the powers granted in this section and the conduct and management of its affairs;

(21) exercise those other powers ~~which~~ that are necessary and proper to enable the corporation to carry out the purpose of its organization."

Section 1040. Section 32-2-403, MCA, is amended to read:

"32-2-403. Statement of interest rates -- canceling loans. (1) ~~Where~~ When the promissory note or other written evidence of the loan made by a building and loan association requires the payment of the loan or total aggregate sum of principal and interest in periodic installments, the promissory note or other written evidence of debt ~~shall~~ must specifically state the actual interest rate charged the borrower upon the unpaid balance of the principal amount at each periodic payment. When the note or other evidence of debt does not require the payment of the loan in periodic installments, the note or other evidence of debt ~~shall~~ must specifically state the actual rate of interest charged the borrower.

(2) A borrower may have ~~his~~ a loan canceled by paying all the interest up to the date of cancellation and the sum actually borrowed, less payments on principal, dues paid in, and the dividends credited."

Section 1041. Section 32-2-404, MCA, is amended to read:

"32-2-404. Savings account withdrawal. (1) ~~No~~ A charge or fee, except as provided in this section, may not be made against a member who withdraws ~~his~~ the member's savings; after having given 30 days' notice of the withdrawal. ~~No~~ A fine of any description may not be made upon the value of that savings account because of the withdrawal. A member who withdraws ~~his~~ the member's savings or whose savings account is matured is entitled to receive all sums paid in and all interest declared, less interest, if any, as provided in 32-2-402, less a reasonable membership fee not exceeding 2% of the amount of ~~his~~ the member's deposit, and less a pro rata

share of all losses, if any, ~~which that~~ have occurred. ~~No other fine~~ Other fines or assessments may not be made against the savings.

(2) Applications for withdrawal ~~shall~~ must be registered on the books of the association in the order received, and one-half of all cash collections not required to meet outstanding contracts must be used for the payment of the matured savings and of the withdrawals in the order registered. The other half of those collections each month may be used for the payment of withdrawals other than in the order registered, but ~~no~~ a member may not receive more than \$100 in any ~~one~~ 1 month other than by payment of an application for withdrawal in the order registered. The term "outstanding contracts" includes the costs and expenses of operation, completion of loans, payment of taxes and assessments and necessary remodeling and repairs on properties owned by or mortgaged to the association, repayment of all borrowed money, and all fixed charges."

Section 1042. Section 32-2-408, MCA, is amended to read:

"32-2-408. Bonds of officers, agents, and employees. The board of directors of ~~every~~ a building and loan association shall require that all officers, agents, and employees of the building and loan ~~associations~~ association whose duties include the handling of ~~moneys~~ money, notes, bonds, credits, and cash items and whose duties include bookkeeping or the making of entries in relation to the business of the building and loan association and its customers be bonded. The board of directors shall by an order entered upon the minute books of the board designate all the officers, agents, and employees to be ~~so~~ bonded and the amount of bonds to be given by each. The action as to the personnel and amount and the surety company or sureties ~~shall be~~ is subject to approval by the department. The bonds ~~shall~~ must be in a form ~~which shall~~ that must be provided and approved by the department, and the bonds ~~shall~~ must be approved by the president of the building and loan association, and ~~his~~ the president's action must be reported to the board of directors. All bonds required by this section ~~shall~~ must be kept in the custody of the building and loan association subject to inspection by the department. As far as possible, a bond may not be placed in the custody of the officer, agent, or employee for whom it is given."

Section 1043. Section 32-2-409, MCA, is amended to read:

"32-2-409. Employment of agents -- licenses and revocation thereof. (1) It is unlawful for a building and loan association doing business in this state to employ an agent for the purpose of soliciting loans or the sale of stock in that association unless ~~he~~ the agent is first licensed by the department. An agent representing an association, foreign or domestic, doing business in this state may not solicit loans or the sale of stock of any

association unless ~~he~~ the agent is first licensed by the department.

(2) A license may not be issued to an applicant for an agent's license until the applicant has first filed with the department a written request from the building and loan association desiring to employ ~~him~~ the applicant as agent and has filed an application upon a form prescribed and furnished by the department. The application must show the applicant's name, the business and residence address, the community or district in which ~~he~~ the applicant wishes to act as agent, the name of the company to be represented, ~~his~~ the applicant's occupation for the last 12 months, and other information that the department may require. If the department is satisfied that the applicant is a fit and proper person to engage in the solicitation of loans or the sale of stock, it shall issue the license. The department, upon 10 days' notice to an agent and after a hearing, may revoke the license of an agent upon the following grounds:

- (a) misrepresentation;
- (b) conviction in any court for violation of the criminal statutes;
- (c) evidence sufficient to convince the department that the agent is not a fit and proper person to sell building and loan association stock.

(3) The department shall revoke the license of an agent upon the request of the association employing the agent.

(4) Each license provided for in this section expires on December 31 of each year, and for issuance or renewal the department shall require a fee of \$2."

Section 1044. Section 32-3-406, MCA, is amended to read:

"32-3-406. Compensation of officials. ~~No~~ An officer, director, or committee member, other than the treasurer, a credit manager, or a loan officer may not be compensated for ~~his~~ his service ~~as such in that position~~, but reasonable life, health, accident, and similar insurance protection for a director or committee member ~~shall~~ may not be considered compensation. Directors and committee members, while on official business of the credit union, may be reimbursed for necessary expenses incidental to the performance of the business."

Section 1045. Section 32-3-407, MCA, is amended to read:

"32-3-407. Conflicts of interest. ~~No~~ A director, committee member, officer, agent, or employee of the credit union ~~shall~~ may not in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting ~~his~~ the person's pecuniary interest or the pecuniary interest of any corporation, partnership, or association, ~~{other than the credit union}~~, in which ~~he~~ the person is directly or

indirectly interested."

Section 1046. Section 32-3-416, MCA, is amended to read:

"32-3-416. Credit manager. The credit committee may be dispensed with and a credit manager may be empowered to approve or disapprove loans under conditions prescribed by the board of directors. ~~In the event~~ If the credit committee is dispensed with, the procedures prescribed in 32-3-413 through 32-3-415 do not apply; and ~~no~~ loans ~~shall~~ may not be made unless approved by the credit manager, except the credit manager may appoint one or more loan officers with the power to approve loans, subject to ~~such~~ limitations or conditions ~~as~~ he that the credit manager prescribes."

Section 1047. Section 32-3-418, MCA, is amended to read:

"32-3-418. Suspension and removal of officials. (1) The supervisory committee by a unanimous vote may suspend any member of the credit committee and shall report ~~such~~ the action to the board of directors for appropriate action.

(2) The supervisory committee by a unanimous vote may suspend any officer or member of the board of directors until the next members' meeting, which ~~shall~~ must be held not less than 7 or more than 21 days after ~~such~~ the suspension. At ~~such~~ the meeting, the suspension ~~shall~~ must be acted upon by the members.

(3) Any member of the supervisory committee may be removed by the board of directors for failure to perform ~~his~~ the member's duties in accordance with this chapter, the articles of incorporation, or the bylaws."

Section 1048. Section 32-3-507, MCA, is amended to read:

"32-3-507. Liens. The credit union ~~shall have~~ has a lien on the shares and accumulated dividends or interest of a member in ~~his~~ the member's individual, joint, or trust account for any sum past due the credit union from ~~said~~ the member or for any loan endorsed by ~~him~~ the member."

Section 1049. Section 32-3-605, MCA, is amended to read:

"32-3-605. Installments. A member may receive a loan in installments or in one sum and may pay the whole or any part of ~~his~~ the loan on any day on which the office of the credit union is open for business."

Section 1050. Section 32-4-203, MCA, is amended to read:

"32-4-203. Certificate of incorporation. Before the articles of incorporation ~~shall~~ may become effective,

the secretary of state ~~must~~ shall issue a certificate that verifies that a copy of the articles containing the required statement of facts has been filed in ~~his~~ the secretary of state's office. ~~Thereupon~~ Upon issuance of the certificate, the persons signing the articles, ~~and~~ their associates, and their successors and assigns ~~shall~~ become a body politic and corporate, by the name specified in the articles of incorporation, subject to amendment and dissolution as provided in this chapter. The incorporators ~~shall~~ have the authority to and shall perform ~~such~~ the acts and things as required by the provisions of this chapter, as set forth in 32-4-201."

Section 1051. Section 32-4-205, MCA, is amended to read:

"32-4-205. Amendment of articles of incorporation. (1) The articles of incorporation may be amended by vote of the stockholders of the corporation, ~~and~~ such the amendments ~~shall~~ require approval by the affirmative vote of two-thirds of the stockholders, provided:

(a) that ~~no an~~ an amendment ~~which that~~ is inconsistent with the general purposes expressed ~~herein~~ in this chapter or ~~which that~~ eliminates or curtails the obligation of the corporation to make reports as provided in 32-4-306 ~~shall~~ may not be made without amendment of this chapter; and

(b) that ~~no an~~ an amendment of the articles of incorporation ~~which that~~ increases the obligation of a member to make loans to the corporation; ~~1~~ makes any change in the principal amount, interest rate, maturity date, or in the security or credit position of any outstanding loan of a member to the corporation; ~~1~~ or affects a member's right to withdraw from membership as provided in 32-4-303 ~~shall~~ may not be made without the consent of each member affected by ~~such the~~ the amendment.

(2) Within 30 days after any meeting at which amendment of the articles of incorporation has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth ~~such the~~ the amendment and the due adoption ~~thereof of the amendment,~~ shall must so far as consistent with this chapter be submitted, as prescribed in Title 35, to the secretary of state who shall examine ~~them~~ the articles. If ~~he~~ the secretary of state finds that ~~they~~ the articles conform to the requirements of this chapter, ~~he~~ the secretary of state shall so certify and endorse his approval ~~thereon~~ on the amended articles. ~~Thereupon~~ Upon certification and approval, the amended articles of incorporation ~~shall~~ must be filed in the office of the secretary of state, and ~~no such an~~ an amendment ~~shall~~ may not take effect until ~~such the~~ the amended articles of incorporation ~~shall~~ have been filed as ~~aforsaid~~ provided in this subsection."

Section 1052. Section 32-4-301, MCA, is amended to read:

"32-4-301. Powers of stockholders. (1) The stockholders of the corporation ~~shall~~ have the following

powers of the corporation:

- (a) to determine the number of and elect directors as provided in 32-4-206;
- (b) to make, amend, and repeal bylaws;
- (c) to amend the articles of incorporation as provided in 32-4-205;
- (d) to exercise ~~such other of the~~ powers of the corporation as may be conferred on the stockholders by

the bylaws.

(2) As to all matters requiring action by the stockholders of the corporation; and except as otherwise ~~herein provided in this chapter, such the~~ matters ~~shall~~ require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting ~~shall be~~ are entitled.

(3) Each stockholder ~~shall have~~ has one vote, in person or by proxy, for each share of capital stock held by ~~him~~ the stockholder."

Section 1053. Section 32-5-304, MCA, is amended to read:

"32-5-304. Receipts -- return of note. Every licensee shall:

(1) give to the borrower a plain and complete receipt in a form approved by the department for every payment made in cash on account of any loan at the time ~~such the~~ payment is made;

(2) endorse indelibly on a loan ledger or card, which ~~shall~~ must be kept by the licensee, the amount and date of each payment made by the borrower. Subject to the prior written approval of the department, mechanical data processing methods may be used. The department may approve any ~~such~~ system containing information that is equivalent to that required on a loan ledger or card.

(3) upon repayment of the loan in full, mark indelibly every obligation and security signed by the borrower with the word "paid" or "canceled" and release any mortgage, restore any pledge, and cancel and return to the borrower any note and any assignment given to the licensee within 10 days after ~~such the~~ repayment. ~~Such The~~ canceled notes and canceled assignments ~~shall~~ must be mailed to the borrower at ~~his last known~~ the borrower's last-known address unless returned to the borrower in person."

Section 1054. Section 32-6-106, MCA, is amended to read:

"32-6-106. Unauthorized disclosure of electronic funds transfer records. (1) A person commits the offense of unauthorized disclosure of electronic funds transfer records if ~~he~~ the person has lawful access to ~~such the~~ records by virtue of office or employment and:

- (a) ~~and~~ permits another, who lacks lawful access to ~~such the~~ records, to inspect, copy, or read ~~such the~~

records; or

(b) transfers ~~such~~ the records to another who lacks lawful access ~~thereto~~ to the records.

(2) A person convicted of the offense of unauthorized disclosure of electronic funds transfer records shall be imprisoned in the state prison for any term not to exceed 1 year, be fined not more than \$5,000, or be punished by both ~~such~~ imprisonment and fine."

Section 1055. Section 32-6-302, MCA, is amended to read:

"32-6-302. Verification of statement -- procedure for discrepancies. (1) If, upon receipt of a periodic statement of account, a customer of a financial institution believes the statement contains an error with respect to an electronic funds transfer, the customer shall notify the institution within 60 days after the day the institution delivered the statement. In this notification, the customer ~~shall identify himself~~ must be identified and shall set forth the foundation of ~~his~~ the customer's belief regarding the error.

(2) Within 10 days after a customer has notified a financial institution of a possible error under subsection (1), the institution shall either:

(a) correct the account in question, giving the customer a description of the correction and (if the correction is not in the exact amount of the alleged error, the description ~~shall~~ must explain the difference); or

(b) after investigating the matter, give the customer an explanation of the reasons the institution believes the statement to be correct. If requested in writing by the customer, a written explanation, documented by the institution's record of the transaction in question, ~~shall~~ must be furnished to the customer.

(3) A financial institution receiving notice under subsection (1) may not close the account concerning which the dispute exists or restrict transactions in ~~such~~ the account affecting the portion not in dispute until it complies with subsection (2). A financial institution ~~which~~ that has once complied with subsection (2) with respect to an alleged error is not required to respond under subsection (2) to repeated allegations of the same error."

Section 1056. Section 32-6-303, MCA, is amended to read:

"32-6-303. Unauthorized transactions -- liability. (1) A customer whose account is debited by an electronic funds transfer without ~~his~~ the customer's authorization is not liable for the amount of ~~such~~ the transaction, and the amount must be recredited to ~~his~~ the customer's account as provided under 32-6-302; unless:

(a) the financial institution has provided the customer with a unique identification device for initiating electronic funds transfer requests and transactions are made as a result of the theft or loss of that device, in

which case the customer is liable for the first \$50 of any consequent transactions made prior to the time the financial institution is notified of the loss or theft; or

(b) the financial institution has provided the customer with a unique identification device for initiating, in conjunction with a personal identification number separate from the device, electronic funds transfer requests and the customer attaches the personal identification number to the device by writing or otherwise or in any way makes the number readily available for discovery in connection with the theft or loss of the device and transactions are made as a result of the theft or loss of the device, in which case the customer is liable for one-half the value of all consequent transactions made until the financial institution is notified of the theft or loss.

(2) A customer who willingly gives ~~his~~ the customer's unique identification device and personal identification number to another is presumed to have authorized any electronic funds transfers requested by the other person.

(3) A merchant who makes electronic funds transfer services available on ~~his~~ the merchant's premises is liable for the amount of an unauthorized electronic funds transfer requested from ~~his~~ the premises only if the merchant:

(a) ~~he~~ or ~~his~~ the merchant's agent is negligent in requiring a user of electronic funds transfer services to furnish adequate self-identification;

(b) ~~he~~ fails to retain a physical record of the transaction for 1 year following the transaction; or

(c) ~~he~~ breaches the warranty required by subsection (4).

(4) A merchant operating a point-of-sale terminal shall warrant to the financial institution or the department that an order for an electronic funds transfer emanating from the terminal is part of a commercial transaction in which the customer receives goods or services of commensurate value.

(5) The liability for any unauthorized or erroneous electronic funds transfer that does not fall upon a customer or a merchant under this section falls upon the financial institution that carries out the transfer."

Section 1057. Section 32-7-103, MCA, is amended to read:

"32-7-103. Exemptions. (1) The provisions of this part do not apply to the following:

(a) a person licensed by this state pursuant to Title 37, chapter 61, as an attorney at law who is not actively engaged in the escrow business;

(b) a person licensed by this state pursuant to Title 37, chapter 50, as a public accountant who is not actively engaged in the escrow business;

(c) a person whose principal business is that of preparing abstracts or making searches of title that are

used as a basis for the issuance of any title insurance policy by a company doing business under the laws of this state relating to insurance companies and the person is regulated by the commissioner of insurance;

(d) a financial institution, as defined in 32-6-103, that has its escrow accounts regularly audited or examined. The financial institution ~~must~~ shall supply a copy of the most recently prepared audit or examination to the director upon ~~his~~ the director's request.

(e) except as provided in subsection (2), any broker licensed by the Montana board of realty regulation if ~~he~~ the broker is performing an act:

(i) in the course of or incidental to a single real estate transaction; and

(ii) for which a real estate license is required; and

(f) any person furnishing escrow services under the order of a court.

(2) A trust account of a broker licensed by the Montana board of realty regulation is not an escrow account within the meaning of this part."

Section 1058. Section 32-7-108, MCA, is amended to read:

"32-7-108. Director -- powers and duties. (1) The director shall exercise general supervision and control over persons doing escrow business in this state.

(2) In addition to the other duties imposed upon ~~him~~ the director by law, the director shall:

(a) adopt reasonable rules necessary to effectuate the purposes of this part;

(b) conduct examinations and investigations that may be necessary to determine whether a person has engaged or is about to engage in any act or practice constituting a violation of any provisions of this part;

(c) conduct examinations, investigations, and hearings necessary and proper for the efficient administration of this part; and

(d) establish fees commensurate with the costs of issuing the license and examining an escrow business."

Section 1059. Section 33-1-211, MCA, is amended to read:

"33-1-211. Surety insurance. Surety insurance includes:

(1) fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(2) insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship;

(3) insurance indemnifying banks, bankers, brokers, or financial or moneyed corporations or associations:

(a) against check forgery or alteration or against loss resulting from any cause of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made ~~therefrom~~ from precious metals, jewelry, watches, necklaces, bracelets, gems, or precious and semiprecious stones, including any loss while being transported in armored motor vehicles, by mail, or by messenger but not including any other risks of transportation or navigation;

(b) against loss or damage to the insured's premises or to ~~his~~ the insured's furnishings, fixtures, equipment, safes, and vaults ~~therein~~ on the premises caused by burglary, robbery, theft, or criminal mischief or any attempt ~~thereat~~ of those crimes."

Section 1060. Section 33-1-228, MCA, is amended to read:

"33-1-228. Commercial property. Risks generally covered by commercial property floaters covering property pertaining to a business, profession, or occupation may be covered by marine, inland marine, and transportation policies. This category includes:

(1) radium floaters;

(2) physicians' and surgeons' instrument floaters. ~~Such~~ The policies may include coverage of ~~such~~ furniture, fixtures, and tenant assured's interest in ~~such~~ the improvements of buildings ~~as~~ that are located in that portion of the premises occupied by the assured in the practice of ~~his~~ the assured's profession.

(3) pattern and die floaters;

(4) theatrical floaters, excluding buildings and improvements, furniture, and fixtures that do not travel ~~about~~ with theatrical troupes;

(5) film floaters, including a builders' risk during the production and coverage on completed negatives, positives, and sound records;

(6) ~~salesmen's~~ salesperson's samples floaters;

(7) exhibition policies on property while it is on exhibition and in transit to or from ~~such~~ exhibitions;

(8) live animal floaters;

(9) builders' risks and installation risks policies covering the interest of owner, seller, or contractor against loss or damage to machinery, equipment, building materials, or supplies being used with and during the course of installation, testing, building, renovating, or repairing. These policies may cover property at points or places where work is being performed, while in transit, and during temporary storage or deposit of property designated

for an awaiting specific installation, building, renovating, or repairing. ~~Such~~ The coverage is limited to builders' risks or installation risks ~~where~~ when perils in addition to fire and extended coverage are to be insured. If written for the account of the owner, the coverage ceases upon completion of work and acceptance ~~thereof~~, of the work, or if written for the account of a seller or contractor, the coverage terminates when the interest of the seller or contractor terminates.

(10) mobile articles, machinery, and equipment floaters, ~~(excluding motor vehicles designed for highway use and motor homes, trailers, and semitrailers except when hauled by tractors not designed for highway use, and snowplows constructed exclusively for highway use)~~, covering identified property of a mobile or floating nature, not on sale or consignment or in the course of manufacture, that has come into custody or control of parties who intend to use ~~such~~ the property for which it was manufactured or created. ~~Such~~ The policies may not cover furniture and fixtures not customarily used away from premises where ~~such~~ the property is usually kept.

(11) property in transit to or from and in the custody of bailees, ~~(not owned, controlled, or operated by the bailor)~~, but ~~such~~ the policies may not cover the bailee's property at ~~his~~ the bailee's premises;

(12) installment sales and leased property policies covering property sold under conditional contract of sale, partial payment contract or installment sales contract or leased, but excluding motor vehicles designed for highway use. These policies must cover property in transit but may not extend beyond the termination of the seller's or lessor's interest. This subsection does not include machinery and equipment under certain "lease-back" contracts.

(13) garment contracts' floaters;

(14) furriers' or fur storers' customer's policies, which are policies under which certificates or receipts are issued by furriers or fur storers, covering specified articles that are the property of customers;

(15) accounts receivable policies and valuable papers and records policies;

(16) floor plan policies, covering property for sale while in possession of dealers under a floor plan or any similar plan under which the dealer borrows money from a bank or lending institution to pay the manufacturer; if:

(a) the merchandise is specifically identifiable as encumbered to the bank or lending institution;

(b) the dealer's right to sell or otherwise dispose of the merchandise is conditioned upon its being released from encumbrance by the bank or lending institution; and

(c) the policies cover property in transit and do not extend beyond the termination of the dealer's interest;

(17) sign and street clock policies, including neon signs, automatic or mechanical signs, and street clocks, while in use as ~~such~~ intended;

(18) fine arts policies covering paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value, or artistic merit, for account of museums, galleries, universities, businesses, municipalities, and other similar interests;

(19) policies covering personal property, which may include coverage of money in locked safes or vaults on the assured's premises and may also include coverage of furniture, fixtures, tools, machinery, patterns, molds, dies, and a tenant insured's interest in improvements of buildings, which when sold to the ultimate purchaser may be covered specifically by the owner under inland marine policies, including:

(a) musical instrument dealers' policies, covering property consisting principally of musical instruments and their accessories, but radios, televisions, record players, and combinations of them are not musical instruments for the purposes of this subsection;

(b) camera dealers' policies covering property consisting principally of cameras and their accessories;

(c) furrier dealers' policies covering property consisting principally of furs and fur garments;

(d) equipment dealers' policies covering mobile equipment consisting of binders, reapers, tractors, harvesters, harrows, tedders, and other similar agricultural equipment and accessories ~~therefor~~; for the equipment and covering construction equipment consisting of bulldozers, road scrapers, tractors, compressors, pneumatic tools, and similar equipment and accessories ~~therefor~~ for the equipment, but excluding motor vehicles designed for highway use;

(e) stamp and coin dealers' policies covering property of philatelic and numismatic nature;

(f) jewelers' block policies; and

(g) fine arts dealers' policies;

(20) wool growers' floaters;

(21) domestic bulk liquids policies covering tanks and domestic bulk liquids stored ~~therein~~ in the tanks;

(22) "difference in conditions" coverage, excluding fire and extended coverage perils; and

(23) electronic data processing policies."

Section 1061. Section 33-1-302, MCA, is amended to read:

"33-1-302. Commissioner's seal. (1) The commissioner ~~shall~~ must have a seal of office consisting of the same symbolic design within the inner circle as the great seal of the state of Montana, encircled by the words "Commissioner of Insurance, State of Montana".

(2) All certificates and licenses issued by the commissioner ~~shall~~ must bear ~~his~~ the seal, except that the commissioner may, ~~in his discretion,~~ omit the seal ~~as to~~ for licenses."

Section 1062. Section 33-1-304, MCA, is amended to read:

"33-1-304. Delegation of authority -- responsibility. (1) The commissioner may delegate to any deputy, assistant, examiner, or employee of ~~his~~ the commissioner's department the exercise or discharge in the commissioner's name of any power, duty, or function, whether ministerial or discretionary, vested by this code in the commissioner.

(2) The commissioner ~~shall be~~ is responsible for the official acts of ~~his~~ the commissioner's deputy, assistant, examiner, or employee acting in the commissioner's name and by ~~his~~ the commissioner's authority."

Section 1063. Section 33-1-312, MCA, is amended to read:

"33-1-312. Records and certificates. (1) The commissioner shall enter in permanent form records of ~~his~~ the commissioner's official transactions, examinations, investigations, and proceedings and keep ~~such~~ the records in ~~his~~ the commissioner's office. ~~Such~~ The records and insurance filings in ~~his~~ the commissioner's office ~~shall~~ must be open to public inspection except as otherwise provided in this code with respect to particular records or filings.

(2) When required, the commissioner shall furnish ~~his~~ a certificate as to the authority of any person to transact insurance, and ~~such~~ the certificate ~~shall~~ must be evidence of the facts set forth ~~therein~~ in the certificate.

(3) Copies of records or documents in ~~his~~ the commissioner's office certified to by the commissioner ~~shall~~ must be received in evidence in all courts as if they were the originals."

Section 1064. Section 33-1-402, MCA, is amended to read:

"33-1-402. Examination of insurance producers, managers, and promoters. For the purpose of ascertaining compliance with this code, the commissioner may, as often as ~~he~~ the commissioner considers advisable, examine the accounts, records, documents, and transactions pertaining to or affecting its insurance affairs or proposed insurance affairs of:

- (1) an insurance producer, surplus lines insurance producer, general insurance producer, or adjuster;
- (2) a person having a contract under which ~~he~~ the person enjoys in fact the exclusive or dominant right to manage or control an insurer;
- (3) a person holding the shares of voting stock or policyholder proxies of a domestic insurer, for the purpose of controlling the management of the domestic insurer, as voting trustee or otherwise;
- (4) a person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer or insurance holding corporation or corporation to finance a domestic insurer or the production

of its business."

Section 1065. Section 33-1-502, MCA, is amended to read:

"33-1-502. Grounds for disapproval. The commissioner shall disapprove any form filed under 33-1-501 or withdraw any previous approval ~~thereof~~ of a form only if the form:

- (1) is in any respect in violation of or does not comply with this code;
- (2) contains or incorporates by reference, where ~~such~~ the incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses or exceptions and conditions ~~which~~ that deceptively affect the risk purported to be assumed in the general coverage of the contract, including a provision in a casualty insurance form permitting defense costs within limits, except as permitted by the commissioner ~~in his discretion~~;
- (3) has any title, heading, or other indication of its provisions ~~which~~ that is misleading;
- (4) is printed or otherwise reproduced in ~~such a manner as to render~~ that renders any provision of the form substantially illegible;
- (5) contains any provision that violates the provisions of 49-2-309."

Section 1066. Section 33-1-602, MCA, is amended to read:

"33-1-602. Service of process -- foreign, alien, or domestic. Service of ~~such~~ process against a foreign or alien insurer ~~shall~~ may be made only by service of process upon the commissioner or upon a deputy or other person in charge of ~~his~~ the commissioner's office during ~~his~~ the commissioner's absence. Service of process against a domestic insurer may be made either upon the commissioner or upon the insurer corporation in the manner provided by laws applying to corporations generally or upon the insurer's attorney-in-fact if a domestic reciprocal insurer."

Section 1067. Section 33-1-603, MCA, is amended to read:

"33-1-603. Serving process -- time to plead. (1) Duplicate copies of legal process against an insurer for whom the commissioner is the attorney, pursuant to 33-1-601, ~~shall~~ must be served upon the commissioner or upon ~~his~~ the commissioner's deputy or other person in charge of ~~his~~ the office during ~~his~~ the commissioner's absence. At the time of service, the plaintiff shall pay to the commissioner \$10, taxable as costs in the action. Upon receiving ~~such~~ the service, the commissioner shall promptly forward a copy ~~thereof~~ by certified ~~or registered~~ mail to the person last ~~so~~ designated by the insurer to receive the ~~same~~ service.

- (2) ~~Where~~ When process is served upon the commissioner as an insurer's attorney, the insurer ~~shall~~

~~have~~ has 30 days within which to appear, answer, or plead after the date of mailing of the copy ~~thereof~~ by the commissioner, exclusive of the date of mailing, as provided by subsection (1).

(3) Process served upon the commissioner and a copy thereof of the process forwarded as provided in this section ~~provided shall constitute~~ constitutes service ~~thereof of the process~~ upon the insurer."

Section 1068. Section 33-1-612, MCA, is amended to read:

"33-1-612. Commissioner -- process agent for unauthorized insurer doing business in state. Delivery, effectuation, or solicitation of any insurance contract, by mail or otherwise, within this state by an unauthorized insurer; or the performance within this state of any other service or transaction connected with ~~such~~ the insurance by or on behalf of ~~such~~ the insurer; ~~shall be deemed~~ must be considered to constitute an appointment by ~~such~~ the insurer of the commissioner and ~~his~~ the commissioner's successors in office as its attorney, upon whom may be served all lawful process issued within this state in any action or proceeding against ~~such~~ the insurer arising out of any ~~such~~ contract or transaction; and ~~shall be deemed~~ must be considered to signify the insurer's agreement that any ~~such~~ service of process ~~shall have~~ has the same legal effect and validity as personal service of process upon it in this state."

Section 1069. Section 33-1-613, MCA, is amended to read:

"33-1-613. Service of process -- criteria mandating designation of commissioner. (1) Service of process upon any ~~such~~ insurer pursuant to 33-1-612 ~~shall~~ must be made by delivering to and leaving with the commissioner or some person in apparent charge of ~~his~~ the commissioner's office two copies ~~thereof of the process~~ and the payment to ~~him~~ the commissioner of ~~such~~ fees ~~as that~~ may be prescribed by law. The commissioner shall ~~forthwith~~ mail by ~~registered or certified~~ mail one of the copies of ~~such~~ the process to the defendant at its principal place of business last known to the commissioner and shall keep a record of ~~all~~ any process ~~so~~ served upon ~~him~~ the commissioner. ~~Such~~ The service of process is sufficient, ~~provided if~~ notice of ~~such~~ the service and a copy of the process are sent within 10 days ~~thereafter~~ by ~~registered or certified~~ mail by the plaintiff's attorney to the defendant at its ~~last-known~~ last-known principal place of business and the defendant's receipt or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance ~~herewith~~ with this section are filed with the clerk of the court in which ~~such~~ the action is pending on or before the date the defendant is required to appear or within ~~such~~ further time ~~as that~~ the court may allow.

(2) Service of process in any ~~such~~ action, suit, or proceeding ~~shall~~ must in addition to the manner provided in subsection (1) ~~of this section~~ be valid if:

(a) served upon any person within this state who in this state on behalf of ~~such~~ the insurer is:

(i) soliciting insurance;

(ii) making any contract of insurance or issuing or delivering any policies or written contracts of insurance;

or

(iii) collecting or receiving any premium for insurance;

(b) a copy of ~~such~~ the process is sent within 10 days ~~thereafter~~ by ~~registered~~ or certified mail by the plaintiff's attorney to the defendant at the ~~last known~~ last-known principal place of business of the defendant; and

(c) the defendant's receipt or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance ~~herewith~~ with this section are filed with the clerk of the court in which ~~such~~ the action is pending on or before the date the defendant is required to appear or within ~~such~~ further time ~~as~~ that the court may allow.

(3) ~~No~~ A plaintiff or complainant ~~shall~~ may not be entitled to a judgment by default under this section until the expiration of 30 days from the date of the filing of the affidavit of compliance.

(4) ~~Nothing in this~~ This section contained ~~shall~~ does not limit or abridge the right to serve any process, notice, or demand upon any insurer in any other manner now or ~~hereafter~~ later permitted by law."

Section 1070. Section 33-2-111, MCA, is amended to read:

"33-2-111. Deposit requirement. (1) An insurer ~~shall~~ may not be authorized to transact insurance in this state unless it makes and ~~thereafter~~ maintains in trust in this state through the commissioner for the protection of all its policyholders or of all its policyholders and creditors a deposit of cash or securities eligible for deposit under 33-2-603 in an amount not less than the minimum paid-in capital stock₁ (if a stock insurer)₂ or minimum surplus₁ (if a mutual or reciprocal insurer), other than special surplus, required to be maintained for authority to transact the kinds of insurance to be transacted, except as to:

(a) title insurers, the deposit ~~shall~~ must be in the amount of \$100,000;

(b) foreign insurers, in lieu of ~~such~~ the deposit or part ~~thereof~~ of the deposit in this state, the commissioner shall accept the certificate in proper form of the public official having supervision over insurers in any other state to the effect that a like deposit or part ~~thereof~~ of a deposit by ~~such~~ the insurer is being maintained in public custody ~~therein~~ in that state in trust for the purpose, among other reasonable purposes of protection of

policyholders ~~and/or~~ or creditors, or both, of the protection of all its policyholders or ~~policyholders and~~ creditors, or both, in Montana;

(c) alien insurers, in lieu of ~~such~~ the deposit or part ~~thereof~~ of the deposit in this state, the commissioner shall accept evidence satisfactory to ~~him~~ the commissioner that the insurer maintains within the United States by way of trust deposits with public depositories or in trust institutions approved by the commissioner assets available for discharge of its United States insurance obligations, ~~which~~ The assets ~~shall~~ must be in an amount not less than the outstanding liabilities of the insurer arising out of its insurance transactions in the United States, together with the larger of the following sums:

(i) the largest deposit required by this code to be made by foreign insurers transacting like kinds of insurance; or

(ii) \$300,000.

(2) Deposits of foreign or alien insurers in another state ~~shall~~ must be in cash ~~and/or~~ or securities, or both, of substantially the same quality as those eligible for deposit in this state under 33-2-603.

(3) Deposits of reserves by domestic life insurers ~~shall~~ must be made as provided in 33-2-531.

(4) Deposits made in this state ~~shall further be~~ are subject to the provisions of part 6 of this chapter."

Section 1071. Section 33-2-112, MCA, is amended to read:

"33-2-112. Management qualifications and affiliations. The commissioner ~~shall~~ may not grant or continue authority to transact insurance in this state as to any insurer the principal management personnel of which is found by ~~him~~ the commissioner to be untrustworthy or not of good character or so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public or to its stockholders or ~~which he~~ that the commissioner has good reason to believe is affiliated directly or indirectly through ownership, control, management, reinsurance transactions, or other insurance or business relations with any person or persons whose business operations, to the detriment of insurers, stockholders, or creditors, are or have been marked by manipulation of assets, accounts, or reinsurance or by bad faith."

Section 1072. Section 33-2-116, MCA, is amended to read:

"33-2-116. Issuance or refusal of certificate of authority -- state ownership of certificate. (1) If upon completion of its application the commissioner finds that the insurer has met the requirements for and is entitled ~~thereto~~ under this code, ~~he~~ the commissioner shall issue to the insurer a proper certificate of authority. If ~~he~~ the commissioner does not so find, the commissioner shall issue ~~his~~ an order refusing ~~such~~ the certificate. The

commissioner shall act upon an application for a certificate of authority within 180 days after its completion.

(2) The certificate, if issued, ~~shall~~ must specify the kind or kinds of insurance the insurer is authorized to transact in Montana. At the insurer's request, the commissioner may issue a certificate of authority limited to particular types of insurance or insurance coverages within the scope of a kind of insurance as defined in 33-1-205 through 33-1-212.

(3) Although issued to the insurer, the certificate of authority is at all times the property of the state of Montana. Upon any expiration, suspension, or termination ~~thereof~~ of the certificate, the insurer shall promptly deliver the certificate of authority to the commissioner."

Section 1073. Section 33-2-120, MCA, is amended to read:

"33-2-120. Notice of suspension or revocation -- effect upon producer's authority. (1) Upon suspending or revoking an insurer's certificate of authority, the commissioner shall ~~forthwith~~ give notice ~~thereof~~ to the insurer and to its insurance producers in this state of record in the commissioner's office.

(2) ~~Such~~ The suspension or revocation ~~shall likewise~~ must automatically suspend or revoke, as the case may be, the authority of all ~~such~~ insurance producers to act as insurance producers of the insurer in this state, and the commissioner shall ~~so~~ state that requirement in the notice to insurance producers provided for in subsection (1).

(3) ~~In his discretion the~~ The commissioner may also publish notice of ~~such~~ revocation in one or more newspapers of general circulation published in this state."

Section 1074. Section 33-2-121, MCA, is amended to read:

"33-2-121. Duration of suspension -- insurer's obligations -- reinstatement. (1) Suspension of an insurer's certificate of authority ~~shall~~ must be for ~~such a~~ period ~~as is~~ fixed by the commissioner in the order of suspension and ~~shall~~ must continue until rescinded or otherwise removed by the commissioner. During the suspension, the commissioner may shorten the period ~~thereof~~ by his further order.

(2) During the period of the suspension the insurer shall file its annual statement and pay fees, licenses, and taxes as required under this code as if the certificate had continued in full force.

(3) If within ~~such~~ the period of suspension the certificate of authority has not been terminated, the insurer's certificate of authority may be reinstated if the commissioner finds that the causes of the suspension have been removed or that the insurer is otherwise in compliance with the requirements of this code.

(4) Upon reinstatement of the insurer's certificate of authority, the authority of its insurance producers

in this state to represent the insurer ~~shall likewise reinstate~~ are reinstated.

(5) The commissioner shall forthwith notify both the insurer and its insurance producers in this state, as shown by ~~his~~ the commissioner's records, of ~~such~~ the reinstatement."

Section 1075. Section 33-2-127, MCA, is amended to read:

"33-2-127. Effects of transfer of domicile. The certificate of authority, producers' appointments and licenses, policy forms, rates, and other items that the commissioner allows, ~~in his discretion,~~ that are in existence at the time an insurer admitted to transact insurance in this state transfers its corporate domicile to this or any other state continue in ~~full force and~~ effect upon transfer if the insurer remains qualified to transact insurance in this state. All rates and outstanding policies of a transferring insurer remain in ~~full force and~~ effect, and policies need not be endorsed as to the new name of the company or its domicile unless required by the commissioner. A transferring insurer either shall file new policy forms for use in this state with the commissioner on or before the effective date of the transfer or may use existing policy forms with the appropriate endorsements; as allowed by the commissioner. A transferring insurer shall notify the commissioner of the proposed transfer and shall promptly file any resulting amendments to corporate documents required to be filed with the commissioner."

Section 1076. Section 33-2-205, MCA, is amended to read:

"33-2-205. Trust agreement -- approval. (1) The deposit referred to in 33-2-202 ~~shall~~ must be made under a written trust agreement between the insurer and the trustee, consistent with the provisions of this part, and ~~shall~~ must be authenticated in ~~such~~ the form and manner ~~as~~ that the commissioner may designate or approve.

(2) The agreement ~~shall~~ may not be effective until filed with and approved in writing by the commissioner. The commissioner ~~shall~~ may not approve any trust agreement found by ~~him~~ the commissioner not to be in compliance with law or the terms of which do not in fact provide reasonably adequate protection for the insurer's policyholders ~~or policyholders and or~~ creditors, or both, in the United States."

Section 1077. Section 33-2-208, MCA, is amended to read:

"33-2-208. Withdrawal of approval. The commissioner's approval of any trust agreement or of any amendment ~~thereof~~ of a trust agreement may be withdrawn by the commissioner if ~~he~~ the commissioner finds upon hearing, after notice ~~thereof~~ to the insurer and the trustee or trustees, that the requisites for ~~such~~ approval, as provided in this part, no longer exist."

Section 1078. Section 33-2-211, MCA, is amended to read:

"33-2-211. Statement of trustee. (1) The trustee of trusteed assets shall, from time to time, file with the commissioner statements, in ~~such the~~ form ~~as he~~ that the commissioner may designate and request in writing, certifying the character of ~~such the~~ assets and the amounts ~~thereof of the assets~~.

(2) If the trustee fails to file any ~~such~~ statement described in subsection (1) after a request therefor for the statement and expiration of a reasonable time ~~thereafter~~, the commissioner may suspend or revoke the certificate of authority of the insurer."

Section 1079. Section 33-2-214, MCA, is amended to read:

"33-2-214. Substitution of trustee. (1) A new trustee or new trustees may be substituted for the original trustee or trustees of trusteed assets in the event of a vacancy or for other proper cause. Any ~~such~~ substitution ~~shall be~~ is subject to the commissioner's approval.

(2) If the trustees of any trusteed assets ~~heretofore created~~ are individuals and if the number of ~~such~~ trustees is reduced to less than three by death, resignation, or otherwise, the commissioner shall require that there be substituted for ~~such the~~ trustees a bank or trust company in this state approved by ~~him~~ the commissioner."

Section 1080. Section 33-2-306, MCA, is amended to read:

"33-2-306. Surplus lines insurance producer's authority under license -- acceptance of business from other insurance producers. (1) Under a surplus lines insurance producer's license, the licensee may place surplus lines insurance, in compliance with The Surplus Lines Insurance Law, with a foreign or alien insurer not authorized to transact insurance in this state and may act as a surplus lines insurance producer in this state for the insurer.

(2) The surplus lines insurance producer may accept surplus lines insurance from a licensed insurance producer of an authorized insurer or, if the commissioner agrees in advance, through an individual, partnership, or corporation that has not been appointed as an insurance producer in this state and may ~~compensate him~~ therefor provide compensation for the insurance.

(3) A surplus lines insurance producer who places or renews surplus lines insurance in accordance with subsection (1) may collect an inspection fee for the actual costs of inspecting the risk to be covered."

Section 1081. Section 33-2-308, MCA, is amended to read:

"33-2-308. Evidence of insurance -- changes -- penalty. (1) Upon placing surplus lines insurance, the surplus lines insurance producer shall promptly issue or deliver to the insured or the producing insurance producer evidence of the insurance, consisting either of the policy as issued by the insurer or, if the policy is not then available, a cover note or certificate of insurance signed or countersigned by the insurance producer. The cover note or certificate must show the subject, coverage, conditions, and term of the insurance, the premium charged and taxes collected from the insured, and the name and address of the insurer. If a direct risk is assumed by more than one insurer, the cover note or certificate must state the name and address and proportion of the entire direct risk assumed by each insurer.

(2) If after the issuance and delivery of any cover note or certificate there is a change as to the identity of the insurers or the proportion of the direct risk assumed by the insurer as stated in the original cover note or certificate or in any other material respect as to the insurance coverage evidenced by the cover note or certificate, the surplus lines insurance producer shall promptly issue or deliver to the insured a substitute cover note or certificate accurately showing the current status of the coverage and the insurers responsible under the coverage.

(3) If a policy issued by the insurer is not available upon placement of the insurance and the surplus lines insurance producer has issued and delivered a cover note or certificate as provided in subsection (2), upon request ~~therefor~~ by the insured, the surplus lines insurance producer shall as soon as reasonably possible procure from the insurer its policy evidencing the insurance and deliver the policy to the insured in replacement of the cover note or certificate previously issued.

(4) A surplus lines insurance producer who knowingly or negligently issues or delivers a false cover note or certificate of insurance or fails promptly to notify the insured of a material change with respect to the insurance by delivery to the insured of a substitute cover note or certificate as provided in subsection (2) is guilty of a violation of this code and upon conviction is subject to the penalties provided by 33-1-104 or to any greater applicable penalty otherwise provided by law.

(5) A surplus lines insurance producer may not issue or deliver an evidence of insurance or purport to insure or represent that insurance will be or has been written by an eligible surplus lines insurer unless ~~he~~ the surplus lines insurance producer has authority from the insurer to cause the risk to be insured or has received information from the insurer in the regular course of business that the insurance has been granted."

Section 1082. Section 33-2-309, MCA, is amended to read:

"33-2-309. Liability of insurer as to losses and unearned premiums. (1) As to a surplus lines risk that has been assumed by an unauthorized insurer pursuant to The Surplus Lines Insurance Law and if the

premium on the surplus lines risk has been received by the surplus lines insurance producer who placed the insurance, in all questions ~~thereafter~~ arising under the coverage as between the insurer and the insured, the insurer is considered to have received the premium due to it for the coverage. The insurer is liable to the insured ~~as to~~ for losses covered by the insurance and for unearned premiums that may become payable to the insured upon cancellation of the insurance, whether or not in fact the surplus lines insurance producer is indebted to the insurer with respect to the insurance or for any other cause. This provision does not affect rights as between the insurer and the surplus lines insurance producer.

(2) A payment of premium to a surplus lines insurance producer acting for a person other than ~~himself~~ individually in negotiating, continuing, or reviewing a policy of insurance under this part is considered to be payment to the insurer, notwithstanding any conditions or stipulations that may be inserted in the policy or contract.

(3) Each unauthorized insurer assuming a surplus lines direct risk under The Surplus Lines Insurance Law is considered to have subjected itself to the terms of this section."

Section 1083. Section 33-2-310, MCA, is amended to read:

"33-2-310. Records and annual statement -- affidavit. (1) Each surplus lines insurance producer shall keep a separate record and account of all business transacted under ~~his~~ the producer's license, including a copy of each daily report, if any, or of each policy, certificate of insurance, cover note, or other evidence of insurance issued or delivered by ~~him~~ the producer. The records must be available for examination by the commissioner at any reasonable time within 5 years after the issuance of the surplus lines insurance to which it relates.

(2) Prior to April 1 of each year, the surplus lines insurance producer shall file with the commissioner a statement for the preceding calendar year, showing:

- (a) name and address of each insured for whom surplus lines insurance was procured;
- (b) name and home office address of each insurer providing the surplus lines insurance;
- (c) amount of each surplus lines insurance policy, the premium rate, and the gross premium charged for the policy;
- (d) date and term of the policy;
- (e) amount of premium returned on each policy canceled or not taken;
- (f) amount of tax and other sums to be collected from the insured;
- (g) identity of the producing insurance producer; and
- (h) ~~such~~ additional information ~~as~~ that the commissioner may reasonably require.

(3) Each producing insurance producer shall execute and each surplus lines insurance producer shall file an affidavit, on a standardized form furnished by the commissioner, as to the diligent efforts to place the coverage with authorized insurers and the results of ~~such~~ the efforts. An affidavit filed under this subsection is subject to public inspection unless the commissioner determines that the public interest requires otherwise. The producing insurance producer shall state in the affidavit that ~~he~~ the producer has expressly advised the insured prior to placing the insurance that:

(a) the surplus lines insurer with whom the insurance is placed is not authorized in this state and is not subject to the same supervision as an authorized insurer; and

(b) in the event of the insolvency of the surplus lines insurer, the property and casualty guaranty fund of the state will not pay losses under the surplus lines coverage."

Section 1084. Section 33-2-311, MCA, is amended to read:

"33-2-311. Tax on surplus lines. There is imposed upon premiums collected for surplus lines insurance transacted in this state a tax at the same rate and computed in the same manner as provided in 33-2-705 as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes, and in excess of the premium otherwise required, are not considered to be part of the premium for the purposes of ~~such~~ the computation. Upon filing of the annual statement referred to in 33-2-310(2), the surplus lines insurance producer shall pay to the commissioner the amount of tax owing as to surplus lines insurance business transacted by ~~him~~ the surplus lines insurance producer during the preceding calendar year. If a surplus lines insurance policy covers risks or exposures only partially in this state, the tax payable must be computed upon the proportion of the premium ~~which~~ that is properly allocable to the risks or exposures located in this state."

Section 1085. Section 33-2-503, MCA, is amended to read:

"33-2-503. Treatment of assets. Assets may be allowed as deductions from corresponding liabilities, ~~and~~ liabilities may be charged as deductions from assets, and deductions from assets may be charged as liabilities, in accordance with the form of annual statement applicable to the insurer as prescribed by the commissioner, ~~or otherwise in his discretion.~~"

Section 1086. Section 33-2-605, MCA, is amended to read:

"33-2-605. Record of deposits -- liability of commissioner and state. (1) The commissioner shall give

to the depositing insurer vouchers as to all assets and securities deposited by it in this state through the commissioner as provided in this code.

(2) The commissioner shall keep a record of the assets and securities comprising each deposit, showing as far as practical the amount and market value of each item, and all ~~his~~ transactions relative ~~thereto~~ to the deposits.

(3) The commissioner and the state of Montana ~~shall do not~~ have ~~no~~ liability as to the safekeeping of any ~~such~~ deposit by the depository or custodian ~~thereof~~ of the deposit."

Section 1087. Section 33-2-606, MCA, is amended to read:

"33-2-606. Assignment or conveyance of assets or securities. All securities not negotiable by delivery and deposited under this code ~~shall~~ must be duly assigned to the commissioner and ~~his~~ the commissioner's successors in office. In the case of securities held under custodial arrangements outside this state pursuant to 33-2-604(3), the custodian's receipt for ~~such~~ the securities ~~shall~~ must be ~~so~~ delivered, if negotiable, or assigned to the commissioner if ~~thereby~~ legal title to ~~such~~ the securities is vested in the commissioner. The insurer shall transfer or convey to the commissioner and ~~his~~ the commissioner's successors in office all other assets ~~so~~ deposited. Upon release to the insurer of any ~~such~~ asset or security, the commissioner shall reassign or transfer or reconvey the ~~same~~ asset or security to the insurer."

Section 1088. Section 33-2-607, MCA, is amended to read:

"33-2-607. Appraisal. The commissioner may, ~~in his discretion,~~ prior to acceptance for deposit of any particular asset or security or at any later time ~~thereafter~~ while ~~so~~ deposited, have the ~~same~~ asset or security appraised or valued by competent appraisers. The reasonable costs of any ~~such~~ appraisal or valuation ~~shall~~ must be borne by the insurer."

Section 1089. Section 33-2-612, MCA, is amended to read:

"33-2-612. Duration and release of deposit. (1) Every deposit made in this state by an insurer pursuant to this code, including assets and securities held in another state under custodial arrangements permitted by 33-2-604(3), ~~shall~~ must be held as long as there is outstanding any liability of the insurer as to which the deposit was so required, or if a deposit was required under the retaliatory law, 33-2-709, the deposit ~~shall~~ must be held for ~~so~~ as long as the basis of ~~such~~ the retaliation exists.

(2) Upon the request of a domestic insurer, the commissioner shall return to the insurer the whole or any

portion of the assets and securities of the insurer held on deposit when the commissioner is satisfied that the assets and securities ~~so~~ to be returned are not subject to ~~no~~ liability and are not required to be ~~longer~~ held by any provision of law or purposes of the original deposit. If the insurer has reinsured all its outstanding risks in another insurer or insurers authorized to transact insurance in this state, then the commissioner shall deliver ~~such~~ the assets and securities to ~~such the~~ insurer or insurers ~~so~~ assuming ~~such the~~ risks; upon:

(a) written notice to ~~him~~ the commissioner by ~~such the~~ domestic insurer that ~~such the~~ assets and securities have been ~~duly~~ assigned, transferred, and set over to ~~such the~~ reinsuring insurer or insurers, ~~which notice shall be~~ accompanied by a ~~duly~~ verified copy of ~~such the~~ assignment, transfer, or conveyance; and

(b) in the case of deposits of the reserves of domestic life insurers under 33-2-531, proof satisfactory to the commissioner that the reinsuring insurer or insurers have deposited or will deposit and will maintain on deposit in public custody through the insurance supervisory official of its state of domicile assets and securities of like quality in an amount not less than the reserves ~~then and thereafter~~ of the policies and contracts ~~so~~ reinsured, in addition to any other deposit of ~~such the~~ insurer required or permitted by law, and, unless the insurer is required ~~so~~ to deposit and maintain on deposit all of its reserves, that ~~such the~~ deposit of ~~such the~~ reserves will be ~~so~~ deposited and held on deposit for the special benefit and protection of the holders of the life insurance policies and annuity contracts ~~so~~ reinsured.

(3) The commissioner shall return to a foreign insurer any deposit made in this state by ~~such the~~ insurer when ~~such the~~ insurer has ceased transacting insurance in this state or in the United States, and the insurer is not subject to any liability in this state on account of which the deposit was held.

(4) If the insurer is subject to delinquency proceedings, as defined in part 13 of this chapter, upon the order of a court of competent jurisdiction, the commissioner shall yield the assets and securities held on deposit to the receiver, conservator, rehabilitator, or liquidator of the insurer or to any other properly designated official or officials who succeed to the management and control of the insurer's assets.

(5) ~~No A~~ release of deposited assets ~~shall~~ may not be made except upon application to and the written order of the commissioner. The commissioner ~~shall~~ does not have ~~no~~ personal liability for ~~any~~ release of any ~~such~~ deposit or part ~~thereof so~~ of a deposit made by ~~him~~ in good faith."

Section 1090. Section 33-2-1104, MCA, is amended to read:

"33-2-1104. Acquisition of control of or merger with domestic insurer -- filing requisites. (1) ~~No A~~ person other than the issuer ~~shall~~ may not make a tender offer for or a request or invitation for tenders of or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any

voting security of a domestic insurer if, after the consummation ~~thereof of the transaction,~~ such the person would, directly or indirectly (or by conversion or by exercise of any right to acquire), be in control of ~~such the~~ insurer; ~~and no~~ A person ~~shall~~ may not enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any ~~such~~ offer, request, or invitation is made or any ~~such~~ agreement is entered into or prior to the acquisition of ~~such the~~ securities if ~~no an~~ offer or agreement is not involved, ~~such the~~ person has filed with the commissioner and has sent to ~~such the~~ insurer, and ~~such the~~ insurer has sent to its shareholders, a statement containing the information required by this section and ~~such the~~ offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner ~~hereinafter~~ prescribed in this section. For purposes of this section, a domestic insurer ~~shall include~~ includes any other person controlling a domestic insurer unless ~~such the~~ other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(2) The statement to be filed with the commissioner ~~hereunder shall~~ must be made under oath or affirmation and ~~shall~~ must contain the following information:

(a) the name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) is to be effected, ~~(hereinafter who is called the~~ "acquiring party"):

(i) if ~~such the~~ person is an individual, ~~his the~~ principal occupation and all offices and positions held during the past 5 years and any conviction of crimes other than minor traffic violations during the past 10 years;

(ii) if ~~such the~~ person is not an individual;

(A) a report of the nature of its business operations during the past 5 years or for ~~such a~~ lesser period ~~as such that the~~ person and any predecessors ~~thereof shall~~ have been in existence;

(B) an informative description of the business intended to be done by ~~such the~~ person and ~~such the~~ person's subsidiaries; and

(C) a list of all individuals who are or who have been selected to become directors or executive officers of ~~such the~~ person or who perform or will perform functions appropriate to ~~such the~~ positions. ~~Such The~~ list ~~shall~~ must include for each ~~such~~ individual the information required by subsection (2)(a)(i).

(b) the source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction ~~wherein in which~~ funds were or are to be obtained for any ~~such~~ purpose, and the identity of persons furnishing ~~such the~~ consideration, provided, ~~however,~~ that ~~where when~~ a source of ~~such~~ consideration is a loan made in the lender's ordinary course of business, the identity of the lender ~~shall~~ must remain confidential if the person filing ~~such the~~ statement ~~so~~ requests;

(c) fully audited financial information as to the earnings and financial condition of each acquiring party

for the preceding 5 fiscal years of each ~~such~~ acquiring party, ~~(or for such a lesser period as such that the~~ acquiring party and any predecessors ~~thereof shall~~ have been in existence), and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;

(d) any plans or proposals ~~which that~~ each acquiring party may have to liquidate ~~such the~~ insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(e) the number of shares of any security referred to in subsection (1) ~~which that~~ each acquiring party proposes to acquire and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1) and a statement as to the method by which the fairness of the proposal was arrived at;

(f) the amount of each class of any security referred to in subsection (1) ~~which that~~ is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(g) a full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (1) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. ~~Such The~~ description ~~shall must~~ identify the persons with whom ~~such the~~ contracts, arrangements, or understandings have been entered into.

(h) a description of the purchase of any security referred to in subsection (1) by an acquiring party during the 12 calendar months preceding the filing of the statement, ~~by an acquiring party~~, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid ~~therefor~~ for the security;

(i) a description of any recommendations to purchase any security referred to in subsection (1) ~~made~~ during the 12 calendar months preceding the filing of the statement; made by any acquiring party or by anyone based upon interviews or at the suggestion of ~~such the~~ acquiring party;

(j) copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) and, ~~(if distributed)~~, of additional soliciting material relating ~~thereto to the offers or agreements~~;

(k) the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (1) for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard ~~thereto to the solicitation~~;

(l) ~~such~~ additional information ~~as that~~ the commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

(3) If the person required to file the statement referred to in subsection (1) is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by subsection (2) ~~shall~~ must be given with respect to each partner of ~~such the~~ partnership or limited partnership, each member of ~~such the~~ syndicate or group, and each person who controls ~~such the~~ partner or member. If any ~~such~~ partner, member, or person is a corporation or the person required to file the statement referred to in subsection (1) is a corporation, the commissioner may require that the information ~~called for~~ required by subsection (2) ~~shall~~ be given with respect to ~~such the~~ corporation, each officer and director of ~~such the~~ corporation, and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of ~~such the~~ corporation.

(4) If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to ~~such the~~ insurer pursuant to this section, an amendment setting forth ~~such the~~ change, together with copies of all documents and other material relevant to ~~such the~~ change, ~~shall~~ must be filed with the commissioner and sent to ~~such the~~ insurer within 2 business days after the person learns of ~~such the~~ change. ~~Such The~~ insurer shall send ~~such the~~ amendment to its shareholders.

(5) If any offer, request, invitation, agreement, or acquisition referred to in subsection (1) is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) may ~~utilize~~ such use the documents in furnishing the information called for by that statement."

Section 1091. Section 33-2-1105, MCA, is amended to read:

"33-2-1105. Approval by commissioner -- hearings -- notice. (1) The commissioner shall approve any merger or other acquisition of control referred to in 33-2-1104(1) unless, after a public hearing ~~thereon, he~~ the commissioner finds that:

(a) after the change of control the domestic insurer referred to in 33-2-1104(1) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly ~~therein~~;

(c) the financial condition of any acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated

with the acquiring party;

(d) the terms of the offer, request, invitation, agreement, or acquisition referred to in 33-2-1104(1) are unfair and unreasonable to the securityholders of the insurer;

(e) the plans or proposals ~~which~~ that the acquiring party has to liquidate the insurer, to sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(f) the competence, experience, and integrity of those persons who would control the operation of the insurer are ~~such~~ of the nature that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(2) The public hearing referred to in subsection (1) must be held within 30 days after the statement required by 33-2-1104(1) is filed, and at least 20 ~~days~~ days' notice ~~thereof~~ of the hearing must be given by the commissioner to the person filing the statement. Not less than 7 days' notice of the public hearing must be given by the person filing the statement to the insurer and to other persons as may be designated by the commissioner. The insurer shall give notice to its securityholders. The commissioner shall make a determination within 30 days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected ~~thereby~~ has the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and ~~in connection therewith is entitled~~ to conduct discovery proceedings in the same manner ~~as that~~ as that is presently allowed in the district court of this state. All discovery proceedings must be concluded not later than 3 days prior to the commencement of the public hearing.

(3) All statements, amendments, or other material filed pursuant to ~~subsections (1) through (4) of~~ 33-2-1104(1) through (4) and all notices of public hearings held pursuant to subsection (1) of this section must be mailed by the insurer to its shareholders within 5 business days after the insurer has received the statements, amendments, other material, or notices. The expenses of mailing must be borne by the person making the filing. As security for the payment of the expenses, the person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(4) The commissioner may retain at the acquiring party's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control."

Section 1092. Section 33-2-1106, MCA, is amended to read:

"33-2-1106. Exemptions -- violations -- jurisdiction. (1) The provisions of 33-2-1104, 33-2-1105, and this section do not apply to an offer, request, invitation, agreement, or acquisition ~~which~~ that the commissioner by order ~~shall exempt therefrom~~ exempts from those sections as:

(a) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or

(b) otherwise not comprehended within the purposes of 33-2-1104 and 33-2-1105.

(2) The following are violations of 33-2-1104, 33-2-1105, and this section:

(a) the failure to file any statement, amendment, or other material required to be filed pursuant to ~~subsections (1) through (4) of 33-2-1104~~ (1) through (4);

(b) the effectuation or any attempt to effectuate an acquisition of control of or merger with a domestic insurer unless the commissioner has given ~~his~~ approval ~~thereto~~.

(3) The courts of this state are ~~hereby~~ vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under 33-2-1104 and over all actions involving the person arising out of violations of 33-2-1104, 33-2-1105, and this section, and each ~~such~~ person is considered to have performed acts equivalent to and constituting an appointment by ~~such a~~ the person of the commissioner to be ~~his true and lawful~~ the person's attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all ~~such~~ lawful process must be served on the commissioner and transmitted by certified mail by the commissioner to the person at ~~his~~ the person's last-known address."

Section 1093. Section 33-2-1120, MCA, is amended to read:

"33-2-1120. Criminal or civil proceedings -- penalties. (1) An insurer failing without just cause to file a registration statement as required in 33-2-1111 shall, after notice and hearing, pay a penalty of \$100 for each day of delinquency. The maximum penalty under this subsection is \$25,000. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(2) A director or an officer of an insurance holding company system who knowingly violates, participates in, or assents to a transaction or who knowingly permits an officer or insurance producer of the insurer to engage in a transaction or make an investment that has not been properly reported or submitted pursuant to 33-2-1111 or 33-2-1113 or that violates any other provision of Title 33, chapter 2, part 11, shall, after notice and hearing, pay, in ~~his~~ the director's or officer's individual capacity, a fine of not more than \$5,000 for each violation. To determine

the amount of the fine, the commissioner shall consider the appropriateness of the fine with respect to the gravity of the violation, the history of previous violations, and ~~such~~ other matters ~~as~~ that justice may require.

(3) If the commissioner determines that an insurer subject to Title 33, chapter 2, part 11, or a director, officer, employee, or insurance producer of the insurer has engaged in a transaction or entered into a contract that is subject to 33-2-1113 and that would not have been approved had approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void the contract and restore the status quo if ~~such~~ that action is in the best interest of policyholders, creditors, or the public.

(4) Whenever it appears to the commissioner that any insurer or any director, officer, employee, or insurance producer ~~thereof of the insurer~~ has committed a willful violation of this part, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if ~~such the insurer has no such~~ does not have an office in the state, then by the district court for Lewis and Clark County against ~~such the~~ insurer or the responsible director, officer, employee, or insurance producer ~~thereof of the insurer~~.

(5) Any insurer ~~which~~ that willfully violates this part may be fined not more than \$25,000.

(6) Any individual who willfully violates this part may be fined not more than \$5,000 or, if ~~such the~~ willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned for not more than 2 years, or both."

Section 1094. Section 33-2-1122, MCA, is amended to read:

"33-2-1122. Revocation, suspension, or nonrenewal of insurer's license. Whenever it appears to the commissioner that any person has committed a violation of this part ~~which~~ that makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke, or refuse to renew ~~such the~~ insurer's license or authority to do business in this state for ~~such a period as he~~ that the commissioner finds is required for the protection of policyholders or the public. Any ~~such~~ determination ~~shall~~ must be accompanied by specific findings of fact and conclusions of law."

Section 1095. Section 33-2-1206, MCA, is amended to read:

"33-2-1206. Bulk reinsurance -- foreign or alien insurers. (1) A foreign or alien insurer may reinsure all or substantially all of its insurance in force in Montana or a major class ~~thereof of insurance~~ with an agreement

of bulk reinsurance, but ~~no such the~~ agreement may not become effective unless filed with the commissioner and approved by ~~him~~ the commissioner in writing. The commissioner may ~~in his discretion~~ hold a hearing before approving or disapproving an agreement of bulk reinsurance. Factors to be considered on bulk reinsurance agreements include but are not limited to:

(a) whether the agreement would be inequitable to Montana policyholders;

(b) whether the agreement would substantially reduce security of Montana policyholders; and

(c) whether the agreement would substantially reduce the service to be rendered to Montana policyholders.

(2) The commissioner shall approve or disapprove the agreement within a reasonable time after filing the proposed agreement or, when applicable, after a hearing.

(3) The commissioner may require a foreign or alien insurer to establish a trust account in this state, not to exceed the aggregate reserves of the policies contained in the bulk reinsurance agreement, prior to granting approval."

Section 1096. Section 33-2-1211, MCA, is amended to read:

"33-2-1211. Bulk reinsurance -- stock insurers. (1) A domestic stock insurer may reinsure all or substantially all of its insurance in force or a major class ~~thereof~~ of insurance with another insurer by an agreement of bulk reinsurance, but ~~no such the~~ agreement ~~shall~~ may not become effective unless filed with the commissioner and approved by ~~him~~ the commissioner in writing after a hearing ~~thereon~~ on the agreement.

(2) The commissioner shall approve ~~such an~~ agreement within a reasonable time after ~~such~~ filing unless ~~he~~ the commissioner finds that it is inequitable to the stockholders of the domestic insurer or would substantially reduce the protection or service to its policyholders. If the commissioner does not approve the agreement, ~~he~~ the commissioner shall ~~so~~ notify the insurer in writing specifying ~~his~~ the reasons ~~therefor~~ for disapproval."

Section 1097. Section 33-2-1212, MCA, is amended to read:

"33-2-1212. Bulk reinsurance -- mutual insurers. (1) A domestic mutual insurer may reinsure all or substantially all its business in force, or all or substantially all of a major class ~~thereof~~ of its business, with another insurer, stock or mutual, by an agreement of bulk reinsurance after compliance with this section. ~~No such~~ An agreement ~~shall~~ may not become effective unless filed with the commissioner and approved by ~~him~~ the commissioner in writing after a hearing ~~thereon~~ on the agreement.

(2) The commissioner shall approve ~~such an~~ agreement within a reasonable time after filing if ~~he~~ the

commissioner finds it to be fair and equitable to each domestic insurer involved and that ~~such~~ the reinsurance if effectuated would not substantially reduce the protection or service to its policyholders. If the commissioner does not ~~so~~ approve the agreement, ~~he~~ the commissioner shall ~~so~~ notify each insurer involved in writing specifying ~~his~~ the reasons ~~therefor~~ for disapproval.

(3) The plan and agreement for ~~such~~ reinsurance must be approved by vote of not less than two-thirds of each domestic mutual insurer's members voting ~~thereon~~ on the plan and agreement at meetings of members called for the purpose, pursuant to ~~such~~ reasonable notice and procedure ~~as that~~ the commissioner may approve. If the insurer is a life insurer, the right to vote may be limited to members whose policies are other than term or group policies and have been in effect for more than 1 year.

(4) If the agreement is for reinsurance of a mutual insurer in a stock insurer, the agreement must provide for payment in cash to each member of the insurer entitled ~~thereto~~ as to a payment upon conversion of ~~such~~ the insurer, pursuant to 33-3-216, of ~~his~~ the member's equity in the business reinsured as determined under a fair formula approved by the commissioner, ~~which~~ The equity ~~shall~~ must be based upon ~~such~~ the member's equity in the reserves, assets, (whether or not "admitted" assets), and surplus, if any, of the mutual insurer to be taken over by the stock insurer."

Section 1098. Section 33-2-1310, MCA, is amended to read:

"33-2-1310. Cooperation of officers, owners, and employees. (1) ~~Any~~ A officer, manager, director, trustee, owner, employee, or insurance producer of any insurer or any other persons with authority over or in charge of any segment of the insurer's affairs shall cooperate with the commissioner in any proceeding under this part or any investigation preliminary to the proceeding.

(2) (a) The term "person" as used in this section includes any person who exercises control directly or indirectly over activities of an insurer through any holding company or other affiliate of the insurer.

(b) "To cooperate" includes but is not limited to the following:

(a)(i) replying promptly in writing to any inquiry from the commissioner requesting ~~such~~ a reply; and
 (b)(ii) making available to the commissioner any books, accounts, documents, or other records or information or property of or pertaining to the insurer and in ~~his~~ the insurer's possession, custody, or control.

(2)(3) ~~No~~ A person may not obstruct or interfere with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental ~~thereto~~ to the proceeding.

(3)(4) This section ~~shall~~ may not be construed to abridge otherwise existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings or other orders.

~~(4)~~(5) Any person included within subsection (1) who fails to cooperate with the commissioner or any person who obstructs or interferes with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental ~~thereto~~ to the proceeding or who violates any order the commissioner issued validly under this part may:

(a) be sentenced to pay a fine not exceeding \$10,000 or to undergo imprisonment for a term of not more than 1 year, or both; or

(b) after a hearing, be subject to the imposition by the commissioner of a civil penalty not to exceed \$10,000 and to the revocation or suspension of any insurance licenses issued by the commissioner."

Section 1099. Section 33-2-1321, MCA, is amended to read:

"33-2-1321. Commissioner's summary orders and supervision proceedings. (1) ~~Whenever~~ If the commissioner determines, after a hearing held under subsection (5), that any domestic insurer has committed or engaged in or is about to commit or engage in any act, practice, or transaction that would subject it to delinquency proceedings under this part, ~~he~~ the commissioner may make and serve upon the insurer and any other persons involved ~~such~~ orders ~~as~~ that are reasonably necessary to correct or eliminate ~~such~~ the conduct.

(2) If upon examination or at any other time the commissioner determines that any domestic insurer is in ~~such~~ a condition ~~as to render~~ that renders the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance or if ~~such~~ the domestic insurer gives its consent, then the commissioner shall notify the insurer of ~~his~~ the commissioner's determination and furnish to the insurer a written list of the commissioner's requirements to abate ~~his~~ the determination.

(3) If the commissioner makes a determination to supervise an insurer subject to an order under subsection (1) or (2), ~~he~~ the commissioner shall notify the insurer that it is under the supervision of the commissioner. During the period of supervision, the commissioner may appoint a supervisor to supervise ~~such~~ the insurer. The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsections (1) and (2) and may also require that the insurer may not do any of the following things during the period of supervision without the prior approval of the commissioner or the supervisor:

- (a) dispose of, convey, or encumber any of its assets or its business in force;
- (b) withdraw from any of its bank accounts;
- (c) lend any of its funds;
- (d) invest any of its funds;
- (e) incur any debt, obligation, or liability;

- (f) merge or consolidate with another company; or
- (g) enter into any new reinsurance contract or treaty.

(4) Any insurer subject to an order under this section shall comply with the lawful requirements of the commissioner and, if placed under supervision, has 60 days from the date the supervision order is served within which to comply with the requirements of the commissioner. If the insurer fails to comply within that time, the commissioner may institute proceedings under 33-2-1331 or 33-2-1341 to have a rehabilitator or liquidator appointed or extend the period of supervision.

(5) The notice of hearing under subsection (1) and any order issued pursuant to ~~such~~ subsection ~~shall~~ (1) must be served upon the insurer pursuant to the applicable rules of civil or administrative procedure. The notice of hearing ~~shall~~ must state the time and place of hearing and the conduct, condition, or ground upon which the commissioner would base ~~his~~ an order. Unless mutually agreed between the commissioner and the insurer, the hearing ~~shall~~ must occur not less than 10 days or more than 30 days after notice is served and ~~shall~~ must be either in Lewis and Clark County or in some other place convenient to the parties to be designated by the commissioner. The commissioner shall hold all hearings under subsection (1) privately unless the insurer requests a public hearing, in which case the hearing ~~shall~~ must be public.

(6) (a) Any insurer subject to an order under subsection (2) may request a hearing to review that order. ~~Such a~~ The hearing ~~shall~~ must be held as provided in subsection (5), but the request for a hearing ~~shall~~ may not stay the effect of the order.

(b) If the commissioner issues an order under subsection (2), the insurer may, at any time, waive a commissioner's hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing, any party to the proceedings whose interests are substantially affected ~~shall be~~ is entitled to judicial review of any order issued by the commissioner.

(7) During the period of supervision the insurer may request the commissioner to review an action taken or proposed to be taken by the supervisor, specifying ~~wherein~~ the reason why the action complained of is believed not to be in the best interest of the insurer.

(8) If any person has violated any supervision order issued under this section ~~which as to him~~ that was ~~then~~ still in effect for that person, ~~he~~ the person is subject to a civil penalty imposed by the district court not to exceed \$10,000.

(9) The commissioner may apply for and any court of general jurisdiction may grant ~~such~~ restraining orders, preliminary and permanent injunctions, and other orders ~~as~~ that may be necessary to enforce a supervision order.

(10) If any person subject to the provisions of this part, including any person described in 33-2-1310(1), knowingly violates any valid order of the commissioner issued under the provisions of this section and, as a result of ~~such~~ the violation, the net worth of the insurer is reduced or the insurer suffers loss it would not otherwise have suffered, ~~said~~ the person is personally liable to the insurer for the amount of any ~~such~~ reduction or loss. The commissioner or supervisor is authorized to bring an action on behalf of the insurer in the district court to recover the amount of the reduction or loss together with any costs."

Section 1100. Section 33-2-1323, MCA, is amended to read:

"33-2-1323. Confidentiality of proceedings. In all proceedings and judicial reviews under 33-2-1321 and 33-2-1322, all records of the insurer, other documents, and all files and court records and papers of the commissioner, so far as they pertain to or are a part of the record of the proceedings, remain confidential except as necessary to obtain compliance ~~therewith~~ with the records, documents, files, or papers, unless the district court, after hearing arguments from the parties in chambers, orders otherwise or unless the insurer requests that the matter be made public. Until ~~such~~ the court order, all papers filed with the clerk of the district court ~~shall~~ must be held ~~by him~~ in a confidential file."

Section 1101. Section 33-2-1333, MCA, is amended to read:

"33-2-1333. Powers and duties of the rehabilitator. (1) The commissioner as rehabilitator may appoint one or more special deputies, who ~~shall~~ have all the powers and responsibilities of the rehabilitator granted under this section, and the commissioner may employ counsel, clerks, and assistants. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings ~~shall~~ must be fixed by the commissioner with the approval of the court and ~~shall~~ must be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the commissioner. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs ~~so~~ incurred out of any appropriation for the maintenance of ~~his~~ the commissioner's office. Any amounts ~~so~~ advanced for expenses of administration ~~shall~~ must be repaid to the commissioner for the use of ~~his~~ the commissioner's office out of the first available money of the insurer.

(2) The rehabilitator may take ~~such~~ action as necessary to reform and revitalize the insurer. ~~He~~ The rehabilitator shall have all the powers of the directors, officers, and managers, whose authority ~~shall~~ must be suspended, except as they are redelegated by the rehabilitator. ~~He shall have~~ The rehabilitator has full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal

with the property and business of the insurer.

(3) If it appears to the rehabilitator that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, insurance producer, broker, employee, or other person, ~~he~~ the rehabilitator may pursue all appropriate legal remedies on behalf of the insurer.

(4) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, ~~he~~ the rehabilitator shall prepare a plan to effect ~~such~~ the changes. Upon application of the rehabilitator for approval of the plan and after ~~such~~ notice and hearings ~~as~~ that the court may prescribe, the court may either approve or disapprove the plan proposed or may modify it and approve it as modified. Any plan approved under this section must be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the policies of the company if all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies for ~~such~~ the period and to ~~such an~~ the extent as may be necessary.

(5) The rehabilitator ~~shall have~~ has the power under 33-2-1351 and 33-2-1352 to avoid fraudulent transfers."

Section 1102. Section 33-2-1334, MCA, is amended to read:

"33-2-1334. Effect of proceedings on pending and potential litigation. (1) Any court in this state before which any action or proceeding in which the insurer is a party or is obligated to defend a party is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for 90 days and ~~such~~ an additional time ~~as~~ that is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take ~~such~~ action respecting the pending litigation ~~as~~ he that the rehabilitator considers necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(2) ~~No~~ A statute of limitations or defense of laches ~~shall~~ may not run with respect to any action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. Any action by or against the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the order of rehabilitation is entered or the petition is denied."

Section 1103. Section 33-2-1341, MCA, is amended to read:

"33-2-1341. Grounds for liquidation. The commissioner may petition the district court for an order directing ~~him~~ the commissioner to liquidate a domestic insurer or an alien insurer domiciled in this state on the basis:

- (1) of any ground for an order of rehabilitation as specified in 33-2-1331, whether or not there has been a prior order directing the rehabilitation of the insurer;
- (2) that the insurer is insolvent; or
- (3) that the insurer is in ~~such a~~ a condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public."

Section 1104. Section 33-2-1344, MCA, is amended to read:

"33-2-1344. Dissolution of insurer. The commissioner may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in this state at the time ~~he~~ the commissioner applies for a liquidation order. The court shall order dissolution of the corporation upon petition by the commissioner upon or after the granting of a liquidation order. If the dissolution has not previously been ordered, it ~~shall~~ must be effected by operation of law upon the discharge of the liquidator if the insurer is insolvent but may be ordered by the court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason."

Section 1105. Section 33-2-1345, MCA, is amended to read:

"33-2-1345. Powers of liquidator. (1) The liquidator may:

(a) appoint a special deputy to act for ~~him~~ the liquidator under this part and determine ~~his~~ the deputy's reasonable compensation. The special deputy has all powers of the liquidator granted by this section. The special deputy ~~shall serve~~ serves at the pleasure of the liquidator.

(b) employ insurance producers, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel necessary to assist in the liquidation;

(c) fix the reasonable compensation of employees and insurance producers, legal counsel, actuaries, accountants, appraisers, and consultants with the approval of the court;

(d) pay reasonable compensation to persons appointed and defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. If the property of the insurer does not contain sufficient cash

or liquid assets to defray the costs incurred, the commissioner may advance the costs ~~so~~ incurred out of any appropriation for the maintenance of the commissioner's office. Any amounts ~~so~~ advanced for expenses of administration ~~shall~~ must be repaid to the commissioner for the use of ~~his~~ the commissioner's office out of the first available money of the insurer.

(e) hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and compel any person to subscribe to ~~his~~ the person's testimony after it has been correctly reduced to writing and in connection ~~therewith~~ with the hearings require the production of any books, papers, records, or other documents ~~which he~~ that the liquidator considers relevant to the inquiry;

(f) collect all debts and money due and claims belonging to the insurer, wherever located, and for this purpose:

(i) institute timely action in other jurisdictions in order to forestall garnishment and attachment proceedings against ~~such~~ the debts;

(ii) do ~~such~~ other acts ~~as~~ that are necessary to collect, conserve, or protect its assets or property, including selling, compounding, compromising, or assigning debts for collection purposes on ~~such~~ terms and conditions ~~as he~~ that the liquidator considers best; and

(iii) pursue any creditor's remedies available to enforce ~~his~~ the liquidator's claims;

(g) conduct public and private sales of the property of the insurer;

(h) use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer if the transfer can be arranged without prejudice to applicable priorities under 33-2-1371;

(i) acquire, encumber, lease, improve, sell, or transfer any property of the insurer at its market value or upon ~~such~~ terms and conditions ~~as~~ that are fair and reasonable. ~~He shall~~ The liquidator also ~~have~~ has the power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation.

(j) borrow money on the security of the insurer's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation;

(k) enter into ~~such~~ contracts ~~as~~ that are necessary to carry out the order to liquidate and affirm or disavow any contracts to which the insurer is a party;

(l) continue to prosecute and institute in the name of the insurer or in ~~his~~ the liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims ~~he~~ that the liquidator considers unprofitable to pursue further. If the insurer is dissolved under 33-2-1344, ~~he shall~~

~~have the liquidator has~~ the power to apply to any court in this state or elsewhere for leave to substitute ~~himself~~ for the insurer as plaintiff.

(m) prosecute any action ~~which that~~ may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer or any other person;

(n) remove any or all records and property of the insurer to the offices of the commissioner or to ~~such other another~~ place ~~as that~~ may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations ~~shall must~~ have ~~such~~ reasonable access to the records of the insurer ~~as that~~ is necessary for them to carry out their statutory obligations.

(o) deposit in one or more banks in this state ~~such sums as that~~ are required for meeting current administration expenses and dividend distributions;

(p) invest all sums not currently needed, unless the court orders otherwise;

(q) file any necessary documents for record in the office of any county clerk and recorder in this state or elsewhere where property of the insurer is located;

(r) assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed ~~shall may~~ not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to ~~such the~~ obligation and may defend only in the absence of a defense by ~~such the~~ guaranty associations.

(s) exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with 33-2-1351 through 33-2-1357;

(t) intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee and act as the receiver or trustee whenever the appointment is offered;

(u) enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states;

(v) exercise all powers now held or ~~hereafter~~ conferred upon receivers by the laws of this state not inconsistent with the provisions of this part.

(2) The enumeration in this section of the powers and authority of the liquidator ~~shall may~~ not be construed as a limitation upon ~~him the liquidator, nor shall it~~ or exclude in any manner ~~his the~~ right to do ~~such~~ other acts not ~~herein~~ specifically enumerated or otherwise provided for ~~as that~~ may be necessary for the accomplishment of or in aid of the purpose of liquidation."

Section 1106. Section 33-2-1347, MCA, is amended to read:

"33-2-1347. Duty of insurance producers to give notice. (1) Every person who receives notice in the form prescribed in 33-2-1346 that an insurer ~~which he~~ that the person represents as an insurance producer is the subject of a liquidation order shall within 15 days of ~~such~~ the notice give notice of the liquidation order. The notice ~~shall~~ must be sent by first-class mail to the last address contained in the insurance producer's records to each policyholder or other person named in any policy issued through the insurance producer by the insurer if ~~he~~ the producer has a record of the address of the policyholder or other person. A policy ~~shall~~ must be considered issued through an insurance producer if the insurance producer has a property interest in the expiration of the policy or if the insurance producer has had in ~~his~~ the producer's possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another. The written notice ~~shall~~ must include the name and address of the insurer, the name and address of the insurance producer, identification of the policy impaired, and the nature of the impairment, including termination of coverage as described in 33-2-1343. Notice by a general insurance producer satisfies the notice requirement for any insurance producers under contract to ~~him~~ the producer. Each insurance producer obligated to give notice under this section shall file a report of compliance with the liquidator.

(2) Any insurance producer failing to give notice or file a report of compliance as required in subsection (1) may be subject to payment of a penalty of not more than \$1,000 and may have ~~his~~ the producer's license suspended; after a hearing held by the commissioner.

(3) The liquidator may waive the duties imposed by this section if ~~he~~ the liquidator determines that other notice to the policyholders of the insurer under liquidation is adequate."

Section 1107. Section 33-2-1348, MCA, is amended to read:

"33-2-1348. Effect of proceedings on pending and potential litigation -- actions by liquidator. (1) Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, ~~no~~ an action at law or equity may not be brought against the insurer or liquidator, whether in this state or elsewhere; ~~nor shall any such~~ Any existing actions may not be maintained or further presented after issuance of ~~such~~ the order. The courts of this state shall give full faith and credit to injunctions against the liquidator or the company or the continuation of existing actions against the liquidator or the company when ~~such~~ the injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states. Whenever in the liquidator's judgment protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, ~~he~~ the liquidator may intervene in the action. The liquidator

may defend any action in which ~~he~~ the liquidator intervenes under this section at the expense of the estate of the insurer.

(2) The liquidator may, upon or after an order for liquidation, within 2 years or ~~such a~~ such a time in addition to 2 years ~~as that~~ applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which ~~such the~~ the order is entered. When, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim or for filing any claim, proof of claim, proof of loss, demand, notice, or the like or when in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading, or doing any act and when in any ~~such~~ case the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any ~~such~~ action or do any ~~such~~ act required of or permitted to the insurer within a period of 180 days subsequent to the entry of an order for liquidation or within ~~such a~~ such a further period ~~as that~~ is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

(3) ~~No~~ A statute of limitations or defense of laches ~~shall~~ may not run with respect to any action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the petition is denied."

Section 1108. Section 33-2-1352, MCA, is amended to read:

"33-2-1352. Fraudulent transfer after petition. (1) After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid ~~therefor~~, for which amount the transferee ~~shall~~ must have a lien on the property ~~so~~ transferred. The commencement of a proceeding in rehabilitation or liquidation is constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the county clerk and recorder in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state ~~shall~~ may not be impaired by the pendency of ~~such a~~ rehabilitation or liquidation proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

(2) After a petition for rehabilitation or liquidation has been filed and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:

(a) a transfer of any of the property of the insurer, other than real property, made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee ~~shall~~ must have a lien on the property ~~so~~ transferred;

(b) a person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property or any part ~~thereof of the property~~ to the insurer or upon ~~his~~ the person's order, with the same effect as if the petition were not pending;

(c) a person having actual knowledge of the pending rehabilitation or liquidation is considered not acting in good faith;

(d) a person asserting the validity of a transfer under this section has the burden of proof. Except as ~~elsewhere~~ otherwise provided in this section, ~~no~~ a transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator ~~shall be~~ is not valid against the liquidator.

(3) ~~Nothing in this~~ This part impairs does not impair the negotiability of currency or negotiable instruments."

Section 1109. Section 33-2-1353, MCA, is amended to read:

"33-2-1353. Voidable preferences and liens. (1) (a) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within 1 year before the filing of a successful petition for liquidation under this part, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then ~~such~~ the transfers ~~shall~~ must be considered preferences if made or ~~suffered~~ allowed within 1 year before the filing of the successful petition for rehabilitation or within 2 years before the filing of the successful petition for liquidation, whichever time is shorter.

(b) Any preference may be avoided by the liquidator if:

(i) the insurer was insolvent at the time of the transfer;

(ii) the transfer was made within 4 months before the filing of the petition;

(iii) the creditor receiving it or to be benefited ~~thereby by it or his~~ the creditor's agent acting with reference ~~thereto~~ to the transfer had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(iv) the creditor receiving it was an officer or any employee or attorney or other person who was in fact

in a position of comparable influence in the insurer to an officer, whether or not ~~he~~ the creditor held ~~such the~~ position, or any shareholder holding directly or indirectly more than 5% of any class of any equity security issued by the insurer or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

(c) When the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property, except ~~where~~ when a bona fide purchaser or lienor has given less than fair equivalent value, ~~he shall have~~ the purchaser or lienor has a lien upon the property to the extent of the consideration actually given by ~~him~~ the purchaser or lienor. When a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title passes to the liquidator.

(2) (a) A transfer of property other than real property is considered to be made or ~~suffered~~ allowed when it becomes so far perfected that ~~no a~~ subsequent lien is not obtainable by legal or equitable proceedings on a simple contract that could become superior to the rights of the transferee.

(b) A transfer of real property is considered to be made or ~~suffered~~ allowed when it becomes so far perfected that ~~no a~~ subsequent bona fide purchaser from the insurer could not obtain rights superior to the rights of the transferee.

(c) A transfer ~~which~~ that creates an equitable lien is not considered to be perfected if there are available means by which a legal lien could be created.

(d) A transfer not perfected prior to the filing of a petition for liquidation is considered to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

(3) (a) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of ~~such the~~ proceedings upon the entry or docketing of a judgment or decree or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens ~~which~~ that under applicable law are given a special priority over other liens ~~which~~ that are prior in time.

(b) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee or a purchaser could obtain rights superior to the rights of a transferee, within the meaning of subsection (2), if ~~such the~~ consequences would follow only from the lien or purchase itself or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial

action by public officials. ~~Such~~ However, a lien could not, ~~however~~, become superior and ~~such~~ a purchase could not create superior rights for the purpose of subsection (2) through any acts subsequent to the obtaining of ~~such~~ a lien or subsequent to ~~such~~ a purchase ~~which that~~ require the agreement or concurrence of any third party or ~~which that~~ require any further judicial action or ruling.

(4) A transfer of property for or on account of a new and contemporaneous consideration ~~which that~~ is considered under subsection (2) to be made or suffered after the transfer because of delay in perfecting it does not ~~thereby~~ become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within 21 days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if ~~such~~ a loan is actually made, or a transfer ~~which that~~ becomes security for a future loan ~~shall~~ must have the same effect as a transfer for or on account of a new and contemporaneous consideration.

(5) If any lien considered voidable under subsection (1)(b) has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under this part ~~which that~~ results in a liquidation order, the indemnifying transfer or lien ~~shall~~ must also be considered voidable.

(6) The property affected by any lien considered voidable under subsections (1) and (5) ~~shall~~ must be discharged from ~~such the~~ lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety ~~shall~~ must pass to the liquidator, except that the court may on due notice order any ~~such~~ lien to be preserved for the benefit of the estate and the court may direct that ~~such the~~ conveyance be executed as may be proper or adequate to evidence the title of the liquidator."

Section 1110. Section 33-2-1355, MCA, is amended to read:

"33-2-1355. Set off for further credit given in good faith. If a creditor has been preferred and afterward in good faith gives the insurer further credit without security of any kind for property ~~which that~~ becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference ~~which that~~ would otherwise be recoverable from ~~him~~ the insurer."

Section 1111. Section 33-2-1357, MCA, is amended to read:

"33-2-1357. Personal liability. (1) Every officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when ~~he~~ the individual has reasonable cause to believe the insurer is or is about to become insolvent at the time

of the preference is personally liable to the liquidator for the amount of the preference. It is permissible to infer that there is reasonable cause to so believe if the transfer was made within 4 months before the date of filing of ~~this a~~ successful petition for liquidation.

(2) Every person receiving any property from the insurer or the benefit ~~thereof~~ of the property as a preference voidable under 33-2-1353(1) is personally liable ~~therefor~~ and is bound to account to the liquidator.

(3) ~~Nothing in this section prejudices~~ This section does not prejudice any other claim by the liquidator against any person."

Section 1112. Section 33-2-1358, MCA, is amended to read:

"33-2-1358. Claims of holders of void or voidable rights. (1) ~~Ne~~ The claims of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance voidable under this part ~~shall~~ may not be allowed unless ~~he~~ the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim may not be allowed unless the money is paid or the property is delivered to the liquidator within 30 days from the date of the entering of the final judgment, except that the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

(2) A claim allowable under subsection (1) by reason of the avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under 33-2-1364 if filed within 30 days from the date of the avoidance or within the further time allowed by the court under subsection (1)."

Section 1113. Section 33-2-1360, MCA, is amended to read:

"33-2-1360. Assessments against members of insurer. (1) As soon as practicable but not more than 2 years from the date of an order of liquidation under 33-2-1342 of an insurer issuing assessable policies, the liquidator shall make a report to the court setting forth:

- (a) the reasonable value of the assets of the insurer;
- (b) the insurer's probable total liabilities;
- (c) the probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment; and
- (d) a recommendation as to whether or not an assessment should be made and in what amount.

(2) (a) Upon the basis of the report provided for in subsection (1), including any supplements and

amendments thereto, the district court may levy one or more assessments against all members of the insurer who are subject to assessment.

(b) Subject to any applicable legal limits on assessability, the aggregate assessment ~~shall~~ must be for the amount that the sum of the probable liabilities, the expenses of administration, and the estimated cost of collection of the assessment exceeds the value of existing assets, with due regard being given to assessments that cannot be collected economically.

(3) After levy of assessment under subsection (2), the liquidator shall issue an order directing each member who has not paid the assessment pursuant to the order to show cause why the liquidator should not pursue a judgment ~~therefor~~ for the assessment.

(4) The liquidator shall give notice of the order to show cause by publication and by first-class mail to each member liable ~~thereunder~~ for the assessment mailed to his ~~the member's~~ the member's last-known address as it appears on the insurer's records at least 20 days before the return day of the order to show cause.

(5) (a) If a member does not appear and serve duly verified objections upon the liquidator on or before the return day of the order to show cause under subsection (3), the court shall make an order adjudging the member liable for the amount of the assessment against him ~~the member~~, pursuant to subsection (3), together with costs, and the liquidator ~~shall have~~ has a judgment against the member ~~therefor~~ for that amount.

(b) If on or before ~~such the~~ the return day the member appears and serves duly verified objections upon the liquidator, the commissioner may hear and determine the matter or may appoint a referee to hear it and make ~~such an~~ an order ~~as that~~ as the facts warrant. If the commissioner determines that ~~such the~~ the objections do not warrant relief from assessment, the member may request the court to review the matter and vacate the order to show cause.

(6) The liquidator may enforce any order or collect any judgment under subsection (5) by any lawful means."

Section 1114. Section 33-2-1362, MCA, is amended to read:

"33-2-1362. Recovery of premiums owed. (1) (a) An insurance producer or any other person responsible for the payment of a premium, other than the insured, ~~shall be~~ is obligated to pay any unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator may recover from ~~such the~~ the person any part of an unearned premium that represents a commission of ~~such the~~ the person. Credits or setoffs or both may not be allowed to an insurance producer for any amounts advanced to the insurer by the insurance producer on behalf of but in the

absence of a payment by the insured.

(b) An insured shall pay any unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer.

(2) Upon satisfactory evidence of a violation of this section, the commissioner may pursue either one or both of the following courses of action:

(a) suspend, ~~or~~ revoke, or refuse to renew the licenses of any offending party;

(b) impose a penalty of not more than \$1,000 for each act in violation of this section by ~~such the~~ party.

(3) Before the commissioner may take any action as set forth in subsection (2), ~~he the commissioner~~ shall give written notice to the person, company, association, or exchange accused of violating the law, stating specifically the nature of the alleged violation and fixing a time and place, at least 10 days ~~thereafter~~ after the notice, when a hearing on the matter ~~shall will~~ be held. After ~~such the~~ hearing or upon failure of the accused to appear at ~~such the~~ hearing, the commissioner, if ~~he finds~~ a violation is found, shall impose ~~such~~ penalties under subsection (2) ~~as he that the commissioner~~ considers advisable.

(4) When the commissioner takes action in any of the ways set out in subsection (2), the party aggrieved may appeal from the action to the district court."

Section 1115. Section 33-2-1364, MCA, is amended to read:

"33-2-1364. Filing of claims. (1) Proof of all claims ~~shall must~~ be filed with the liquidator in the form required by 33-2-1365 on or before the last day for filing specified in the notice required under 33-2-1346, except that proof of claims for cash surrender values or other investment values in life insurance and annuities ~~need are~~ not required to be filed unless the liquidator requires.

(2) The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if ~~he the claimant~~ were not late, to the extent that any ~~such~~ payment will not prejudice the orderly administration of the liquidation, under the following circumstances:

(a) the existence of the claim was not known to the claimant, and ~~his the~~ claim was filed as promptly after learning of it as reasonably possible;

(b) a transfer to a creditor was avoided under 33-2-1351 through 33-2-1357 or was voluntarily surrendered under 33-2-1358, and the filing satisfies the conditions of 33-2-1358; and

(c) the valuation under 33-2-1370 of security held by a secured creditor shows a deficiency, which is filed within 30 days after the valuation.

(3) The liquidator shall permit late filing claims to share in distributions, whether past or future, as if they

were not late if ~~such~~ the claims are claims of a guaranty association or foreign guaranty association for reimbursement of covered claims paid or expenses incurred, or both, subsequent to the last day for filing where ~~such~~ the payments were made and expenses incurred as provided by law.

(4) The liquidator may consider any claim filed late ~~which~~ that is not covered by subsection (2) and permit it to receive distributions ~~which~~ that are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive, at each distribution, the same percentage of the amount allowed on ~~his~~ that claim ~~as~~ that is ~~then~~ being paid to claimants of any lower priority. This ~~shall~~ distribution must continue until ~~his~~ the claim has been paid in full."

Section 1116. Section 33-2-1365, MCA, is amended to read:

"33-2-1365. Proof of claim. (1) Proof of claim ~~shall consist~~ consists of a statement signed by the claimant that includes all of the following that are applicable:

- (a) the particulars of the claim, including the consideration given for it;
- (b) the identity and amount of the security on the claim;
- (c) the payments made on the debt, if any;
- (d) that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim;
- (e) any right of priority of payment or other specific right asserted by the claimants;
- (f) a copy of the written instrument ~~which~~ that is the foundation of the claim;
- (g) the name and address of the claimant and the attorney who represents ~~him~~ the claimant, if any.

(2) ~~No~~ A claim ~~need~~ is not required to be considered or allowed if it does not contain all the information in subsection (1) ~~which~~ that may be applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

(3) At any time, the liquidator may request the claimant to present information or evidence supplementary to that required under subsection (1) and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

(4) ~~No~~ A judgment or order against an insured or the insurer entered after the date of filing of a successful petition for liquidation and ~~no~~ a judgment or order against an insured or the insurer entered at any time by default or by collusion ~~need~~ are not required to be considered as evidence of liability or of quantum of damages. ~~No~~ A judgment or order against an insured or the insurer entered within 4 months before the filing of the petition ~~need~~ is not required to be considered as evidence of liability or of the quantum of damages.

(5) All claims of a guaranty association or foreign guaranty association ~~shall~~ must be in ~~such~~ the form

and contain ~~such~~ the substantiation ~~as~~ that may be agreed to by the association and the liquidator."

Section 1117. Section 33-2-1366, MCA, is amended to read:

"33-2-1366. Special claims. (1) The claim of a third party ~~which~~ that is contingent ~~only~~ on ~~his~~ the third party first obtaining a judgment against the insured ~~shall~~ must be considered and allowed as if there were no ~~such~~ contingency.

(2) A claim may be allowed, even if contingent, if it is filed in accordance with 33-2-1364. It may be allowed and may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

(3) Claims that are due except for the passage of time ~~shall~~ must be treated as absolute claims are treated, except that ~~such~~ the claims may be discounted at the legal rate of interest.

(4) Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of any order of rehabilitation or liquidation under 33-2-1332 or 33-2-1342."

Section 1118. Section 33-2-1367, MCA, is amended to read:

"33-2-1367. Claims of insureds or claimants against insureds. (1) Whenever any third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator.

(2) Whether or not the third party files a claim, the insured may file a claim on ~~his~~ the insured's own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within 60 days after mailing of the notice required by 33-2-1346, whichever is later, ~~he~~ the insured is an unexcused late filer.

(3) The liquidator shall make ~~his~~ recommendations to the court under 33-2-1371 for the allowance of an insured's claim under subsection (2); after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action, and the probable costs and expenses of defense. After allowance by the court, the liquidator shall withhold any dividends payable on the claim, pending the outcome of litigation and negotiation with the insured. Whenever it seems appropriate, ~~he~~ the liquidator shall reconsider the claim on the bases of additional information and amend ~~his~~ the recommendations to the court. The insured ~~shall~~ must be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. The court may amend its allowance as it ~~thinks~~ determines appropriate. As claims against the insured are settled or barred, the insured ~~shall~~ must be paid, from the amount

withheld, the same percentage dividend as was paid on other claims of ~~like~~ similar property, based on the lesser of the amount actually recovered from the insured by action or paid by agreement, plus the reasonable costs and expenses of defense, or the amount allowed on the claims by the court. After all claims are settled or barred, any sum remaining from the amount withheld ~~shall~~ must revert to the undistributed assets of the insurer. Delay in final payment under this subsection ~~shall~~ may not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

(4) If several claims founded upon one policy are filed, whether by third parties or as claims by the insured under this section and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed ~~shall~~ must be reduced in the same proportion so that the total equals the policy limit. Claims by the insured ~~shall~~ must be evaluated as provided in subsection (3). If any insured's claim is subsequently reduced under subsection (3), the amount ~~thus~~ freed ~~shall~~ must be apportioned ratably among the claims ~~which~~ that have been reduced under this subsection.

(5) ~~No~~ A claim may not be presented under this section if it is or may be covered by any guaranty association or foreign guaranty association."

Section 1119. Section 33-2-1368, MCA, is amended to read:

"33-2-1368. Disputed claims. (1) When a claim is denied in whole or in part by the liquidator, written notice of the determination ~~shall~~ must be given to the claimant or ~~his~~ the claimant's attorney by first-class mail at the address shown in the proof of claim. Within 60 days from the mailing of the notice, the claimant may file ~~his~~ objections with the liquidator. If ~~no such~~ a filing is not made, the claimant may not further object to the determination.

(2) Whenever objections are filed with the liquidator and the liquidator does not alter ~~his~~ the denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first-class mail to the claimant or ~~his~~ the claimant's attorney and to any other persons directly affected not less than 10 or more than 30 days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee who shall submit findings of fact along with ~~his~~ a recommendation."

Section 1120. Section 33-2-1369, MCA, is amended to read:

"33-2-1369. Claims of sureties. (1) Whenever a creditor whose claim against an insurer is secured, in whole or in part, by the undertaking of another person fails to prove and file that claim, the other person may do so in the creditor's name and ~~shall~~ must be subrogated to the rights of the creditor, whether the claim has been

filed by the creditor or by the other person in the creditor's name, to the extent that ~~he~~ the other person discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the other person ~~shall~~ is not be entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor ~~shall~~ must be held by ~~him~~ the creditor in trust for ~~such~~ the other person.

(2) The term "other person", as used in this section, is not intended to apply to a guaranty association or foreign guaranty association."

Section 1121. Section 33-2-1370, MCA, is amended to read:

"33-2-1370. Claims of secured creditors. (1) The value of any security held by a secured creditor ~~shall~~ must be determined in one of the following ways, as the court may direct:

(a) by converting the ~~same~~ security into money according to the terms of the agreement pursuant to which the security was delivered to ~~such~~ the creditors; or

(b) by agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

(2) The determination ~~shall~~ must be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount ~~so~~ determined ~~shall~~ must be credited upon the secured claim, and any deficiency ~~shall~~ must be treated as an unsecured claim. If the claimant surrenders ~~his~~ the claimant's security to the liquidator, the entire claim ~~shall~~ must be allowed as if unsecured."

Section 1122. Section 33-2-1372, MCA, is amended to read:

"33-2-1372. Liquidator's recommendations to the court concerning claims. (1) The liquidator shall review all claims duly filed in the liquidation and make ~~such~~ further investigation ~~as he~~ that the liquidator considers necessary. ~~He~~ The liquidator may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the court except ~~where~~ when the liquidator is required by law to accept claims as settled by any person or organization, including any guaranty association or foreign guaranty association. Unresolved disputes ~~shall~~ must be determined under 33-2-1368. As soon as practicable, ~~he~~ the liquidator shall present to the court a report of the claims against the insurer with ~~his~~ the liquidator's recommendations. The report ~~shall~~ must include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.

(2) The court may approve, disapprove, or modify the report on claims by the liquidator. Reports not modified by the court within a period of 60 days following submission by the liquidator ~~shall~~ must be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to 33-2-1368. ~~No~~ A claim under a policy of insurance ~~shall~~ may not be allowed for an amount in excess of the applicable policy limits."

Section 1123. Section 33-2-1374, MCA, is amended to read:

"33-2-1374. Unclaimed and withheld funds. (1) All unclaimed funds subject to distribution remaining in the liquidator's hands when ~~he~~ the liquidator is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member, or other person who is unknown or cannot be found, ~~shall~~ must be deposited with the state treasurer and ~~shall~~ must be paid without interest except in accordance with 33-2-1371 to the person entitled ~~thereto~~ to the funds or ~~his~~ the person's legal representative upon proof satisfactory to the state treasurer of ~~his~~ the person's right ~~thereto~~ to the funds. Any amount on deposit not claimed within 6 years from the discharge of the liquidator ~~shall~~ must be considered to have been abandoned and ~~shall~~ must be escheated without formal escheat proceedings and be deposited in the general fund.

(2) All funds withheld under 33-2-1366 and not distributed ~~shall~~ must upon discharge of the liquidator be deposited with the state treasurer and paid ~~by him~~ in accordance with 33-2-1371. Any sums remaining ~~which~~ that under 33-2-1371 would revert to the undistributed assets of the insurer ~~shall~~ must be transferred to the state treasurer and become the property of the state under subsection (1) unless the commissioner ~~in his discretion~~ petitions the court to reopen the liquidation under 33-2-1376."

Section 1124. Section 33-2-1377, MCA, is amended to read:

"33-2-1377. Disposition of records during and after liquidation. When it appears to the commissioner that the records of any insurer in the process of liquidation or completely liquidated are no longer useful, ~~he~~ the commissioner may recommend to the court and the court shall direct ~~what~~ which records should be retained for future reference and ~~what~~ which should be destroyed."

Section 1125. Section 33-2-1379, MCA, is amended to read:

"33-2-1379. Conservation of property of foreign or alien insurers. (1) If a domiciliary liquidator has not been appointed, the commissioner may apply to the district court by verified petition for an order directing ~~him~~ the commissioner to act as conservator to conserve the property of an alien insurer not domiciled in this state or

a foreign insurer on any one or more of the following grounds:

- (a) any of the grounds in 33-2-1331;
- (b) that any of its property has been sequestered by official action in its domiciliary state or in any other state;
- (c) that enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent;
- (d) that its certificate of authority to do business in this state has been revoked or that none was ever issued;
- (e) that there are residents of this state with outstanding claims or outstanding policies.

(2) When an order is sought under subsection (1), the court shall cause the insurer to be given ~~such~~ notice and a time to respond ~~thereto as that~~ that is reasonable under the circumstances.

(3) The court may issue the order in whatever terms it considers appropriate. The filing or recording of the order with the clerk of the district court or the clerk and recorder of the county in which the principal business of the company is located or the county in which its principal office or place of business is located ~~shall~~ must impart the same notice as a deed, bill of sale, or other evidence of title ~~duly~~ filed or recorded with that clerk and recorder would have imparted.

(4) The conservator may at any time petition for and the court may grant an order under 33-2-1380 to liquidate assets of a foreign or alien insurer under conservation or, if appropriate, for an order under 33-2-1382 to be appointed ancillary receiver.

(5) The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, it shall order the insurer to be restored to possession of its property and the control of its business. The court may also make ~~such~~ a finding and issue ~~such~~ an order at any time upon motion of any interested party, but if ~~such~~ the motion is denied, all costs ~~shall~~ must be assessed against ~~such~~ the party."

Section 1126. Section 33-2-1380, MCA, is amended to read:

"33-2-1380. Liquidation of assets of foreign or alien insurers. (1) If ~~no~~ a domiciliary receiver has not been appointed, the commissioner may apply to the district court by verified petition for an order directing ~~him~~ the commissioner to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state; on any of the following grounds:

- (a) any of the grounds in 33-2-1331 or 33-2-1341; or

(b) any of the grounds specified in ~~subsections (1)(b) through (1)(d)~~ of 33-2-1379(1)(b) through (1)(d).

(2) When an order is sought under subsection (1), the court shall cause the insurer to be given notice and time to respond ~~thereto as~~ that is reasonable under the circumstances.

(3) If it appears to the court that the best interests of creditors, policyholders, and the public require, the court may issue an order to liquidate in whatever terms it considers appropriate. The filing or recording of the order with the clerk of the district court or the clerk and recorder of the county in which the principal business of the company is located or the county in which its principal office or place of business is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that clerk and recorder would have imparted.

(4) If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall ~~thereafter~~ act as ancillary receiver under 33-2-1382. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under 33-2-1382.

(5) On the same grounds as specified in subsection (1), the commissioner may petition any appropriate federal district court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction or any lesser part ~~thereof~~ of the assets and business that the commissioner considers desirable for the protection of the policyholders and creditors in this state.

(6) The court may order the commissioner, when ~~he~~ the commissioner has liquidated the assets of a foreign or alien insurer under this section, to pay claims of residents of this state against the insurer under ~~such~~ rules ~~as~~ that relate to the liquidation of insurers under this part ~~as~~ and that are otherwise compatible with the provisions of this section."

Section 1127. Section 33-2-1381, MCA, is amended to read:

"33-2-1381. Domiciliary liquidators in other states. (1) The domiciliary liquidator of an insurer domiciled in a reciprocal state ~~shall is~~, except as to special deposits and security on secured claims under 33-2-1382(3), ~~be~~ vested by operation of law with the title to all of the assets, property, contracts, and rights of action, insurance producers' balances, and all of the books, accounts, and other records of the insurer located in this state. The date of vesting ~~shall~~ must be the date of the filing of the petition if that date is specified by the domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of vesting ~~shall be~~ is the date of entry of the order directing possession to be taken. The domiciliary liquidator has the immediate right to recover balances due from insurance producers and to obtain possession of the books, accounts, and other

records of the insurer located in this state. ~~He~~ The domiciliary liquidator also has the right to recover all other assets of the insurer located in this state, subject to 33-2-1382.

(2) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner of this state is vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books, accounts, and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domicile. The commissioner of this state may petition for a conservation or liquidation order under 33-2-1379 or 33-2-1380 or for an ancillary receivership under 33-2-1382 or, after approval by the district court, may transfer title to the domiciliary liquidator, ~~as~~ that the interests of justice and the equitable distribution of the assets require.

(3) Claimants residing in this state may file claims with the liquidator or ancillary receiver, if any, in this state or with the domiciliary liquidator; if the domiciliary law permits. The claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings."

Section 1128. Section 33-2-1382, MCA, is amended to read:

"33-2-1382. Ancillary formal proceedings. (1) If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the commissioner may file a petition with the district court requesting appointment as ancillary receiver in this state:

(a) if ~~he~~ the commissioner finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver;

(b) if the protection of creditors or policyholders in this state ~~so~~ requires.

(2) The court may issue an order appointing an ancillary receiver in whatever terms it considers appropriate. The filing or recording of the order with the county clerk and recorder imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded.

(3) When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in this state may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in this state. The ancillary receiver shall, as soon as practicable, liquidate from ~~their~~ respective securities those special deposit claims and secured claims ~~which~~ that are proved and allowed in the ancillary proceedings in this state and shall pay the necessary expenses of the proceedings. ~~He~~ The ancillary receiver shall promptly transfer all remaining assets, books, accounts, and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and ~~his~~ the ancillary receiver's deputies ~~shall~~ have the same powers and ~~be~~ are subject to the same duties with respect to the administration of assets as a liquidator of an insurer

domiciled in this state.

(4) When a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states ~~shall~~ have, as to assets and books, accounts, and other records in their respective states, corresponding rights, duties, and powers to those provided in subsection (3) for ancillary receivers appointed in this state."

Section 1129. Section 33-2-1383, MCA, is amended to read:

"33-2-1383. Ancillary summary proceedings. The commissioner ~~in his sole discretion~~ may institute proceedings under 33-2-1321 through 33-2-1323 at the request of the commissioner or other appropriate insurance official of the domiciliary state of any foreign or alien insurer having property located in this state."

Section 1130. Section 33-2-1385, MCA, is amended to read:

"33-2-1385. Claims of residents against insurers domiciled in reciprocal states. (1) In a liquidation proceeding in a reciprocal state against an insurer domiciled in that state, claimants against the insurer who reside within this state may file claims either with the ancillary receiver, if any, in this state or with the domiciliary liquidator. Claims must be filed on or before the last dates fixed for the filing of claims in the domiciliary liquidation proceeding.

(2) Claims belonging to claimants residing in this state may be proved either in the domiciliary state under the law of that state or in ancillary proceedings, if any, in this state. If a claimant elects to prove ~~his a~~ claim in this state, ~~he~~ the claimant shall file ~~his the~~ claim with the liquidator in the manner provided in 33-2-1364 and 33-2-1365. The ancillary receiver shall make ~~his a~~ recommendation to the court ~~as under~~ in the same manner provided in 33-2-1372. ~~He~~ The ancillary receiver shall also arrange a date for hearing, ~~if necessary,~~ under 33-2-1368 and shall give notice to the liquidator in the domiciliary state, either by certified mail or by personal service, at least 40 days prior to the date set for hearing. If the domiciliary liquidator, within 30 days after the giving of ~~such the~~ notice, gives notice in writing to the ancillary receiver and to the claimant, either by certified mail or by personal service, of ~~his~~ the ancillary receiver's intention to contest the claim, ~~he shall be~~ the ancillary receiver is entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim.

(3) The final allowance of the claim by the courts of this state ~~shall~~ must be accepted as conclusive as to amount and as to priority against special deposits or other security located in this state."

Section 1131. Section 33-2-1387, MCA, is amended to read:

"33-2-1387. Interstate priorities. (1) In a liquidation proceeding in this state involving one or more reciprocal states, the order of distribution of the domiciliary state ~~shall~~ must control as to all claims of residents of this and reciprocal states. All claims of residents of reciprocal states ~~shall~~ must be given equal priority of payment from general assets regardless of where ~~such~~ the assets are located.

(2) The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state is given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in any deposit so that the claims secured by it are not fully discharged from it, the claimants may share in the general assets, but the sharing ~~shall~~ must be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(3) The owner of a secured claim against an insurer for which a liquidator has been appointed in this or any other state may surrender ~~his~~ the security and file ~~his~~ the claim as a general creditor, or the claim may be discharged by resort to the security in accordance with 33-2-1370, in which case the deficiency, if any, ~~shall~~ must be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors."

Section 1132. Section 33-3-216, MCA, is amended to read:

"33-3-216. Converting mutual insurer to stock insurer. (1) A mutual insurer may become a stock insurer under ~~such~~ a plan and procedure as may be approved by the commissioner after a hearing ~~thereon~~.

(2) The commissioner ~~shall~~ may not approve any ~~such~~ plan or procedure unless:

(a) it is equitable to the insurer's members;

(b) it is subject to approval by vote of not less than three-fourths of the insurer's current members voting ~~thereon~~ on the plan or procedure in person, by proxy, or by mail at a meeting of members called for the purpose pursuant to ~~such~~ reasonable notice and procedure ~~as~~ that may be approved by the commissioner. If the insurer is a life insurer, the right to vote may be limited to members who hold policies other than term or group policies and whose policies have been in force for not less than 1 year.

(c) the equity of each policyholder in the insurer is determinable under a fair formula approved by the commissioner, which ~~such~~ equity ~~shall~~ must be based upon not less than the insurer's entire surplus, after deducting contributed or borrowed surplus funds, plus a reasonable present equity in its reserves and in all

nonadmitted assets;

(d) the policyholders entitled to participate in the purchase of stock or distribution of assets ~~shall~~ must include all current policyholders and all existing persons who had been policyholders of the insurer within 3 years prior to the date ~~such~~ the plan was submitted to the commissioner;

(e) the plan gives to each policyholder of the insurer, as specified in subsection (2)(d), a preemptive right to acquire ~~his~~ the policyholder's proportionate part of all of the proposed capital stock of the insurer, within a designated reasonable period, and to apply upon the purchase ~~thereof~~ of the stock the amount of ~~his~~ the policyholder's equity in the insurer as determined under subsection (2)(c);

(f) shares are ~~so~~ offered to policyholders at a price not greater than the price to be ~~thereafter~~ offered to others but at not more than double the par value of ~~such~~ the shares;

(g) the plan provides for payment to each policyholder not electing to apply ~~his~~ the policyholder's equity in the insurer for or upon the purchase price of stock to which preemptively entitled of cash in the amount of not less than 50% of the amount of ~~his~~ the equity not ~~so~~ used for the purchase of stock, and which cash payment together with stock ~~so~~ purchased, if any, ~~shall constitute~~ constitutes full payment and discharge of the policyholder's equity as an owner of ~~such~~ the mutual insurer; and

(h) the plan, when completed, would provide for the converted insurer paid-in capital stock in an amount not less than the minimum paid-in capital required of a domestic stock insurer transacting like kinds of insurance, together with surplus funds in amount not less than one-half of ~~such~~ the required capital."

Section 1133. Section 33-3-217, MCA, is amended to read:

"33-3-217. Mergers and consolidations of stock insurers. (1) A domestic stock insurer may merge or consolidate with one or more domestic or foreign stock corporations authorized to transact business in this state by complying with the applicable provisions of the statutes of this state governing the merger or consolidation of stock corporations formed for profit but subject to subsections (2) and (3) ~~below~~.

(2) ~~No such~~ A merger or consolidation may not be effectuated unless in advance ~~thereof~~ of the merger or consolidation the plan and agreement ~~therefor~~ for the merger or consolidation have been filed with the commissioner and approved in writing by ~~him~~ the commissioner after a hearing ~~thereon~~. The commissioner shall give ~~such~~ approval within a reasonable time after ~~such~~ the filing unless ~~he~~ the commissioner finds ~~such~~ that the plan or agreement:

(a) is contrary to law;

(b) is inequitable to the stockholders of any domestic insurer involved; or

(c) would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere.

(3) ~~No~~ A director, officer, insurance producer, or employee of any insurer that is party to such the merger or consolidation may not receive any fee, commission, compensation, or other valuable consideration ~~whatsoever~~ for in any manner aiding, promoting, or assisting ~~therein~~ in the merger or consolidation except as set forth in ~~such~~ the plan or agreement.

(4) If the commissioner does not approve any ~~such~~ plan or agreement, ~~he~~ the commissioner shall ~~so~~ notify the insurer in writing specifying ~~his~~ the reasons ~~therefor~~ for disapproval.

(5) If any domestic insurer involved in the proposed merger or consolidation is authorized to transact insurance ~~also~~ in other states, the commissioner may request the insurance commissioner, director of insurance, superintendent of insurance, or other similar public insurance supervisory official of the two other ~~such~~ states in which ~~such the~~ insurer has in force the larger amounts of insurance to participate in the hearing provided for under subsection (2) ~~above~~, with full right to examine all witnesses and evidence and to offer to the commissioner ~~such~~ pertinent information and suggestions ~~as that~~ they may ~~deem~~ consider proper.

(6) Any plan or proposal through which a stock insurer proposes to acquire a controlling stock interest in another stock insurer through an exchange of stock of the first insurer, issued by the insurer for the purpose, for ~~such the~~ controlling stock of the second insurer is ~~deemed~~ considered to be a plan or proposal of merger of the second insurer into the first insurer for the purposes of this section and is subject to the applicable provisions hereof of this section.

(7) Upon merger or consolidation of a domestic insurer with another insurer under this chapter, the corporate charter of ~~such the~~ merged or consolidated domestic insurer ~~shall thereby~~ must automatically be extinguished and nullified."

Section 1134. Section 33-3-218, MCA, is amended to read:

"33-3-218. Mergers and consolidations of mutual insurers. (1) A domestic mutual insurer ~~shall~~ may not merge or consolidate with a stock insurer.

(2) A domestic mutual insurer may merge or consolidate with another mutual insurer under the applicable procedures prescribed by the statutes of this state applying to corporations formed for profit, except as ~~hereinbelow~~ provided in this section.

(3) The plan and agreement for merger or consolidation ~~shall~~ must be submitted to and approved by at least two-thirds of the members of each mutual insurer involved by voting thereon on the issue at meetings called

for the purpose pursuant to ~~such~~ reasonable notice and procedure ~~as~~ that has been approved by the commissioner. If the insurer is a life insurer, the right to vote may be limited to members whose policies are other than term and group policies and have been in effect for more than 1 year.

(4) ~~No such~~ An merger or consolidation ~~shall~~ may not be effectuated unless in advance ~~thereof~~ of the merger or consolidation the plan and agreement ~~therefor~~ for the merger or consolidation have been filed with the commissioner and approved by ~~him in writing~~ the commissioner after a hearing ~~thereon~~. The commissioner shall give ~~such~~ approval within a reasonable time after ~~such~~ the filing unless ~~he~~ the commissioner finds ~~such~~ that the plan or agreement:

(a) is inequitable to the policyholders of any domestic insurer involved; or

(b) would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state and elsewhere.

(5) If the commissioner does not approve ~~such~~ the plan or agreement, ~~he~~ the commissioner shall ~~so~~ notify the insurers in writing specifying ~~his~~ the reasons ~~therefor~~ for disapproval.

(6) Section 33-3-217(5) ~~shall~~ also ~~apply as~~ applies to mergers and consolidations of ~~such~~ mutual insurers.

(7) Upon merger or consolidation of a domestic insurer with another insurer under this chapter, the corporate charter of ~~such~~ the merged or consolidated domestic insurer ~~shall thereby~~ must automatically be extinguished and nullified."

Section 1135. Section 33-3-301, MCA, is amended to read:

"33-3-301. Bylaws of mutual. (1) A domestic mutual insurer ~~shall~~ must have bylaws for the governing of its affairs. The initial board of directors of the insurer shall adopt original bylaws, subject to the approval of the insurer's members at the next ~~succeeding~~ meeting. The members ~~shall~~ have the power to make, modify, and revoke bylaws.

(2) The bylaws ~~shall~~ must provide:

(a) that each member is entitled to one vote upon each matter coming to a vote at meetings of members; or to more votes in accordance with a reasonable classification of members as set forth in the bylaws and based upon the amount of insurance in force, upon the number of policies held or ~~upon~~ the amount of the premiums paid by ~~such~~ the member, or upon other reasonable factors. A member ~~shall have~~ has the right to vote in person or by his written proxy. ~~No such~~ A proxy ~~shall~~ may not be ~~made~~ irrevocable or for longer than a reasonable period of time.

(b) for election of directors by the members and the number, qualifications, terms of office, and powers of directors;

(c) the time, notice, quorum, and conduct of annual and special meetings of members and voting ~~thereat~~ at the meetings. The bylaws may provide that the annual meeting ~~shall~~ must be held at a place, date, and time to be set forth in the policy and without giving other notice of ~~such~~ the meeting.

(d) the number, designation, election, terms, and powers and duties of the respective corporate officers;

(e) for deposit, custody, disbursement, and accounting as to corporate funds;

(f) for any other reasonable provisions customary, necessary, or convenient for the management or regulation of its corporate affairs.

(3) ~~No~~ A provision in the bylaws for determining a quorum of members at any meeting ~~thereof~~ of less than a majority of all the insurer's members ~~shall be~~ is not effective unless approved by the commissioner. This subsection ~~shall~~ may not affect any other provision of law requiring the vote of a larger percentage of members for a specified purpose.

(4) The insurer shall promptly file with the commissioner a copy, certified by the insurer's secretary, of its bylaws and of every modification ~~thereof~~ of or addition ~~thereto~~ to the bylaws. The commissioner shall disapprove any bylaw provision ~~deemed by him to be~~ that the commissioner considers unlawful, unreasonable, inadequate, unfair, or detrimental to the proper interests or protection of the insurer's members or any class ~~thereof~~ of members. The insurer ~~shall~~ may not, after receiving written notice of ~~such~~ the disapproval and during the existence ~~thereof~~ of the disapproval, effectuate any bylaw provision ~~so~~ disapproved."

Section 1136. Section 33-3-308, MCA, is amended to read:

"33-3-308. Prohibited pecuniary interest of officials. (1) Any officer or director or any member of any committee or an employee of a domestic insurer who is charged with the duty of investing or handling the insurer's funds ~~shall~~ may not:

(a) deposit or invest ~~such~~ the funds except in the insurer's corporate name;

(b) ~~shall not~~ borrow the funds of ~~such~~ the insurer;

(c) ~~shall not~~ be pecuniarily interested in any loan, pledge of deposit, security, investment, sale, purchase, exchange, reinsurance, or other similar transaction or property of ~~such~~ the insurer except as a stockholder or member;

(d) ~~shall not~~ take or receive to ~~his~~ the individual's own use any fee, brokerage, commission, gift, or other consideration for or on account of any ~~such~~ transaction made by or on behalf of ~~such~~ the insurer.

(2) ~~No~~ An insurer ~~shall~~ may not guarantee any financial obligation of any of its officers or directors.

(3) This section ~~shall~~ may not prohibit ~~such~~ a director or officer or member of a committee or employee from becoming a policyholder of the insurer and enjoying the usual rights ~~so~~ provided for its policyholders.

(4) The commissioner may, by regulations from time to time, define and permit additional exceptions to the prohibition contained in subsection (1) ~~of this section~~ solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the insurer or to a corporation or firm in which a director is interested for necessary services performed or sales or purchases made to or for the insurer in the ordinary course of the insurer's business and in the usual private professional or business capacity of ~~such the~~ director or ~~such the~~ corporation or firm."

Section 1137. Section 33-3-309, MCA, is amended to read:

"33-3-309. Management and exclusive agency contracts. (1) ~~No~~ A domestic insurer ~~shall~~ may not make any contract ~~whereby~~ under which any person is granted or is to enjoy in fact the management of the insurer to the substantial exclusion of its board of directors or to have the controlling or preemptive right to produce substantially all insurance business for the insurer unless the contract is filed with and approved by the commissioner. The contract ~~shall~~ must be ~~deemed~~ considered approved unless disapproved by the commissioner within 20 days after date of filing, subject to ~~such~~ a reasonable extension of time ~~as that~~ the commissioner may require by notice given within ~~such~~ 20 days. Any disapproval ~~shall~~ must be delivered to the insurer in writing, stating the grounds ~~therefor~~ for disapproval.

(2) The commissioner shall disapprove any ~~such~~ contract if ~~he~~ the commissioner finds that it:

- (a) subjects the insurer to excessive charges;
- (b) is to extend for an unreasonable length of time;
- (c) does not contain fair and adequate standards of performance; or
- (d) contains other inequitable provision or provisions ~~which~~ that impair the proper interests of stockholders or members of the insurer."

Section 1138. Section 33-3-411, MCA, is amended to read:

"33-3-411. Contingent liability of mutual members. (1) Each member of a domestic mutual insurer shall, except as otherwise ~~hereinafter~~ provided in this part with respect to nonassessable policies, have a contingent liability, pro rata and not one for another, for the discharge of its obligations; ~~which~~ The contingent liability ~~shall~~ must be expressed in the policy and must be in ~~such~~ a maximum amount ~~as is~~ specified in the

insurer's articles of incorporation.

(2) Termination of the policy of any ~~such~~ member ~~shall~~ may not relieve the member of contingent liability for ~~his~~ the member's proportion, if any, of the obligations of the insurer ~~which~~ that accrued while the policy was in force.

(3) Unrealized contingent liability of members does not constitute an asset of the insurer in any determination of its financial condition."

Section 1139. Section 33-3-412, MCA, is amended to read:

"33-3-412. Levy of contingent liability. (1) If at any time the assets of a domestic mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it by this code for authority to transact the kinds of insurance being transacted and the deficiency is not cured from other sources, its directors shall levy an assessment only upon its members who held policies providing for contingent liability at any time within the 12 months preceding the date notice of ~~such~~ the assessment was mailed to them, and ~~such~~ the members ~~shall be~~ are liable to the insurer for the amount ~~so~~ assessed.

(2) The assessment ~~shall~~ must be for ~~such~~ an amount ~~as~~ that is required to cure ~~such~~ the deficiency and to provide a reasonable amount of working funds ~~above such~~ in excess of the minimum amount of surplus, but ~~such~~ the working funds ~~so~~ provided ~~shall~~ may not exceed 5% of the insurer's liabilities as of the date ~~as of which~~ that the amount of ~~such~~ the deficiency was determined.

(3) In levying an assessment upon a policy providing for contingent liability, the assessment ~~shall~~ must be computed on the basis of the premiums earned on ~~such~~ the policy during the period to which the assessment relates.

(4) ~~No~~ A member ~~shall~~ may not have an offset against any assessment for which ~~he~~ the member is liable on account of any claim for unearned premium or loss payable.

(5) As to life insurance, any part of ~~such~~ an assessment upon a member ~~which~~ that remains unpaid following notice of assessment, demand for payment, and lapse of a reasonable waiting period as specified in ~~such~~ the notice may, if approved by the commissioner as being in the best interests of the insurer and its members, be secured by placing a lien upon the cash surrender values and accumulated dividends held by the insurer to the credit of ~~such~~ the member."

Section 1140. Section 33-3-433, MCA, is amended to read:

"33-3-433. Assessment of stockholders or members. (1) Any insurer receiving the commissioner's

notice mentioned in 33-3-432(1):

(a) if a stock insurer, by resolution of its board of directors and subject to any limitations upon assessment contained in its articles of incorporation, may assess its stockholders for amounts necessary to cure the deficiency and provide the insurer with a reasonable amount of surplus in addition. If ~~any a~~ a stockholder fails to pay a lawful assessment after notice given to ~~him~~ the stockholder in person or by advertisement in ~~such a~~ such a time and manner ~~as~~ approved by the commissioner, the insurer may require the return of the original certificate of stock held by the stockholder and in cancellation and in lieu ~~thereof of the original certificate~~ thereof issue a new certificate for ~~such the~~ such the number of shares ~~as that~~ as that the stockholder may then be entitled to, upon the basis of the stockholder's proportionate interest in the amount of the insurer's capital stock as determined by the commissioner to be remaining at the time of determination of the amount of impairment under 33-3-432, after deducting from ~~such the~~ such the proportionate interest the amount of ~~such the~~ such the unpaid assessment. The insurer may pay for or reissue fractional shares under this subsection.

(b) if a mutual insurer, shall levy such an assessment upon members as is provided for under 33-3-412.

(2) ~~Neither this section nor 33-3-432 nor this section shall may be deemed considered~~ to prohibit the insurer from curing any ~~such~~ deficiency through any lawful means other than those referred to in ~~such sections 33-3-432 or this section.~~"

Section 1141. Section 33-3-436, MCA, is amended to read:

"33-3-436. Mutual member's share of assets on liquidation. (1) Upon any liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness, policy obligations, repayment of contributed or borrowed surplus, if any, and expenses of administration ~~shall~~ must be distributed to existing persons who were its members at any time within 36 months ~~next~~ preceding the date ~~such that~~ that liquidation was authorized or ordered or the date of last termination of the insurer's certificate of authority, whichever date is the earlier.

(2) The distributive share of each ~~such~~ such member ~~shall~~ under subsection (1) must be in the proportion that the aggregate premiums earned by the insurer on the policies of the member during the combined periods of ~~his~~ his membership bear to the aggregate of all premiums ~~so~~ earned on the policies of all ~~such~~ such members. The insurer may, and if the insurer is a life insurer shall, make a reasonable classification of its policies ~~so~~ held by ~~such~~ such members; and a formula based upon ~~such the~~ such the classification; for determining the equitable distributive share of each ~~such~~ such member. ~~Such~~ The classification and formula ~~shall be~~ are subject to the approval of the commissioner."

Section 1142. Section 33-3-442, MCA, is amended to read:

"33-3-442. Inside trading of securities -- profit inures to company -- limitation of action to recover

-- rules. (1) For the purpose of preventing the unfair use of information ~~which that~~ may have been obtained by ~~such the~~ beneficial owner, director, or officer by reason of ~~his the individual's~~ relationship to ~~such the~~ company, any profit realized by ~~him the individual~~ from any purchase and sale, or any sale and purchase, of any equity security of ~~such the~~ company within any period of less than 6 months, unless ~~such the~~ security was acquired in good faith in connection with a debt previously contracted, ~~shall inure to~~ must benefit and be recoverable by the company, irrespective of any intention on the part of ~~such the~~ beneficial owner, director, or officer in entering into ~~such the~~ transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding 6 months.

(2) Suit to recover ~~such the~~ profit described in subsection (1) may be instituted at law or in equity in any court of competent jurisdiction by the company or by the owner of any security of the company in the name and in behalf of the company if the company ~~shall fail fails~~ or ~~refuse refuses~~ to bring ~~such~~ suit within 60 days after request or ~~shall fail diligently fails~~ to diligently prosecute the ~~same thereafter, suit.~~ However, the suit ~~shall may not~~ be brought more than 2 years after the date ~~such the~~ profit was realized.

(3) This section ~~shall may~~ not be construed to cover any transaction ~~where such in which the~~ beneficial owner was not ~~such the beneficial owner~~ both at the time of the purchase and sale, or the sale and purchase, of the security involved or any transaction or transactions ~~which that~~ the commissioner ~~by rules~~ may exempt by rule as not comprehended within the purpose of this section."

Section 1143. Section 33-3-443, MCA, is amended to read:

"33-3-443. Short sales of equity securities prohibited -- time for delivery after sale. (1) It ~~shall be~~

is unlawful for any ~~such~~ beneficial owner, director, or officer, directly or indirectly, to sell any equity security of ~~such the~~ company if the person selling the security or ~~his the person's~~ principal:

(a) does not own the security sold; or

(b) if ~~owning the person owns~~ the security, does not deliver it against ~~such the~~ sale within 20 days ~~thereafter~~ or does not within 5 days after ~~such the~~ sale deposit it in the ~~mails mail~~ or other usual channels of transportation.

(2) ~~No~~ A person ~~shall be deemed~~ may not be considered to have violated this section if ~~he the person~~ proves that notwithstanding the exercise of good faith ~~he the person~~ was unable to make ~~such the~~ delivery or deposit within ~~such that~~ time or that to do so would cause undue inconvenience or expense."

Section 1144. Section 33-3-444, MCA, is amended to read:

"33-3-444. Exemptions -- securities held in an investment account -- primary or secondary market -- rules. (1) The provisions of 33-3-442 ~~shall do~~ not apply to any purchase and sale, or sale and purchase, and the provisions of 33-3-443 ~~shall do~~ not apply to any sale of an equity security of a domestic stock insurance company not then or ~~therefore~~ later held by ~~him~~ a person in an investment account by a broker-dealer in the ordinary course of ~~his~~ business and incident to the establishment or maintenance by ~~him~~ the broker-dealer of a primary or secondary market, ~~(otherwise than except on an exchange as defined in the Securities Exchange Act of 1934),~~ for such the security.

(2) The commissioner may, by ~~such rules as he deems~~ that the commissioner considers necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market."

Section 1145. Section 33-3-447, MCA, is amended to read:

"33-3-447. Rules of commissioner -- classifications -- effect. (1) The commissioner may make ~~such~~ adopt rules ~~as that~~ as that may be necessary for the execution of the functions vested in ~~him~~ the commissioner by 33-3-441 through 33-3-446 and may ~~for such purpose~~ classify domestic stock insurance companies, securities, and other persons or matters within ~~his~~ the commissioner's jurisdiction.

(2) ~~No~~ A provision of 33-3-441 through 33-3-443 imposing any liability ~~shall does not~~ apply to any act done or omitted in good faith in conformity with any rule of the commissioner, notwithstanding that ~~such the~~ rule may, after ~~such the~~ act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason."

Section 1146. Section 33-3-502, MCA, is amended to read:

"33-3-502. Solicitations in other states. (1) ~~No~~ A domestic insurer ~~shall may not~~ knowingly solicit insurance business in any reciprocating state in which it is not then licensed as an authorized insurer.

(2) This section ~~shall does~~ not prohibit advertising through publication and radio, television, and other broadcasts originating outside ~~such the~~ reciprocating state; if the insurer is licensed in a majority of the states in which ~~such the~~ advertising is disseminated and if ~~such the~~ advertising is not specifically directed to residents of ~~such the~~ reciprocating state.

(3) This section ~~shall does~~ not prohibit insurance, covering persons or risks located in a reciprocating

state, under contracts solicited and issued in states in which the insurer is then licensed. ~~It shall~~ This section does not prohibit insurance effectuated by the insurer as an unauthorized insurer in accordance with the laws of the reciprocating state.

(4) A reciprocating state, as used ~~herein~~ in this section, is one under the laws of which a similar prohibition is imposed upon and enforced against insurers domiciled in that state.

(5) The commissioner shall suspend or revoke the certificate of authority of a domestic insurer found by ~~him~~ the commissioner, after a hearing, to have violated this section."

Section 1147. Section 33-3-602, MCA, is amended to read:

"33-3-602. Conversion to involuntary liquidation. An insurer may at any time during liquidation under 35-1-931 and 35-1-932 apply to the commissioner to have the liquidation continued under ~~his~~ the commissioner's supervision; ~~thereupon~~ Upon receipt of the application, the commissioner shall apply to the court for liquidation under 33-2-1341."

Section 1148. Section 33-3-604, MCA, is amended to read:

"33-3-604. Distribution of assets of a mutual insurer. The maximum amount that a mutual insurer may pay to a policyholder upon dissolution, in addition to the benefits promised in the insurance policy, is the total of the premium payments made by the policyholder with interest at the legal rate compounded annually. Any excess over ~~such~~ the amounts must be deposited with the state treasurer to the credit of the state general fund. A person may participate in the distribution of assets of a mutual insurer only if ~~he~~ the person has a policy in effect 180 days before the insurer files its plan for dissolution with the commissioner. The amount that a person eligible to participate in the distribution of assets of a mutual insurer may receive must be in the proportion that the premiums paid by the policyholder bear to the total premiums paid to the mutual insurer by all policyholders who had policies in effect 180 days before the insurer filed its plan for dissolution with the commissioner."

Section 1149. Section 33-4-302, MCA, is amended to read:

"33-4-302. Bylaws -- contents. (1) The bylaws of a farm mutual insurer ~~shall~~ must provide:

- (a) ~~as to~~ for the liability of each member for payment of the expenses and losses of the insurer and for what obligations ~~shall~~ must be given ~~therefor~~ for the expenses and losses when a person applies for insurance;
- (b) ~~as to~~ for the time when obligations of members for losses and expenses become due;
- (c) for the limitation of liability of members for the payment of expenses and losses of the insurer;

(d) ~~for~~ the terms of office of the directors. At least part of the directors ~~shall~~ must be elected at each annual meeting of members. The term of any director ~~shall~~ may not be longer than 3 years.

(e) the date of the annual meeting of the members, at which vacancies existing or occurring on the board of directors are to be filled by election by the members. Each member ~~shall~~ must be permitted to cast at least one vote, either in person or, if ~~so~~ authorized in the bylaws, by proxy, for each director to be elected and may cumulate ~~his~~ the member's votes for one or more directors, not exceeding the number to be elected.

(f) how directors are to be elected in case ~~no an~~ election ~~occurs~~ does not occur at the annual meeting or in event of resignation, disability, or death of a director;

(g) the manner and time of giving notice of annual and special meetings of members.

(2) The bylaws may provide:

(a) the character of property to be insured and under what restrictions and limitations;

(b) restrictions and limitations as to membership and the powers, duties, and obligations of the members other than as to obligations covered under subsection (1)(a) ~~above~~;

(c) the manner of making and collecting assessments;

(d) the manner of the suspension and expulsion of members;

(e) the form of application and the form of policy;

(f) the manner of making proof, adjustment, and payment of losses;

(g) ~~as to~~ for who is authorized to adjust losses for the insurer;

(h) for arbitration as provided in 33-4-411, in event the insurer's adjuster and any claimant cannot agree as to the amount of any insured damage or loss;

(i) the duties and compensation of the officers and the bonds to be required of them;

(j) the books and records to be kept by the insurer, reports required of the officers, and the manner of examining and auditing their accounts;

(k) what ~~shall~~ must be contained on the corporate seal and when the seal ~~shall be~~ is required to be used;

(l) ~~such~~ other matters as may be ~~deemed~~ considered necessary or convenient for the management of the affairs of the insurer."

Section 1150. Section 33-4-316, MCA, is amended to read:

"33-4-316. Records -- inspections. (1) A farm mutual insurer, through its president and secretary, shall keep or cause to be kept accurate records and accounts of its transactions. The books, files, and records of the insurer ~~shall~~ must be located at its principal place of business or, in the case of a county mutual insurer, at ~~such~~

a place within the county of its principal place of business as may be designated by the insurer's board of directors and shown in the minutes of the board.

(2) The books, files, and records of the insurer ~~shall~~ must be available for inspection by the insurer's directors and officers and by the commissioner or ~~his~~ the commissioner's duly constituted examiner at all reasonable times."

Section 1151. Section 33-4-402, MCA, is amended to read:

"33-4-402. Members' liability -- limitation. All liability of the members of a farm mutual insurer ~~shall~~ must be as limited in the insurer's bylaws. ~~As to~~ For insurers transacting business on the cash premium plan, the limitation ~~shall~~ must comply with 33-4-504(4). ~~No~~ A member ~~shall~~ may not be required to pay more than the full amount of ~~his~~ the member's obligation given to the insurer or of ~~his~~ the member's liability as provided for in the bylaws."

Section 1152. Section 33-4-411, MCA, is amended to read:

"33-4-411. Arbitration -- committee -- compensation. (1) If any insurer's adjuster and a claimant fail to agree as to the amount of the insured loss or damage sustained by the claimant and if ~~so~~ provided for in the insurer's bylaws, the matter ~~shall~~ must be submitted to three persons as a committee of reference; ~~one of whom shall~~ One member must be selected by the claimant, one by the insurer, and the third by ~~such~~ the other two persons members, all of whom ~~shall~~ must be sworn to a faithful and impartial investigation and award.

(2) The committee of reference ~~shall have~~ has authority to examine witnesses and determine all matters in dispute. The decision or award of the committee ~~shall~~ must be made in writing to the secretary of the insurer. If it relates to any claimed loss or damage to a crop, the decision or award ~~shall~~ may not be made until after maturity of ~~such~~ the crop. The decision or award of the committee ~~shall be~~ is final and binding upon all parties; unless an interested party appeals to the court within 30 days ~~thereafter~~ after the decision or award.

(3) The compensation of each member of any ~~such~~ committee ~~shall~~ must be at the rate of \$10 per day for each day of service in the discharge of ~~his~~ duties. ~~Such~~ The compensation ~~shall~~ must be paid by the claimant; unless the award of the committee exceeds the sum ~~theretofore~~ offered by the insurer in settlement of the claim, ~~and~~ in which case the compensation ~~shall~~ must be paid by the insurer."

Section 1153. Section 33-4-506, MCA, is amended to read:

"33-4-506. Members -- minimum membership. (1) ~~No~~ A person may ~~not~~ become a member of a farm

mutual insurer except by insuring ~~therein~~ property owned by ~~him~~ so the person insurable under this chapter.

(2) The membership of ~~such~~ an insurer ~~shall consist~~ consists of the persons lawfully insuring ~~therein in~~ the insurer.

(3) The total membership of the insurer ~~shall~~ must at all times be not less than the number of persons required by 33-4-201 to incorporate ~~such~~ an insurer."

Section 1154. Section 33-4-507, MCA, is amended to read:

"33-4-507. Withdrawal of member -- cancellation by insurer. (1) ~~Any~~ A member of an insurer may withdraw ~~therefrom~~ by surrendering his the member's policy to the insurer for cancellation and paying all obligations then ~~owing~~ owned by ~~him~~ the member to the insurer.

(2) The insurer ~~has power to~~ may cancel the policy of any member for any cause ~~deemed~~ considered adequate by the insurer and upon not less than 10 days' written notice in advance of cancellation delivered to the member or mailed to his the member's last address ~~last~~ of record on file with the insurer."

Section 1155. Section 33-4-508, MCA, is amended to read:

"33-4-508. Application for insurance. ~~All persons~~ A person desiring insurance shall make written application ~~therefor~~ to the insurer. If the insurer is transacting business on the assessment plan, the applicant shall at the time of application give his the applicant's obligation to the insurer for the payment of losses and expenses as provided in the insurer's bylaws and make ~~such~~ advance payment in cash as the insurer may require."

Section 1156. Section 33-4-509, MCA, is amended to read:

"33-4-509. Application and policy forms filed with commissioner. All forms of application for insurance and of policies proposed to be used by an insurer ~~shall~~ must be filed with the commissioner at least 30 days in advance of any ~~such~~ use. The commissioner shall disapprove any ~~such~~ form found by ~~him~~ the commissioner to be unlawful, illegible, or misleading. An insurer ~~shall~~ may not use any ~~such~~ form after it has received the commissioner's notice of disapproval setting forth the reasons ~~therefor~~ for disapproval."

Section 1157. Section 33-5-202, MCA, is amended to read:

"33-5-202. Merger or conversion. (1) A domestic reciprocal insurer, upon affirmative vote of not less than two-thirds of its subscribers who vote on ~~such~~ a merger pursuant to due notice and the approval of the

commissioner of the terms ~~therefor~~, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

(2) ~~Such a~~ A stock or mutual insurer ~~shall be~~ is subject to the same capital or surplus requirements and ~~shall have~~ has the same rights as a ~~like~~ similar domestic insurer transacting ~~like~~ the same kinds of insurance.

(3) The commissioner ~~shall~~ may not approve any plan for ~~such~~ merger or conversion ~~which~~ that is inequitable to subscribers or ~~which~~ that, if for conversion to a stock insurer, does not give each subscriber a preferential right to acquire stock of the proposed insurer proportionate to ~~his~~ the subscriber's interest in the reciprocal insurer as determined in accordance with 33-5-411 and a reasonable length of time within which to exercise ~~such~~ the right."

Section 1158. Section 33-5-303, MCA, is amended to read:

"33-5-303. Attorney's bond. (1) Concurrently with the filing of the declaration provided for in 33-5-201, the attorney of a domestic reciprocal insurer shall file with the commissioner a bond in favor of this state for the benefit of all persons damaged as a result of breach by the attorney of the conditions of ~~his~~ the attorney's bond as set forth in subsection (2) ~~hereof~~. The bond ~~shall~~ must be executed by the attorney and by an authorized corporate surety and ~~shall~~ must be subject to the commissioner's approval.

(2) The bond ~~shall~~ must be in the penal sum of \$25,000, aggregate in form, conditioned that the attorney will faithfully account for all ~~moneys~~ money and other property of the insurer coming into ~~his hands~~ the attorney's possession and that ~~he~~ the attorney will not withdraw or appropriate to ~~his~~ the attorney's own use from the funds of the insurer any ~~moneys~~ money or property to which ~~he~~ the attorney is not entitled under the power of attorney.

(3) The bond ~~shall~~ must provide that it is not subject to cancellation unless 30 days' advance notice in writing of cancellation is given to both the attorney and the commissioner."

Section 1159. Section 33-5-403, MCA, is amended to read:

"33-5-403. Financial condition -- method of determining. In determining the financial condition of a reciprocal insurer the commissioner shall apply the following rules:

(1) ~~He~~ The commissioner shall charge as liabilities the same reserves ~~as~~ that are required of incorporated insurers issuing nonassessable policies on a reserve basis.

(2) The surplus deposits of subscribers ~~shall~~ must be allowed as assets, except that any premium deposits delinquent for 90 days ~~shall~~ must first be charged against ~~such~~ the surplus deposit.

(3) The surplus deposits of subscribers ~~shall~~ may not be charged as a liability.

- (4) All premium deposits that are delinquent for less than 90 days ~~shall~~ must be allowed as assets.
- (5) An assessment levied upon subscribers and not collected ~~shall~~ may not be allowed as an asset.
- (6) The contingent liability of subscribers ~~shall~~ may not be allowed as an asset.
- (7) The computation of reserves ~~shall~~ must be based upon premium deposits other than membership fees and without any deduction for expenses and the compensation of the attorney."

Section 1160. Section 33-5-404, MCA, is amended to read:

"33-5-404. Subscribers' liability. (1) The liability of each subscriber, other than as to a nonassessable policy, for the obligations of the reciprocal insurer ~~shall~~ must be an individual, several, and proportionate liability, and not joint liability.

(2) Except as to a nonassessable policy, each subscriber ~~shall~~ must have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual losses and expenses incurred while ~~his~~ the subscriber's policy was in force. ~~Such~~ The contingent liability may be at the rate of not less than 1 or more than 10 times the premium or premium deposit stated in the policy, and the maximum aggregate ~~thereof~~ contingent liability must be computed in the manner set forth in 33-5-406.

(3) Each assessable policy issued by the insurer ~~shall~~ must contain a statement of the contingent liability."

Section 1161. Section 33-5-405, MCA, is amended to read:

"33-5-405. Subscribers' liability on judgment. (1) ~~No~~ An action ~~shall~~ may not lie against any subscriber upon any obligation claimed against the insurer until a final judgment has been obtained against the insurer and remains unsatisfied for 30 days.

(2) Any ~~such~~ judgment ~~shall be~~ described in subsection (1) is binding upon each subscriber only in ~~such~~ the proportion ~~as his~~ that the subscriber's interests may appear and in an amount not exceeding ~~his~~ the subscriber's contingent liability, if any."

Section 1162. Section 33-5-406, MCA, is amended to read:

"33-5-406. Assessments. (1) Assessments may from time to time be levied upon subscribers of a domestic reciprocal insurer liable ~~therefor~~ for the assessment under the terms of their policies by the attorney upon approval in advance by the subscribers' advisory committee and the commissioner or by the commissioner in liquidation of the insurer.

(2) Each subscriber's share of a deficiency for which an assessment is made, but not exceeding in any event ~~his~~ the subscriber's aggregate contingent liability as stated in accordance with 33-5-404, ~~shall must~~ be computed by applying to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment the ratio of the total deficiency to the total premiums earned during ~~such~~ the period upon all policies subject to the assessment.

(3) In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy ~~shall must~~ be used as a base, deducting ~~therefrom solely~~ only charges not recurring upon the renewal or extension of the policy.

(4) ~~No~~ A subscriber ~~shall may not~~ have an offset against any assessment for which ~~he~~ the subscriber is liable on account of any claim for unearned premium or losses payable."

Section 1163. Section 33-5-407, MCA, is amended to read:

"33-5-407. Time limit for assessments. Every subscriber of a domestic reciprocal insurer having contingent liability ~~shall must~~ be liable for and shall pay ~~his~~ the subscriber's share of any assessment, as computed and limited in accordance with this chapter, if:

(1) while ~~his~~ the subscriber's policy is in force or within 1 year after its termination, ~~he~~ the subscriber is notified by either the attorney or the commissioner of ~~his intentions~~ the intention to levy ~~such an~~ an assessment; or

(2) an order to show cause why a receiver, conservator, rehabilitator, or liquidator of the insurer should not be appointed is issued while ~~his~~ the subscriber's policy is in force or within 1 year after its termination."

Section 1164. Section 33-5-409, MCA, is amended to read:

"33-5-409. Nonassessable policies. (1) If a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum capital stock required of a domestic stock insurer authorized to transact ~~like~~ similar kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee, the commissioner shall issue ~~his~~ a certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for ~~so~~ as long as all ~~such~~ the surplus remains unimpaired.

(2) Upon impairment of ~~such~~ the surplus, the commissioner shall ~~forthwith~~ revoke the certificate. ~~Such~~ The revocation ~~shall may not~~ render make a policy subject to contingent liability ~~any~~ if the policy is then in force and for the remainder of the period for which the premium has ~~therefore~~ been paid; ~~but~~ However, after ~~such~~ the revocation, ~~no~~ a policy ~~shall may not~~ be issued or renewed without providing for contingent assessment

liability of the subscriber.

(3) The commissioner ~~shall~~ may not authorize a domestic reciprocal insurer ~~to~~ to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued unless it qualifies to and does extinguish ~~such the~~ the liability of all its subscribers and in all ~~such~~ policies for all kinds of insurance transacted by it; ~~except that~~ However, if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of ~~such those~~ those of its subscribers ~~as that~~ that may acquire ~~such the~~ the policies in ~~such that~~ that state and need not extinguish the contingent liability applicable to policies ~~theretofore~~ previously in force in ~~such that~~ that state."

Section 1165. Section 33-5-412, MCA, is amended to read:

"33-5-412. Impaired reciprocals. (1) If the assets of a reciprocal insurer are at any time insufficient to discharge its liabilities, other than any liability on account of funds contributed by the attorney or others, and to maintain the required surplus, its attorney shall ~~forthwith~~ make up the deficiency or levy an assessment upon the subscribers for the amount needed to make up the deficiency, but subject to the limitation set forth in the power of attorney or policy.

(2) If the attorney fails to make up ~~such the~~ the deficiency or to make the assessment within 30 days after the commissioner orders ~~him~~ the attorney to do so; or if the deficiency is not fully made up within 60 days after the date the assessment was made, the insurer ~~shall be deemed~~ is considered insolvent and ~~shall~~ must be proceeded against as authorized by this code.

(3) If liquidation of ~~such~~ an insurer is ordered, an assessment ~~shall~~ must be levied upon the subscriber for ~~such~~ an amount, subject to limits as provided by this chapter, ~~as that~~ that the commissioner determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney or other persons but including the reasonable cost of the liquidation."

Section 1166. Section 33-6-102, MCA, is amended to read:

"33-6-102. Definitions. (1) (a) ~~Any~~ An entity is considered a "benevolent association" for the purposes of this chapter if the entity:

(i) is a corporation, association, or society, or by whatever name called, ~~which that~~ which issues any certificate, policy, or membership agreement; or makes any promise or agreement with its members ~~whereby~~ under which, upon ~~decease~~ the death of a member, any money or other benefit, charity, aid, or relief is to be paid, provided, or rendered by ~~such the~~ the corporation, association, or society to ~~his~~ the deceased's legal representatives or to the

beneficiary designated by ~~him~~ the deceased, ~~which~~ and the money, benefit, charity, aid, or relief is derived from voluntary donations or from admission fees, dues, or assessments or any of ~~them~~ those items collected or to be collected from the members ~~thereof~~ of the entity or members of a class ~~therein~~ of the entity or interest or ~~accretions thereon~~ gains on the items or accumulations ~~thereof~~ of the items; and

(ii) ~~wherein~~ uses the money or other benefit, charity, aid, or relief ~~so realized is applied to or accumulated~~ for the uses and purposes ~~herein~~ specified in this chapter, ~~and/or~~ the uses of ~~such~~ the corporation, association, or society, ~~and/or~~ or the expenses of management and prosecution of its business, ~~shall be deemed to be a~~ "benevolent association" for the purposes of this chapter.

(b) The definition of benevolent association in subsection (1)(a) ~~above~~ is not applicable to:

(i) burial or death benefits, annuities, endowments, or any other benefit payments of any legal reserve life or disability insurer or of any labor union, railroad brotherhood, or lodge having as a primary business the improvement of working conditions;

(ii) any auxiliaries to any labor union, railroad brotherhood, or lodge referred to in subsection (1)(b)(i); or

(iii) the benevolent plans within fraternal orders if limited to members and if the plan is not the principal object for the formation or continuance of the fraternal order.

(2) ~~A "member"~~ "Member" or "member in good standing" is an individual who must contribute to a benevolent association upon notice of assessment.

(3) (a) "Membership contract" is any certificate, policy, membership agreement, by whatever name called, or any promise or agreement of a benevolent association with any or all of its members, ~~whereby~~ under which any money or other benefit, charity, aid, or relief is to be paid, provided, or rendered by ~~such~~ the association upon the ~~decease~~ death of a member to ~~his~~ the member's legal representatives or to the beneficiary or beneficiaries designated by ~~him~~ the member.

(b) There ~~shall~~ must be one contributing member for each membership contract, but a membership contract may cover more than one individual.

(4) "Officer" is any of the individuals having supervision and control of a benevolent association and engaging in the management and the prosecution of the business ~~thereof~~ of the association, whether designated as officers, trustees, comptrollers, managers, or by whatever name called."

Section 1167. Section 33-6-401, MCA, is amended to read:

"33-6-401. Continuous certificate of authority -- fee -- evidence. (1) A benevolent association may not insure a risk in this state unless it ~~then~~ holds a subsisting certificate of authority issued to it by the

commissioner.

(2) A benevolent association's certificate of authority continues in force as long as the benevolent association is entitled to it under this chapter and until suspended, revoked, or otherwise terminated; ~~subject,~~ ~~however~~ However, the certificate is subject to continuance of the certificate by the benevolent association each year by payment before May 15 of the continuation fee of \$25, to be deposited by the commissioner with the state treasurer to the credit of the state general fund.

(3) If a benevolent association does not continue its certificate of authority in accordance with subsection (2), its certificate of authority expires at midnight on May 31 ~~next~~ following its failure to continue it in force. The commissioner shall promptly notify a benevolent association that has not continued its certificate of authority of the impending expiration of its certificate of authority.

(4) The commissioner may ~~in his discretion~~ reinstate a certificate of authority that a benevolent association has inadvertently permitted to expire; after the benevolent association has fully cured all failures that resulted in the expiration and upon payment by the benevolent association of a \$25 fee for reinstatement in addition to the current continuation fee as provided in subsection (2). If a certificate is not reinstated, the commissioner may grant a benevolent association another certificate of authority only after the benevolent association files an application for a certificate of authority and meets all other requirements for an original certificate of authority in this state.

(5) The commissioner may amend a certificate of authority at any time to accord with changes in the benevolent association's charter of insuring powers.

(6) A duly certified copy or duplicate of ~~such the~~ license ~~shall be~~ is prima facie evidence that the licensee is a benevolent association within the meaning of this chapter."

Section 1168. Section 33-7-119, MCA, is amended to read:

"33-7-119. Examination of societies. (1) The commissioner of insurance or any person ~~he may appoint~~ appointed by the commissioner may examine any domestic, foreign, or alien society transacting or applying for admission to transact business in this state in the same manner as authorized for examination of domestic, foreign, or alien insurers. Requirements of notice and an opportunity to respond before findings are made public, as provided in the laws regulating insurers, are applicable to the examination of societies.

(2) The expense of each examination and of each valuation, including compensation and actual expenses of examiners, must be paid by the society examined or whose certificates are valued, upon statements furnished by the commissioner."

Section 1169. Section 33-7-120, MCA, is amended to read:

"33-7-120. Injunction -- liquidation -- receivership of domestic society. (1) The commissioner of insurance shall notify a domestic society of a deficiency or deficiencies and state in writing the reasons for ~~his~~ the dissatisfaction, whenever the commissioner, upon investigation, finds that the society:

- (a) has exceeded its powers;
- (b) has failed to comply with any provision of this chapter;
- (c) is not fulfilling its contracts in good faith;
- (d) has a membership of less than 400 after an existence of 1 year or more; or
- (e) is conducting business fraudulently or in a manner hazardous to its members, creditors, the public, or the business.

(2) Whenever a deficiency or deficiencies are found, the commissioner shall issue to the society a written notice that requires the deficiency or deficiencies to be corrected. The society shall within 30 days comply with the commissioner's request for correction. If the society fails to comply, the commissioner shall notify the society of the noncompliance and require the society to show cause by a stated date why it should not be enjoined from transacting business until the violation complained of is corrected or why an action in quo warranto should not be commenced against the society.

(3) If the society does not present sufficient reasons why it should not be enjoined from transacting business or why the quo warranto action should not be commenced, the commissioner may present the facts relating to ~~his~~ the commissioner's determination to the attorney general who shall, if ~~he~~ the attorney general finds that the circumstances warrant, commence an action to enjoin the society from transacting business or an action in quo warranto.

(4) The court shall notify the officers of the society of a hearing. If after a hearing it appears that the society should be enjoined or liquidated or that a receiver should be appointed, the court shall enter the necessary order. A society enjoined from transacting business may not do business until:

- (a) the commissioner finds that the violation complained of has been corrected;
- (b) the costs of the action have been paid by the society if the court finds that the society was in default as charged;
- (c) the court has dissolved its injunction; and
- (d) the commissioner has reinstated the certificate of authority.

(5) If the court orders the society liquidated, it is enjoined from transacting any further business. The receiver of the society shall proceed at once to take possession of the books, papers, money, and other assets

of the society and, under the direction of the court, proceed to close the affairs of the society and distribute its funds to those entitled to the funds.

(6) An action under this section may not be recognized in any court of this state unless brought by the attorney general upon request of the commissioner. The court shall appoint the commissioner as the receiver for a domestic society.

(7) The provisions of this section relating to hearing by the commissioner, action by the attorney general at the request of the commissioner, hearing by the court, injunction, and receivership apply to a society that voluntarily decides to discontinue business."

Section 1170. Section 33-7-121, MCA, is amended to read:

"33-7-121. Suspension, revocation, or refusal of license of foreign or alien society. (1) The commissioner of insurance shall notify a foreign or alien society of a deficiency or deficiencies and state in writing the reasons for ~~his~~ the commissioner's dissatisfaction; whenever the commissioner, upon investigation, finds that the society transacting or applying to transact business in this state:

(a) has exceeded its powers;

(b) has failed to comply with any of the provisions of this chapter;

(c) is not fulfilling its contracts in good faith; or

(d) is conducting its business fraudulently or in a manner hazardous to its members, creditors, or the public.

(2) Whenever a deficiency or deficiencies are found, the commissioner shall issue to the society a written notice that requires the deficiency or deficiencies to be corrected. The society shall within 30 days comply with the commissioner's request for correction. If the society fails to comply, the commissioner shall notify the society of the noncompliance and require the society to show cause by a stated date why its authority to do business in this state should not be suspended, revoked, or refused.

(3) If the society does not present sufficient reason why its authority to do business in this state should not be suspended, revoked, or refused, the commissioner may:

(a) suspend or refuse the authority of the society to do business in this state until satisfactory evidence is furnished to the commissioner that the suspension or refusal should be withdrawn; or

(b) revoke the authority of the society to do business in this state.

(4) ~~Nothing in this~~ This section may not be construed as preventing any society from continuing in good faith all contracts made in this state during the time the society was legally authorized to transact business in this

state."

Section 1171. Section 33-7-208, MCA, is amended to read:

"33-7-208. Organization. A domestic society organized on or after January 1, 1992, must be formed as follows:

(1) Ten or more citizens of the United States, a majority of whom are residents of this state, who desire to form a fraternal benefit society, may make, sign, and acknowledge before a notary public; an application for articles of incorporation that states:

(a) the proposed corporate name of the society, which may not so closely resemble the name of any society or insurance company as to be misleading or confusing;

(b) the purposes for which it is being formed and the mode in which its corporate powers are to be exercised. The purposes may not include more liberal powers than are granted by this chapter.

(c) the names and residences of the incorporators and the names, residences, and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all officers are elected by the supreme governing body. The election must be held not later than 1 year from the date of issuance of the permanent certificate of authority.

(2) The application for articles of incorporation, certified copies of the society's bylaws and rules, copies of all proposed forms of certificates, applications for certificates, and circulars to be issued by the society, and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within 1 year must be filed with the commissioner, who may require further information considered necessary. The bond, with sureties approved by the commissioner, must be in an amount, not less than \$300,000 or more than \$1,500,000, required by the commissioner. All documents filed must be in English. If the purposes of the society conform to the requirements of this chapter and all provisions of law have been complied with, the commissioner shall certify, retain, and file the articles of incorporation and furnish to the incorporators a preliminary certificate of authority authorizing the society to solicit members.

(3) A preliminary certificate of authority granted under the provisions of this section is not valid after 1 year from its date of issuance or after an extended period, not exceeding 1 year, as may be authorized by the commissioner upon good cause shown, unless the 500 applicants required under subsection (4) have been secured and the organization has been completed. The charter and all other proceedings under the charter are void 1 year from the date of issuance of the preliminary certificate of authority or at the expiration of the extended

period; unless the society has completed its organization and received a certificate of authority to do business.

(4) Upon receipt of a preliminary certificate of authority from the commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates, and shall issue to each applicant a receipt for the amount collected. A society may not incur a liability other than for the return of an advance premium, issue any certificate, or pay, allow, offer, or promise to pay or allow any benefit to a person until:

(a) actual applications for benefits have been secured, aggregating at least \$500,000, on not less than 500 applicants; and any necessary evidence of insurability has been furnished to and approved by the society;

(b) at least 10 subordinate lodges have been established into which the 500 applicants have been admitted;

(c) there has been submitted to the commissioner, under oath of the president, secretary, or corresponding officer of the society, a list of the applicants, giving their names, addresses, date each was admitted, name and number of the subordinate lodge of which each applicant is a member, amount of benefits to be granted, and premiums for benefits; and

(d) it has been shown to the commissioner, by sworn statement of the treasurer or the corresponding officer of the society, that at least 500 applicants have each paid in cash at least one regular monthly premium. The aggregate premiums must amount to at least \$150,000. The advance premiums must be held in trust during the period of organization. If the society has not qualified for a certificate of authority within 1 year, unless extended as provided in subsection (3), the premiums must be returned to the applicants.

(5) The commissioner may ~~in his discretion~~ require and examine additional information ~~he~~ that the commissioner considers advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, the commissioner shall issue a certificate of authority to the society, authorizing it to transact business pursuant to the provisions of this chapter. The certificate of authority is prima facie evidence of the existence of the society at the date of the certificate. The commissioner shall record the certificate of authority.

(6) A society authorized to transact business in this state on January 1, 1992, is not required to reincorporate.

(7) An unincorporated or voluntary association may not transact business in this state as a society. Every voluntary association incorporated as provided in section 629(2), Chapter 286, Laws of 1959, may incur the obligations and enjoy the benefits of a society as if it were originally incorporated, and the corporation is considered a continuation of the original voluntary association. The officers must be elected and serve as

provided in its articles of incorporation. Incorporation of a voluntary association does not affect existing suits, claims, or contracts."

Section 1172. Section 33-7-209, MCA, is amended to read:

"33-7-209. Amendments to laws. (1) A domestic society may amend its laws in accordance with the provisions of its laws by action of its supreme governing body at any regular or special meeting or, if its laws provide, by referendum. The referendum may be held in accordance with the provisions of its laws by a vote of the voting members of the society, by a vote of delegates or representatives of voting members, or by a vote of local lodges. A society may provide for voting by mail. An amendment submitted by referendum may not be adopted unless, within 6 months from the date of submission, a majority of the members voting have signified their consent to the amendment.

(2) An amendment to the laws of a domestic society does not take effect unless approved by the commissioner of insurance, who shall approve the amendment if ~~he~~ the commissioner finds that it has been adopted and is not inconsistent with any requirement of the laws of this state or with the character, objectives, and purposes of the society. Unless the commissioner disapproves an amendment within 60 days after its filing, the amendment is considered approved. The approval or disapproval of the commissioner must be in writing and mailed to the secretary or corresponding officer of the society at its principal office. If the commissioner disapproves an amendment, the reasons for the disapproval must be stated in the written notice.

(3) Within 90 days of approval by the commissioner, all amendments or a synopsis of the amendments must be furnished to all members of the society, either by mail or by publication in full in the official publication of the society.

(4) A foreign or alien society authorized to do business in this state shall file with the commissioner a certified copy of all amendments of or additions to its laws within 90 days after their enactment.

(5) Printed copies of the laws, as amended, that are certified by the secretary or a corresponding officer of the society are prima facie evidence of their legal adoption."

Section 1173. Section 33-7-216, MCA, is amended to read:

"33-7-216. Conversion of a society into a mutual life insurance company. A domestic society may be converted and licensed as a mutual life insurance company by compliance with all the applicable requirements of Title 33 if the plan of conversion has been approved by the commissioner of insurance. The board of directors shall prepare a written plan of conversion that sets forth in full the terms and conditions of conversion. An

affirmative vote of two-thirds of all members of the supreme governing body at a regular or special meeting is necessary for the approval of the plan. A conversion may not take effect unless approved by the commissioner, who may approve the conversion if ~~he~~ the commissioner finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificate holders of the society."

Section 1174. Section 33-7-307, MCA, is amended to read:

"33-7-307. No personal liability. (1) The officers and members of the supreme governing body or any subordinate body of a society are not personally liable for any benefits provided by a society.

(2) A person may be indemnified and reimbursed by a society for expenses reasonably incurred by and liabilities imposed upon ~~him~~ the person in connection with or arising out of an action, suit, or proceeding, ~~(whether civil, criminal, administrative, or investigative),~~ or threat ~~thereof~~ of a proceeding in which the person may be involved by reason of the fact that ~~he~~ the person is or was a director, officer, employee, or agent of the society or of a firm, corporation, or organization that ~~he~~ the person served in any capacity at the request of the society.

(3) (a) A person may not be indemnified or reimbursed in relation to any matter in an action, suit, or proceeding:

(i) in which ~~he~~ the person is finally found to be guilty of breach of a duty as a director, officer, employee, or agent of the society; or

(ii) that is the subject of a compromise settlement.

(b) A person may be indemnified or reimbursed if ~~he~~ the person acted in good faith for a purpose ~~he~~ that the person reasonably believed to be in, or not opposed to, the best interests of the society and, in a criminal action or proceeding, in addition, ~~had no~~ did not have reasonable cause to believe that ~~his~~ the conduct was unlawful.

(4) The determination of whether the person's conduct met the standard required in order to justify indemnification or reimbursement in relation to any matter described in subsection (3) may be made only by the supreme governing body or board of directors by a majority vote of a quorum consisting of persons who were not parties to the action, suit, or proceeding or by a court of competent jurisdiction. The termination of an action, suit, or proceeding by a judgment, order, settlement, or conviction or upon a plea of no contest, does not create a conclusive presumption that the person did not meet the standard of conduct required in order to justify indemnification or reimbursement. The right of indemnification or reimbursement is not exclusive of other rights to which the person may be entitled as a matter of law, and the right inures to the benefit of ~~his~~ the person's heirs, executors, and administrators.

(5) A director, officer, employee, member, or volunteer of a society who serves without compensation may not be held liable; ~~for~~ and a cause of action may not be brought; ~~for~~ damages resulting from the exercise of judgment or discretion in connection with the person's duties or responsibilities for the society unless the act or omission involved willful or wanton misconduct.

(6) A society may purchase and maintain liability insurance for acts incurred in the course and scope of the position for a person who is or was a director, officer, employee, or agent of the society or who is or was serving at the request of the society as a director, officer, employee, or agent of any other firm, corporation, or organization."

Section 1175. Section 33-7-411, MCA, is amended to read:

"33-7-411. Valuation. (1) Standards of valuation for certificates issued prior to July 1, 1993, must be those provided by the laws applicable immediately prior to July 1, 1992.

(2) (a) The minimum standards of valuation for certificates issued on or after July 1, 1993, must be based on the following tables:

(i) for certificates of life insurance--the commissioner of insurance's 1941 standard ordinary mortality table, the commissioner's 1941 standard industrial mortality table, the commissioner's 1958 standard ordinary mortality table, the commissioner's 1980 standard ordinary mortality table, or any more recent table made applicable to life insurers;

(ii) for annuity and pure endowment certificates, for total and permanent disability benefits, for accidental death benefits and for noncancelable accident and health benefits--the tables authorized for use by life insurers in this state.

(b) All of the certificates must be valued under valuation methods and standards, including interest assumptions, that are in accordance with the laws of this state applicable to life insurers that issue policies containing similar benefits.

(3) The commissioner may accept other standards for valuation if ~~he~~ the commissioner finds that the reserves produced by the valuation will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard prescribed in this section. The commissioner may vary the standards of mortality applicable to all benefit contracts on substandard lives or other extrahazardous lives by a society authorized to do business in this state.

(4) A society, with the consent of the commissioner of insurance of the state of domicile of the society and under conditions, if any, that the commissioner may impose, may establish and maintain reserves on its

certificates in excess of required reserves, but the contractual rights of a benefit member may not be affected by the excess reserves."

Section 1176. Section 33-9-102, MCA, is amended to read:

"33-9-102. Professionals as members, stockholders, or subscribers of mutual, stock, or reciprocal insurers. A health care provider or other professional may be a member of a mutual insurer, a stockholder of a stock insurer, or a subscriber of a reciprocal insurer, whether ~~such the~~ mutual, stock, or reciprocal insurer is domestic, foreign, or alien, for the purpose of protecting ~~himself the provider or professional~~ by insurance against loss, damage, or expense incident to a claim arising out of a breach of contract, pecuniary or personal injury to or death of any person, or other loss as the result of negligence in rendering professional services by any health care provider or other professional."

Section 1177. Section 33-10-108, MCA, is amended to read:

"33-10-108. Prevention of insolvencies -- directors' and commissioner's action. (1) It ~~shall be~~ is the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating that any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer ~~which that~~ the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within 30 days of the receipt of ~~such the~~ request, the commissioner shall begin ~~such the~~ examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by ~~such persons as that~~ the commissioner designates. The cost of ~~such the~~ examination ~~shall must~~ be paid by the association, and the examination report ~~shall must~~ be treated as are other examination reports. ~~In no event shall such~~ The examination report may not be released to the board of directors prior to its release to the public, but this ~~shall does~~ not preclude the commissioner from complying with subsection (3). The commissioner shall notify the board of directors when the examination is completed. The request for an examination ~~shall must~~ be kept on file by the commissioner, but it ~~shall may~~ not be open to public inspection prior to the release of the examination report to the public.

(3) It ~~shall be~~ is the duty of the commissioner to report to the board of directors when ~~he the~~ the commissioner has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or supervision of any member insurer. ~~Such~~ The reports and recommendations ~~shall~~ may not be considered public documents.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of ~~such~~ the insolvency, based on the information available to the association, and submit ~~such~~ the report to the commissioner."

Section 1178. Section 33-10-109, MCA, is amended to read:

"33-10-109. Notice of insolvencies -- suspension -- other powers and duties of commissioner. (1)

The commissioner shall:

(a) notify the association of the existence of an insolvent insurer not later than 3 days after ~~he~~ the commissioner receives notice of the determination of the insolvency;

(b) upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The commissioner may:

(a) require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this part. ~~Such~~ The notification ~~shall~~ must be by mail at their ~~last-known address~~ last-known addresses, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation ~~shall be~~ is sufficient.

(b) suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer ~~which~~ that fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer ~~which~~ that fails to pay an assessment when due. ~~Such~~ The fine ~~shall~~ may not exceed 5% of the unpaid assessment ~~per~~ a month, except that ~~no~~ a fine ~~shall~~ may not be less than \$100 ~~per~~ a month.

(c) revoke the designation of any servicing facility if ~~he~~ the commissioner finds claims are being handled unsatisfactorily.

(3) Any final action or order of the commissioner under this part ~~shall~~ must be subject to judicial review in a court of competent jurisdiction."

Section 1179. Section 33-10-115, MCA, is amended to read:

"33-10-115. Recovery -- sequence -- nonduplication. (1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer ~~which that~~ is also a covered claim ~~shall~~ must be required to exhaust ~~first his~~ the person's right under ~~such the~~ policy. Any amount payable on a covered claim under this part ~~shall~~ must be reduced by the amount of any recovery under ~~such the~~ insurance policy.

(2) Any person having a claim ~~which that~~ may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that if it is a first party claim for damage to property with a permanent location, ~~he~~ the person shall seek recovery first from the association of the location of the property, and if it is a workers' compensation claim, ~~he~~ the person shall seek recovery first from the association of the residence of the claimant. Any recovery under this part ~~shall~~ must be reduced by the amount of recovery from any other insurance guaranty association or its equivalent."

Section 1180. Section 33-14-203, MCA, is amended to read:

"33-14-203. License revocation -- suspension. The commissioner may revoke or suspend the license of a premium finance company when and if after investigation it appears to the commissioner that:

- (1) a license issued to the company was obtained by fraud;
- (2) there was misrepresentation in the application for the license;
- (3) the holder of the license has otherwise been shown ~~himself~~ untrustworthy or incompetent to act as a premium finance company; or
- (4) the company has violated any provisions of this chapter."

Section 1181. Section 33-14-204, MCA, is amended to read:

"33-14-204. Records required of licensees -- form -- inspection. (1) Every premium finance company shall maintain records of its premium finance transactions, and the records ~~shall~~ must be open to examination and investigation by the commissioner. The commissioner may at any time require the company to bring ~~such~~ records ~~as he~~ that the commissioner may direct to the commissioner's office for examination.

(2) Every premium finance company shall preserve its records of premium finance transactions for at least 3 years after making the final entry in respect to any premium finance agreement. The records may be preserved in photographic form."

Section 1182. Section 33-14-301, MCA, is amended to read:

"33-14-301. Premium finance agreements -- contents -- form -- delivery. (1) A premium finance agreement ~~shall~~ must:

(a) be dated; and signed by the insured or by any person authorized in writing to act in behalf of the insured, and the printed portion ~~thereof shall~~ of the agreement must be in at least 8-point type;

(b) contain the name and place of business of the insurance producer negotiating the related insurance policy, the name and residence or the place of business of the insured as specified by ~~him~~ the insured, the name and place of business of the premium finance company to which payments are to be made, and a description of the insurance policies involved and the amount of the premium ~~therefor~~ for the policies; and

(c) set forth when applicable:

(i) the total amount of the premiums;

(ii) the amount of the downpayment;

(iii) the principal balance, ~~(which is~~ the difference between the items enumerated in subsections (1)(c)(i) and (1)(c)(ii));

(iv) the amount of the finance charge;

(v) the balance payable by the insured, ~~(which is~~ the sum of the items enumerated in subsections (1)(c)(iii) and (1)(c)(iv)); and

(vi) the number of installments required, the amount of each installment expressed in dollars, and the due date or period ~~thereof~~ of the installments.

(2) The items set out in subsection (1)(c) ~~need are~~ not required to be stated in the sequence or order in which they appear in that subsection, and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(3) The information required by subsection (1) may only be required in the initial agreement only if the premium finance company and the insured enter into an open-end credit transaction, which is defined as a plan prescribing the terms of credit transactions that may be made ~~thereunder~~ under the plan from time to time and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time ~~thereunder~~ under the plan.

(4) The premium finance company or the insurance producer shall deliver to the insured or mail to ~~him~~ the insured at ~~his~~ the address shown in the agreement a complete copy of the agreement."

Section 1183. Section 33-14-302, MCA, is amended to read:

"33-14-302. Charges for premium financing regulated -- method of computation. (1) A premium finance company may not charge, contract for, receive, or collect a finance charge other than as permitted by this chapter.

(2) The finance charge must be computed on the balance of the premiums due, ~~(after subtracting the downpayment made by the insured in accordance with the premium finance agreement),~~ from the effective date of the insurance coverage for which the premiums are being advanced to and including the date when the final payment of the premium finance agreement is payable.

(3) Notwithstanding any other provision of law, the finance charge may not exceed interest at the annual rate of 21%, plus a service charge of \$12.50 per premium finance agreement. The service charge of \$12.50 ~~need~~ is not required to be refunded upon cancellation or prepayment.

(4) An insured may prepay ~~his~~ the premium finance agreement in full at any time prior to the due date of the final payment, ~~and in such event upon payment~~ the unearned finance charge ~~shall~~ must be refunded."

Section 1184. Section 33-15-103, MCA, is amended to read:

"33-15-103. Power to contract -- purchase of insurance by minors. (1) Any person of competent legal capacity may contract for insurance.

(2) Any minor ~~of the age of 15 years~~ of age or more older, as determined by the nearest birthday, may, ~~notwithstanding his minority,~~ contract for annuities and for insurance upon ~~his~~ the minor's own life, body, health, property, liabilities, or other interests or on the person of another in whom the minor has an insurable interest. ~~Such a~~ The minor ~~shall, notwithstanding such minority, be deemed~~ must be considered competent to exercise all rights and powers with respect to or under any contract for annuity or for insurance upon ~~his~~ the minor's own life, body, or health or any contract ~~such~~ the minor effected upon ~~his~~ the minor's own property, liabilities, or other interests or on the person of another; as might be exercised by a person of full legal age; and may at any time surrender ~~his~~ the minor's interest in any ~~such~~ contracts and give valid discharge for any benefit accruing or money payable ~~thereunder~~ under the contracts. ~~Such a~~ The minor ~~shall~~ may not, by reason of ~~his~~ minority, be entitled to rescind, avoid, or repudiate the contract or to rescind, avoid, or repudiate any exercise of a right or privilege ~~thereunder~~ under the contract, except that ~~such a~~ the minor, not otherwise emancipated, ~~shall~~ may not be bound by any unperformed agreement to pay by promissory note or otherwise any premium on any ~~such~~ annuity or insurance contract.

(3) If any minor mentioned in subsection (2) ~~above~~ is possessed of an estate that is being administered by a guardian, ~~no such~~ the contract ~~shall be~~ is not binding upon the estate as to payment of premiums except

~~as and~~ when consented to by the guardian and approved by the district court of the county in which the administration of the estate is pending, and ~~such the~~ consent and approval ~~shall be~~ is required ~~as to~~ for each annual premium payment.

(4) Any annuity contract or policy of life or disability insurance procured by or for a minor under subsection (2) ~~above shall~~ must be made payable either to the minor, ~~or his~~ to the minor's estate, or to a person having an insurable interest in the life of the minor under 33-15-201."

Section 1185. Section 33-15-201, MCA, is amended to read:

"33-15-201. Restrictions on contracting for personal insurance -- insurable interests -- violation.

(1) Any individual of competent legal capacity may procure or effect an insurance contract upon ~~his~~ the individual's own life or body for the benefit of any person. ~~But no~~ However, a person ~~shall~~ may not procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under ~~such the~~ contract are payable to the individual insured, ~~or his~~ to the individual's personal representatives, or to a person having, at the time when ~~such the~~ contract was made, an insurable interest in the individual insured.

(2) If the beneficiary, assignee, or other payee under any contract made in violation of this section receives from the insurer any benefits ~~thereunder~~ under the contract accruing upon the death, disablement, or injury of the individual insured, the individual insured or ~~his~~ the individual's personal representative may maintain an action to recover ~~such the~~ benefits from the person ~~so~~ receiving them.

(3) "Insurable interest" with reference to personal insurance includes only interests as follows:

(a) in the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection;

(b) in the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest ~~which that~~ would arise only by or would be enhanced in value by the death, disablement, or injury of the individual insured.

(4) An individual ~~heretofore or hereafter~~ who is a party to a contract or option for the purchase or sale of an interest in a business partnership or firm or of shares of stock of a closed corporation or of an interest in ~~such the~~ shares has an insurable interest in the life of each individual party to ~~such the~~ contract and for the purposes of ~~such the~~ contract only; in addition to any insurable interest ~~which that~~ may otherwise exist as to the life of ~~such the~~ individual.

(5) A charitable institution has an insurable interest in an individual if:

(a) the individual authorizes the charitable institution to purchase insurance naming the charitable

institution as an irrevocable beneficiary; and

(b) the insurance is purchased with contributions made by the individual."

Section 1186. Section 33-15-206, MCA, is amended to read:

"33-15-206. Interest of named insured -- change of interest on death -- transfer. (1) When the name of the person insured is specified in a policy insuring property, the insurance can be applied only to ~~his~~ the person's own proper interest.

(2) A change of interest, by will or succession, on the death of the insured does not avoid an insurance of property, and the insurance passes to the person taking ~~his~~ the insured's interest in the thing insured.

(3) A transfer of interest by one of several partners, joint owners, or owners in common, who are jointly insured, to the others does not avoid an insurance of property even though it has been agreed that the insurance ~~shall~~ must cease upon an alienation of the thing insured."

Section 1187. Section 33-15-327, MCA, is amended to read:

"33-15-327. Powers of the commissioner. The commissioner may authorize a lower score than the Flesch reading ease score required in 33-15-325(1)(a) whenever, in ~~his~~ in the commissioner's sole discretion, ~~he~~ the commissioner finds that a lower score:

(1) will provide a more accurate reflection of the readability of a policy form;

(2) is warranted by the nature of a particular policy form or type or class of policy forms; or

(3) is caused by certain policy language ~~which~~ that is drafted to conform to the requirements of any state law, regulation, or agency interpretation."

Section 1188. Section 33-15-329, MCA, is amended to read:

"33-15-329. Applicability schedule. (1) Except as provided in 33-15-324, the provisions of 33-15-321 through 33-15-329 apply to all policy forms filed on or after July 1, 1983. ~~No~~ A policy form may not be delivered or issued for delivery in this state on or after July 1, 1986, unless approved by the commissioner or permitted to be issued under 33-15-321 through 33-15-329. Any policy form that has been approved or permitted to be issued prior to July 1, 1986, and that meets the standards set by 33-15-321 through 33-15-329 ~~need~~ is not required to be refiled for approval but may continue to be lawfully delivered or issued for delivery in this state upon the filing with the commissioner of a list of ~~such~~ the forms identified by form number and accompanied by a certificate as to each ~~such~~ form in the manner provided in 33-15-325(4).

(2) The commissioner may, ~~in his sole discretion,~~ extend the dates in subsection (1)."

Section 1189. Section 33-15-402, MCA, is amended to read:

"33-15-402. Application as evidence -- copy to insured -- alteration. (1) ~~No~~ An application for the issuance of any life or disability insurance policy or annuity contract ~~shall~~ may not be admissible in evidence in any action relative to ~~such the~~ policy or contract unless a true copy of the application was attached to or otherwise made a part of the policy or contract when issued. This provision ~~shall~~ does not apply to industrial life insurance policies.

(2) If any policy of life or disability insurance delivered in this state is reinstated or renewed and the insured or the beneficiary or assignee of the policy makes written request to the insurer for a copy of the application, if any, for ~~such the~~ reinstatement or renewal, the insurer shall, within 30 days after receipt of ~~such the~~ request at its home office or at any of its branch offices, deliver or mail to the person making ~~such the~~ request a copy of ~~such the~~ application. If ~~such the~~ copy is not ~~so~~ delivered or mailed after having been ~~so~~ requested, the insurer ~~shall be~~ is precluded from introducing the application in evidence in any action or proceeding based upon or involving the policy or its reinstatement or renewal. In the case of ~~such a~~ request from a beneficiary, the time within which the insurer is required to furnish a copy of ~~such the~~ application ~~shall~~ may not begin to run until after receipt of evidence satisfactory to the insurer of the beneficiary's vested interest in the policy or contract.

(3) As to kinds of insurance other than life or disability insurance, ~~no~~ an application for insurance signed by or on behalf of the insured ~~shall~~ may not be admissible in evidence in any action between the insured and the insurer arising out of the policy ~~so~~ applied for if the insurer has failed, at expiration of 30 days after receipt by the insurer of written demand ~~therefor~~ by or on behalf of the insured, to furnish to the insured a copy of ~~such the~~ application reproduced by any legible means.

(4) ~~No~~ An alteration of any written application for any life or disability insurance policy ~~shall~~ may not be made by any person other than the applicant without ~~his~~ the applicant's written consent, except that insertions may be made by the insurer, for administrative purposes only, in ~~such a~~ manner ~~as to indicate that~~ clearly indicates that ~~such the~~ insertions are not to be ascribed to the applicant."

Section 1190. Section 33-15-511, MCA, is amended to read:

"33-15-511. Exemption from execution of life insurance proceeds. (1) If a policy of insurance, ~~whether heretofore or hereafter issued,~~ is effected by any person on ~~his~~ the person's own life or on another life in favor of a person other than ~~himself~~ the applicant or, except in cases of transfer with intent to defraud creditors,

if a policy of life insurance is assigned or in any way made payable to any ~~such~~ person, the lawful beneficiary or assignee ~~thereof of the policy~~, other than the insured or the person ~~so~~ effecting ~~such the~~ insurance or executors or administrators of ~~such the~~ insured or the person ~~so~~ effecting ~~such the~~ insurance, ~~shall be~~ is entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting the ~~same~~; policy whether or not the right to change the beneficiary is reserved or permitted and whether or not the policy is made payable to the person whose life is insured if the beneficiary or assignee ~~shall~~ predecease ~~such that~~ person; ~~except that~~ However, subject to the statute of limitations, the amount of any premiums for ~~such the~~ insurance paid with intent to defraud creditors with interest ~~thereon shall enure~~ on the premiums accrues to ~~their the creditor's~~ benefit from the proceeds of the policy, but the insurer issuing the policy ~~shall~~ must be discharged of all liability ~~thereof~~ by payment of its proceeds in accordance with its terms; unless before ~~such the~~ payment the insurer ~~shall have~~ received written notice at its home office, by or in behalf of a creditor, of a claim to recover for transfer made or premiums paid with intent to defraud creditors, with specifications of the amount ~~so~~ claimed.

(2) For the purposes of subsection (1) ~~above~~, a policy ~~shall~~ must also be ~~deemed~~ considered to be payable to a person other than the insured if and to the extent that a facility-of-payment clause or similar clause in the policy permits the insurer to discharge its obligation after the death of the individual insured by paying the death benefits to a person as permitted by ~~such the~~ clause."

Section 1191. Section 33-15-512, MCA, is amended to read:

"33-15-512. Exemption from execution of proceeds of group life -- exception. (1) A policy of group life insurance or the proceeds ~~thereof of the policy~~ payable to the individual insured or to the beneficiary ~~thereunder shall~~ under the policy may not be liable, either before or after payment, to be applied by any legal or equitable process to pay any debt or liability of ~~such the~~ insured individual, ~~or his~~ of the individual's beneficiary, or of any other person having a right under the policy. The proceeds ~~thereof of the policy~~, when not made payable to a named beneficiary or to a third person pursuant to a facility-of-payment clause, ~~shall~~ may not constitute a part of the estate of the individual insured for the payment of ~~his~~ the individual's debts.

(2) This section ~~shall~~ does not apply to group life insurance issued pursuant to Title 33, chapter 20, parts 10, 11, and 12, ~~of chapter 20~~ to a creditor covering ~~his~~ the creditor's debtors; to the extent that ~~such the~~ proceeds are applied to payment of the obligation for the purpose of which the insurance was ~~so~~ issued."

Section 1192. Section 33-15-513, MCA, is amended to read:

"33-15-513. Exemption from execution of proceeds of disability insurance. The proceeds or ~~avails~~ other payments of all contracts of disability insurance and of provisions providing benefits on account of the insured's disability ~~which that~~ are supplemental to life insurance or annuity contracts ~~heretofore or hereafter effected shall be~~ are exempt from all liability for any debt of the insured and from any debt of the beneficiary existing at the time the proceeds are made available for ~~his~~ the insured's use."

Section 1193. Section 33-15-514, MCA, is amended to read:

"33-15-514. Exemption from execution of proceeds of annuity contracts -- assignability of rights.

(1) The benefits, rights, privileges, and options ~~which that~~ under any annuity contract ~~heretofore or hereafter issued~~ are due or prospectively due the annuitant ~~shall~~ may not be subject to execution, ~~nor shall~~ the annuitant may not be compelled to exercise any ~~such~~ rights, powers, or options, ~~nor shall~~ and creditors may not be allowed to interfere with or terminate the contract, except:

(a) as to amounts paid for or as premium on any ~~such~~ annuity with intent to defraud creditors, with interest ~~thereon~~, and of which the creditor has given the insurer written notice at its home office prior to the making of the payments to the annuitant out of which the creditor seeks to recover. ~~Any such~~ The notice ~~shall~~ must specify the amount claimed or ~~such~~ the facts ~~as that~~ will enable the insurer to ascertain ~~such~~ the amount and ~~shall~~ must set forth ~~such~~ the facts ~~as that~~ will enable the insurer to ascertain the annuity contract, the annuitant, and the payments sought to be avoided on the ground of fraud.

(b) the total exemption of benefits presently due and payable to any annuitant periodically or at stated times under all annuity contracts under which ~~he~~ the person is an annuitant ~~shall~~ may not at any time exceed \$250 ~~per a~~ month for the length of time represented by ~~such~~ the installments and ~~that such~~ the periodic payments in excess of \$350 ~~per a~~ month ~~shall~~ must be subject to garnishee execution;

(c) if the total benefits presently due and payable to any annuitant under all annuity contracts under which ~~he~~ the person is an annuitant ~~shall~~ at any time exceed payment at the rate of \$350 ~~per a~~ month, then the court may order ~~such~~ the annuitant to pay to a judgment creditor or apply on the judgment, in installments, ~~such~~ the portion of ~~such~~ the excess benefits ~~as to the court may~~ that appear to the court to be just and proper, after due regard for the reasonable requirements of the judgment debtor and ~~his~~ the debtor's family, if dependent upon ~~him~~ the debtor, as well as any payments required to be made by the annuitant to other creditors under prior court orders.

(2) If the contract ~~so~~ provides, the benefits, rights, privileges, or options accruing under ~~such~~ the contract to a beneficiary or assignee ~~shall~~ may not be transferable or subject to commutation, and if the benefits are

payable periodically or at stated times, the same exemptions contained ~~herein~~ in this section for the annuitant ~~shall~~ apply with respect to ~~such~~ the beneficiary or assignee.

(3) An annuity contract within the meaning of this section ~~shall be~~ is any obligation to pay certain sums at stated times during life or lives or for a specified term or terms, issued for a valuable consideration, regardless of whether or not ~~such~~ the sums are payable to one or more persons, jointly or otherwise, but does not include payments under life insurance contracts at stated times during life or lives or for a specified term or terms."

Section 1194. Section 33-16-111, MCA, is amended to read:

"33-16-111. Issuance of order -- suspension or revocation of certificate of authority or license.

If, after a hearing pursuant to 33-16-206, the commissioner finds:

(1) that an insurer, a rating organization, an advisory organization, or a group, association, or other organization of insurers ~~which~~ that engages in joint underwriting or joint reinsurance is in violation of the provisions of this chapter applicable to it, other than the provisions dealing with rates, rating plans, or rating systems, ~~he~~ the commissioner may issue an order to ~~such~~ the insurer, organization, group, or association ~~which~~ that has been the subject of the hearing, specifying in what respects ~~such~~ the violation exists and requiring compliance within a reasonable time ~~thereafter~~;

(2) that the violation of any of the provisions of this chapter applicable to it by any insurer or rating organization ~~which~~ that has been the subject of hearing was willful, ~~he~~ the commissioner may suspend or revoke, in whole or in part, the certificate of authority of ~~such~~ the insurer or the license of ~~such~~ the rating organization with respect to the class of insurance ~~which~~ that has been the subject matter of the hearing;

(3) that any rating organization has willfully engaged in any fraudulent or dishonest act or practices, ~~he~~ the commissioner may suspend or revoke, in whole or in part, the license of ~~such~~ the organization, in addition to any other penalty provided in this chapter."

Section 1195. Section 33-16-112, MCA, is amended to read:

"33-16-112. Failure to comply with order -- suspension or revocation of license or certificate. In addition to other penalties provided in this code, the commissioner may suspend or revoke, in whole or in part, the license of any rating organization or the certificate of authority of any insurer with respect to the class or classes of insurance specified in ~~such~~ the order ~~which~~ that fails to comply within the time limited by ~~such~~ the order or any extension ~~thereof~~ of the order ~~which~~ that the commissioner may grant, with an order of the commissioner lawfully made ~~by him~~ pursuant to 33-16-111 and 33-16-211 and effective pursuant to 33-16-113."

Section 1196. Section 33-16-113, MCA, is amended to read:

"33-16-113. Appeal from order or decision of commissioner. Any person, insurer, or rating organization aggrieved by any order or decision made by the commissioner under this chapter may appeal ~~therefrom~~ to the district court of the county where the aggrieved party may reside or has ~~his~~ a principal place of business in this state or to the district court of Lewis and Clark County, Montana. The appeal ~~shall~~ must be taken within 30 days from the making and filing of the order or decision by filing in the office of the commissioner a notice of the appeal in writing. The commissioner shall, within 20 days after filing of the notice, make and return to the district court a full and complete certified transcript of the finding and order appealed from and of all parts relative ~~thereto~~ to the finding and order on file in ~~his~~ the commissioner's office, including the notice of appeal. Upon filing of the certified transcript, all matters involved ~~therein shall~~ in the appeal must be brought on for trial upon the merits at the next term of the court after the filing of the transcript unless otherwise ordered by the court. Upon the trial, the findings of fact on which the order is based ~~shall~~ must be prima facie evidence of the matters ~~therein~~ stated. During the pendency of the proceedings upon review, the order of the commissioner ~~shall be~~ is suspended, but in the event of a final determination against any insurer, any overcharge by the insurer during review ~~shall~~ must be refunded to the persons entitled ~~thereto~~ to the refund."

Section 1197. Section 33-16-114, MCA, is amended to read:

"33-16-114. Penalty. (1) ~~Any~~ A person, insurer, organization, group, or association ~~who~~ that fails to comply with a final order of the commissioner under this chapter ~~shall be~~ is liable to the state in an amount not exceeding \$50. If ~~such~~ the failure ~~be~~ is willful, ~~he~~ the person or it ~~shall be~~ entity is liable to the state in an amount not exceeding \$5,000 for ~~such~~ the failure. The commissioner shall collect the amount ~~so~~ payable and may bring an action in the name of the people of the state of Montana to enforce collection. ~~Such~~ The penalties may be in addition to any other penalties provided by law.

(2) A willful violation of the provisions of this chapter by any person is a misdemeanor."

Section 1198. Section 33-16-204, MCA, is amended to read:

"33-16-204. Review of rates on request by aggrieved person. (1) ~~Any~~ A person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization may request the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded ~~him~~ the person. ~~Such~~ The request may be made by ~~his~~ the person's authorized representative and ~~shall~~ must be written.

(2) If the request is not granted within 30 days after it is made, the requester may treat it as rejected.

(3) Any person aggrieved by the action of an insurer or rating organization in refusing the review requested or in failing or refusing to grant all or part of the relief requested may file a written complaint and request for hearing with the commissioner, specifying the grounds relied upon. If the commissioner has information concerning a similar complaint, ~~he~~ the commissioner may deny the hearing. If ~~he~~ the commissioner believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, ~~he~~ the commissioner shall deny the hearing. Otherwise, and if ~~he~~ the commissioner finds that the complaint charges a violation of this chapter and that the complainant would be aggrieved if the violation is proven, ~~he~~ the commissioner shall proceed as provided in 33-16-205."

Section 1199. Section 33-16-206, MCA, is amended to read:

"33-16-206. Hearings -- notice -- subject of hearing. (1) If the commissioner has good cause to believe ~~such~~ the noncompliance to be willful or if within the period prescribed by the commissioner in the notice required by 33-16-205 the insurer, organization, group, or association does not make ~~such~~ changes ~~as~~ that may be necessary to correct the noncompliance specified by the commissioner or establish to the satisfaction of the commissioner that ~~such~~ the specified noncompliance does not exist, then the commissioner may hold a public hearing in connection ~~therewith~~ with the noncompliance, provided that within a reasonable period of time, which ~~shall~~ may not be ~~not~~ less than 10 days before the date of ~~such~~ hearing, ~~he~~ the commissioner ~~mails~~ written notice specifying the matters to be considered at ~~such~~ the hearing to ~~such~~ the insurer, organization, group, or association. If ~~no~~ notice has not been given as provided in 33-16-205, ~~such~~ the notice ~~shall~~ must state ~~therein~~ in what manner and to what extent noncompliance is alleged to exist.

(2) The hearing ~~shall~~ may not include any additional subjects not specified in the notices required by 33-16-205 or this section."

Section 1200. Section 33-16-211, MCA, is amended to read:

"33-16-211. Order prohibiting use of rate or rating system. If, after a hearing pursuant to 33-16-206, the commissioner finds that any rate, rating plan, or rating system violates the provisions of this chapter applicable to it, ~~he~~ the commissioner may issue an order to the insurer or rating organization ~~which~~ that has been the subject of the hearing, specifying in what respects ~~such~~ the violation exists and stating when, within a reasonable period of time, the further use of ~~such~~ the rate or rating system by ~~such~~ the insurer or rating organization in contracts of insurance made ~~thereafter~~ shall be after that time is prohibited."

Section 1201. Section 33-16-223, MCA, is amended to read:

"33-16-223. Effective period of reduction. (1) The premium reduction required by 33-16-222 is effective for an insured for a 2-year period after successful completion of the approved course. Each person shall take an approved course every 2 years in order to continue to be eligible for the reduction in premium required by 33-16-222.

(2) An insurer may require, as a condition of maintaining the discount, any or all of the following:

(a) that the insured not be involved in an accident in which ~~he~~ the insured is at fault;

(b) that the insured not be convicted of or plead guilty or nolo contendere to a moving traffic violation;

or

(c) that the insured not have forfeited bail or collateral for a moving traffic violation."

Section 1202. Section 33-16-224, MCA, is amended to read:

"33-16-224. Certificate. The organization offering the approved course shall issue a certificate to each person who successfully completes the course, ~~which~~ that qualifies ~~him~~ the person for the premium discount required by 33-16-222."

Section 1203. Section 33-16-305, MCA, is amended to read:

"33-16-305. Agreements for apportionment of casualty insurance -- approval of commissioner -- review of practices of adherents -- revocation of approval. (1) Agreements may be made among admitted insurers with respect to the equitable apportionment among them of casualty insurance ~~which~~ that may be afforded applicants who are in good faith entitled to but who are unable to procure ~~such~~ the insurance through ordinary methods and with respect to the use of reasonable rate modifications for ~~such~~ the insurance; ~~such~~ The agreements ~~to be~~ are subject to the approval of the commissioner.

(2) All ~~such~~ agreements ~~shall~~ must be submitted in writing to the commissioner for ~~his~~ consideration and approval, together with ~~such~~ information ~~as he~~ that the commissioner may reasonably require. The commissioner shall approve only ~~such~~ agreements ~~as~~ that are found ~~by him~~ to contemplate:

(a) the use of rates ~~which~~ that meet the standards prescribed by this chapter; and

(b) activities and practices that are not unfair, unreasonable, or otherwise inconsistent with the provisions of this chapter.

(3) At any time after ~~such~~ the agreements are in effect, the commissioner may review the practices and activities of the ~~adherents~~ parties to ~~such~~ the agreements and if, after a hearing upon not less than 10 days'

notice to ~~such adherents~~ the parties, ~~he~~ the commissioner finds that any ~~such~~ practice or activity is unfair or unreasonable or is otherwise inconsistent with the provisions of this chapter, ~~he~~ the commissioner may issue a written order to the parties to any ~~such~~ agreement, specifying in what respects ~~such~~ the act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter and requiring the discontinuance of ~~such~~ the activity or practice. For good cause and after hearing upon not less than 10 days' notice to the ~~adherents thereto~~ the parties, the commissioner may revoke approval of any ~~such~~ agreement referred to in this section."

Section 1204. Section 33-17-411, MCA, is amended to read:

"33-17-411. Penalty. A nonresident insurance producer who violates a condition of ~~his~~ the producer's Montana license or a provision of this part is subject to a fine by the commissioner of up to \$50,000 for each violation and may, at the discretion of the commissioner, have ~~his~~ the Montana nonresident license revoked or suspended for a period of up to 5 years."

Section 1205. Section 33-17-513, MCA, is amended to read:

"33-17-513. Restrictions on insurers recommended by licensee. A person licensed as an insurance consultant under this part may not recommend or encourage the purchase of insurance, annuities, or securities from an authorized insurer in which ~~he~~ the person or any member of ~~his~~ the person's immediate family holds an executive position or holds a substantial interest."

Section 1206. Section 33-18-201, MCA, is amended to read:

"33-18-201. Unfair claim settlement practices prohibited. ~~No~~ A person may not, with such frequency as to indicate a general business practice, do any of the following:

- (1) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;
- (2) fail to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
- (3) fail to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
- (4) refuse to pay claims without conducting a reasonable investigation based upon all available information;
- (5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have

been completed;

(6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(7) compel insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by ~~such~~ the insureds;

(8) attempt to settle a claim for less than the amount to which a reasonable ~~man~~ person would have believed ~~he~~ the person was was entitled by reference to written or printed advertising material accompanying or made part of an application;

(9) attempt to settle claims on the basis of an application ~~which~~ that was altered without notice to or knowledge or consent of the insured;

(10) make claims payments to insureds or beneficiaries not accompanied by statements setting forth the coverage under which the payments are being made;

(11) make known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(12) delay the investigation or payment of claims by requiring an insured, claimant, or physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(13) fail to promptly settle claims, if liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(14) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement."

Section 1207. Section 33-18-203, MCA, is amended to read:

"33-18-203. False or deceptive advertising prohibited. ~~No~~ A person ~~shall~~ may not make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter, or poster or over any radio or television station or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of ~~his~~ the person's insurance business;

which that is untrue, deceptive, or misleading."

Section 1208. Section 33-18-1003, MCA, is amended to read:

"33-18-1003. Undefined unfair practices -- procedures for determining and restraining. (1) If the commissioner believes that any person engaged in the insurance business is engaging in this state in any method of competition or in any act or practice in the conduct of ~~such the~~ business ~~which that~~ is not defined in this chapter but that ~~such the~~ method of competition is unfair or that ~~such the~~ act or practice is unfair or deceptive and that a proceeding by ~~him the commissioner~~ in respect ~~thereto to the act or practice~~ would be in the public interest, ~~he the commissioner~~ shall, after a hearing of which notice of the hearing and of the charges against ~~him the person~~ are given ~~such to the~~ person, make a written report of ~~his the~~ findings of fact relative to ~~such the~~ charges and serve a copy ~~thereof of the report~~ upon ~~such the~~ person and any intervenor at the hearing.

(2) If ~~such the~~ report charges a violation of this chapter and if ~~such the~~ method of competition, act, or practice has not been discontinued, the commissioner may, through the attorney general of this state, at any time after the service of ~~such the~~ report cause an action to be instituted to enjoin and restrain ~~such the~~ person from engaging in ~~such the~~ method, act, or practice. In ~~such the~~ action, the court may grant a restraining order or injunction upon ~~such terms as that~~ may be just, but the people of this state ~~shall may~~ not be required to give security before the issuance of any ~~such~~ order or injunction. If a stenographic record of the proceedings in the hearing before the commissioner was made, a certified transcript ~~thereof~~, including all evidence taken and the report and findings, ~~shall must~~ be received in evidence in ~~such the~~ action.

(3) If the commissioner's report made under subsection (1) ~~above~~ or order on hearing made under 33-18-1004 does not charge a violation of this chapter, then any intervenor in the proceedings may appeal ~~therefrom from the report or order on hearing~~ within the time and in the manner provided in this code for appeals from the commissioner generally."

Section 1209. Section 33-18-1004, MCA, is amended to read:

"33-18-1004. Desist orders for prohibited practices. (1) If, after a hearing ~~thereon of the charges~~ of which notice of ~~such the~~ hearing and of the charges against ~~him the person~~ ~~were was~~ given ~~such to the~~ person, the commissioner finds that ~~any a~~ person in this state has engaged or is engaging in any act or practice defined in or prohibited under this chapter, the commissioner shall order ~~such the~~ person to desist from ~~such the~~ acts or practices.

(2) ~~Such The~~ desist order ~~shall become~~ becomes final upon expiration of the time allowed for appeals

from the commissioner's orders if ~~no such an~~ appeal is not taken or, in event of ~~such~~ an appeal, upon final decision of the court if the court affirms the commissioner's order or dismisses the appeal. An intervenor in ~~such~~ the hearing ~~shall have~~ has the right to appeal as provided in 33-18-1003(3).

(3) In event of ~~such~~ an appeal, to the extent that the commissioner's order is affirmed, the court shall issue its own order commanding obedience to the terms of the commissioner's order.

(4) ~~No~~ An order of the commissioner pursuant to this section or order of court to enforce it ~~shall~~ does not in any way relieve or absolve ~~any a~~ person affected by ~~such~~ the order from any other liability, penalty, or forfeiture under law.

(5) This section ~~shall~~ may not be ~~deemed~~ considered to affect or prevent the imposition of any penalty provided by this code or by other law for violation of any other provision of this chapter, whether or not ~~any such~~ the hearing is called or held or ~~such~~ the desist order is issued."

Section 1210. Section 33-19-205, MCA, is amended to read:

"33-19-205. Investigative consumer reports. (1) An insurance institution, insurance producer, or insurance-support organization may not prepare or request an investigative consumer report about an individual in connection with an insurance transaction involving an application for insurance, a policy renewal, a policy reinstatement, or a change in insurance benefits unless the insurance institution or insurance producer informs the individual:

(a) that ~~he~~ the individual may request to be interviewed in connection with the preparation of the investigative consumer report; and

(b) that upon a request pursuant to 33-19-301, ~~he~~ the individual is entitled to receive a copy of the investigative consumer report.

(2) If an investigative consumer report is to be prepared by an insurance institution or insurance producer, the insurance institution or insurance producer shall institute reasonable procedures to conduct a personal interview requested by an individual.

(3) If an investigative consumer report is to be prepared by an insurance-support organization, the insurance institution or insurance producer desiring ~~such~~ the report shall inform the insurance-support organization as to whether a personal interview has been requested by the individual. The insurance-support organization shall institute reasonable procedures to conduct ~~such~~ the interview, if requested."

Section 1211. Section 33-20-117, MCA, is amended to read:

"33-20-117. Nonforfeiture rights -- policies issued before operative date. (1) This section ~~shall apply~~ applies only to policies of life insurance issued prior to the operative date of 33-20-213.

(2) In the event of default in payment of any premium due on any policy, ~~provided if~~ not less than ~~three~~ 3 full years' premiums ~~shall~~ have been paid, there ~~shall~~ must be secured to the insured, without action on ~~his~~ the insured's part, either paid-up or extended insurance as specified in the policy, the net value of which ~~shall~~ must be at least equal to the entire net reserve held by the insurer of ~~such~~ the policy, less 2 1/2% of the amount insured by the policy and dividend additions, if any, and less any outstanding indebtedness to the insurer on the policy at the time of default. There ~~shall~~ must be secured to the insured the right to surrender the policy to the insurer at its home office within 1 month after the date of default for cash value otherwise available for the purchase of the paid-up or extended insurance ~~as aforesaid.~~"

Section 1212. Section 33-20-1002, MCA, is amended to read:

"33-20-1002. Employee life insurance defined. "Employee life insurance" is that plan of life insurance, other than salary savings life insurance or pension trust insurance and annuities, under which individual policies are issued to the employees of any employer and ~~where such~~ when the policies are issued on the lives of not less than five employees at date of issue. Premiums for ~~such~~ the policies ~~shall~~ must be paid by the employer or the trustee of a fund established by the employer either wholly from the employer's funds or funds contributed by ~~him~~ the employer or partly from ~~such~~ those funds and partly from funds contributed by the insured employees."

Section 1213. Section 33-20-1103, MCA, is amended to read:

"33-20-1103. Employer and labor union combinations -- trustee groups. The lives of a group of individuals may be insured under a policy issued to the trustees of a fund established by two or more employers or by one or more labor unions or by one or more employers and one or more labor unions, which trustees ~~shall be deemed~~ must be considered the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

(1) The persons eligible for insurance ~~shall~~ must be all of the employees of the employers or all of the members of the unions or all of any class or classes ~~thereof~~ of the employees or members determined by conditions pertaining to their employment or to membership in the unions, or to both. The policy may provide that the term "employees" ~~shall include~~ includes retired employees and the individual proprietor or partners if an employer is an individual proprietor or a partnership. ~~No~~ A director of a corporate employer ~~shall~~ may not be eligible for insurance under the policy unless ~~such~~ the person is otherwise eligible as a bona fide employee of

the corporation by performing services other than usual duties of a director. ~~No~~ An individual proprietor or partner ~~shall~~ may not be eligible for insurance under the policy unless ~~he~~ the proprietor or partner is actively engaged in and devotes a substantial part of ~~his~~ the individual's time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" ~~shall include~~ includes the trustees or their employees, or both, if their duties are principally connected with ~~such~~ the trusteeship.

(2) The premium for the policy ~~shall~~ must be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons or by the union or unions, or by both, or partly from ~~such~~ the funds and partly from funds contributed by the insured persons. ~~No~~ A policy may not be issued on which the entire premium is to be derived from funds contributed by the insured persons specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least 75% of the then eligible persons, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons or all except any ~~as to~~ person for whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at date of issue at least 100 persons and not less than an average of 5 persons per employer unit; and if the fund is established by the members of an association of employers the policy may be issued if:

(a) either:

(i) the participating employers constitute at date of issue at least 60% of those employer members whose employees are not already covered for group life insurance; or

(ii) the total number of persons covered at date of issue exceeds 600; and

(b) the policy ~~shall~~ does not require that, if a participating employer discontinues membership in the association, the insurance of ~~his~~ the employer's employees shall cease solely by reason of ~~such~~ the discontinuance.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions."

Section 1214. Section 33-20-1105, MCA, is amended to read:

"33-20-1105. Debtor groups. The lives of a group of individuals may be insured under a policy issued to a creditor, who ~~shall be deemed~~ is considered the policyholder, to insure the debtors of the creditor, subject

to the following requirements:

(1) The debtors eligible for insurance under the policy ~~shall~~ must be all of the debtors of the creditor or all of any class or classes ~~thereof~~ of those debtors determined by conditions pertaining to the indebtedness or the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" ~~shall include~~ includes the debtors of one or more subsidiary corporations and the debtors of one or more affiliated corporations, proprietors, or partnerships if the business of the policyholder and of ~~such~~ the affiliated corporations, proprietors, or partnerships is under common control.

(2) The premium for the policy ~~shall~~ must be paid by the policyholder, ~~either~~ from the creditor's funds, ~~or~~ from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors ~~shall~~ may not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least 75% of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of ~~such~~ identifiable charges must insure all eligible debtors or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly or may reasonably be expected to receive at least 100 new entrants during the first policy year and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than 75% of the new entrants become insured. The policy may exclude from the classes eligible for insurance classes of debtors determined by age.

(4) The amount of insurance on the life of any debtor ~~shall~~ may not at ~~no~~ any time exceed the amount owed by ~~him~~ the debtor to the creditor.

(5) The insurance ~~shall~~ must be payable to the policyholder. Each payment ~~shall~~ must reduce or extinguish the unpaid indebtedness of the debtor to the extent of ~~such~~ the payment."

Section 1215. Section 33-20-1208, MCA, is amended to read:

"33-20-1208. Certificate. The group life insurance policy ~~shall~~ must contain a provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which ~~he~~ the person is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in 33-20-1209 through 33-20-1211."

Section 1216. Section 33-21-104, MCA, is amended to read:

"33-21-104. Existing insurance -- choice of insurer. When credit life insurance or credit disability insurance is required as additional security for an indebtedness, the debtor, upon request to the creditor, has the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by ~~him~~ the debtor or of procuring and furnishing the required coverage through an insurer authorized to transact insurance within Montana."

Section 1217. Section 33-21-111, MCA, is amended to read:

"33-21-111. Rules -- enforcement of chapter. The commissioner may, after notice and hearing, ~~issue such adopt~~ rules as he deems that the commissioner considers appropriate for the supervision of this chapter. Whenever the commissioner finds that there has been a violation of this chapter or any rules ~~issued~~ adopted pursuant ~~thereto~~ to this chapter and after written notice ~~thereof~~ and hearing given to the insurer or other person authorized or licensed by the commissioner, ~~he~~ the commissioner shall set forth the details of ~~his~~ the commissioner's findings together with an order for compliance by a specified date. ~~Such~~ The order ~~shall be~~ is binding on the insurer and other person authorized or licensed by the commissioner on the date specified unless ~~sooner~~ withdrawn by the commissioner or unless a stay ~~thereof~~ has been ordered by a court of competent jurisdiction."

Section 1218. Section 33-21-113, MCA, is amended to read:

"33-21-113. Penalties. In addition to any penalty provided by law, a person who violates an order of the commissioner after it has become final and while the order is in effect shall, upon proof ~~thereof~~ of the violation to the satisfaction of the court, forfeit and pay to the state of Montana a sum not to exceed \$250, which may be recovered in a civil action, except that if the violation is found to be willful, the amount of the penalty is a sum not to exceed \$1,000. The commissioner, ~~in his discretion,~~ may revoke or suspend the license or certificate of authority of the person, partnership, or corporation guilty of ~~such~~ the violation. The order for suspension or revocation is subject to judicial review as provided in 33-1-711."

Section 1219. Section 33-21-204, MCA, is amended to read:

"33-21-204. Policy or certificate delivered -- time of delivery -- provisions. (1) All credit life insurance and credit disability insurance sold must be evidenced by an individual policy or, in the case of group insurance, by a certificate of insurance, ~~which~~ The individual policy or group certificate of insurance must be delivered to

the debtor at the time the indebtedness is incurred except as ~~hereinafter~~ provided in this section.

(2) If the individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for the policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home office address of the insurer, the name of each debtor, the premium or amount of payment, if any, by the debtor separately in connection with credit life insurance and credit disability insurance coverage, the amount, term, and a brief description of the coverage provided or to be provided, must be delivered to the debtor at the time ~~such~~ the indebtedness is incurred. The copy of the application for or notice of proposed insurance must also refer exclusively to insurance coverage and must be separate and apart from the loan, sale, or other credit statement of account, instrument, or agreement unless the information required by this section is prominently set forth ~~therein~~ in the statement of account, instrument, or agreement. Upon approval by the insurer of the application for insurance or acceptance of the insurance by the insurer and within 30 days of the date upon which the indebtedness is incurred, the insurer shall deliver the individual policy or group certificate of insurance to the debtor. The application or notice of proposed insurance must state that, upon acceptance by the insurer, the insurance becomes effective as of the date the indebtedness is incurred. If the named insurer does not accept the risk, the debtor must receive a policy or certificate of insurance setting forth the name and home office address of the substituted insurer and the amount of the premium to be charged. If the amount of premium is less than that set forth in the notice of proposed insurance, the insurer shall make an appropriate refund.

(3) Each individual policy or group certificate of credit life insurance and credit disability insurance must, in addition to other requirements of law, set forth the name and home office address of the insurer, the name of each debtor or, in the case of a group certificate of insurance, the identity by name or otherwise of the debtor, the rate or amount of payment, if any, by the debtor separately in connection with credit life insurance and credit disability insurance, and a description of the coverages, including the amount and term ~~thereof~~ of the coverages and any exceptions, limitations, or restrictions, and must state that the benefits must be paid to the creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance may exceed the unpaid indebtedness, that any ~~such~~ excess must be payable to a beneficiary, other than the creditor, named by the debtor or to ~~his~~ the debtor's estate. If the term of the insurance is less than the term of the loan, that fact must be stated on the face of the individual policy or group certificate in not less than 10-point boldface type.

(4) For the purposes of subsections (1) and (2), an individual policy or group certificate of insurance delivered in connection with an open-end credit agreement is considered to be delivered at the time the indebtedness is incurred if delivery occurs on or before the date the indebtedness is incurred."

Section 1220. Section 33-22-112, MCA, is amended to read:

"33-22-112. Disability insurance coverage of services of state institutions -- provision void -- rate of payment. (1) ~~From and after February 14, 1973, it shall be~~ It is unlawful for any insurance company issuing disability insurance policies in Montana to exclude from coverage in a disability insurance policy services rendered the insured while a resident in a Montana state institution; ~~provided if~~ provided if the services to the insured would be covered by the disability insurance policy if rendered to ~~him~~ the insured outside a Montana state institution.

(2) A disability insurance policy is considered issued in Montana if the insured purchasing the disability insurance policy is, at the time of the purchase, residing in the state of Montana.

(3) If the exclusion prohibited by this section ~~should appear~~ appears in a disability insurance policy issued in Montana after February 14, 1973, the provision is void and the disability insurance policy will be considered to cover services rendered the insured in a Montana state institution if the services would have been covered if rendered to an insured outside of a Montana state institution.

(4) Payment for services rendered in a Montana state institution ~~shall~~ must be to the same extent and at the same rates, according to the provisions of the disability policy, ~~which~~ that would be paid for the services if rendered outside a Montana state institution."

Section 1221. Section 33-22-125, MCA, is amended to read:

"33-22-125. Independent chiropractic physical examination or review of records. (1) If a patient's attending health care professional is a licensed chiropractor, the following provisions govern the conduct of a utilization review of the health care services rendered to the patient by the chiropractor:

(a) If an independent physical examination is required by the insurer, it must be conducted by a chiropractor engaged in the practice of chiropractic in Montana.

(b) If a review of the patient's or the chiropractor's records is required by the insurer in the course of an appeal or a redetermination of an adverse determination of medical necessity or appropriateness made pursuant to an insurer's review, the review must be conducted by a person trained in the field of chiropractic. During an appeal or redetermination, the patient may, at ~~his~~ the patient's expense, request an independent review of the patient's or the chiropractor's records by a chiropractor engaged in the practice of chiropractic in Montana and may require that review to be considered by the insurer in reaching its decision. If the initial adverse determination of medical necessity or appropriateness is reversed, the insurer shall bear the expense of the independent review.

(2) ~~Nothing in this section prevents~~ This section does not prevent a health care insurer from requesting

additional medical review of a patient's condition or treatment by another chiropractor or medical provider.

(3) The provisions of this section do not apply to routine claim administration or determination by an insurer.

(4) As used in this section, "health care insurer" means:

- (a) an insurer who provides disability insurance as defined in 33-1-207;
- (b) a health service corporation as defined in 33-30-101;
- (c) a health maintenance organization as defined in 33-31-102;
- (d) a fraternal benefit society as defined in 33-7-108;
- (e) an administrator as defined in 33-17-102; and
- (f) any other entity regulated by the commissioner that provides health care coverage."

Section 1222. Section 33-22-206, MCA, is amended to read:

"33-22-206. Grace period. (1) There ~~shall~~ must be a provision as follows:

"Grace Period: A grace period of (insert a number not less than 7 for weekly premium policies, 10 for monthly premium policies, and 31 for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy ~~shall~~ must continue in force."

(2) A policy in which the insurer reserves the right to refuse renewal ~~shall~~ must have, at the beginning of the ~~above~~ provision contained in subsection (1):

"Unless not less than 30 days prior to the premium due date the insurer has delivered to the insured or has mailed to ~~his~~ the insured's last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.""

Section 1223. Section 33-22-208, MCA, is amended to read:

"33-22-208. Notice of claim. (1) ~~There shall be~~ A policy must contain a provision as follows:

"Notice of Claim: Written notice of claim must be given to the insurer within 6 months after the occurrence or commencement of any loss covered by the policy or as soon ~~thereafter~~ after that date as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at (insert the location of ~~such the office as that~~ the insurer may designate for the purpose) or to any authorized insurance producer of the insurer, with information sufficient to identify the insured, ~~shall be deemed~~ is considered notice to the insurer."

(2) In a policy providing a loss-of-time benefit ~~which that~~ may be payable for at least 2 years, an insurer may at its option insert the following between the first and second sentences of the ~~above~~ provision in subsection

(1):

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least 2 years, ~~he~~ the insured shall, at least once in every 6 months after having given notice of the claim, give to the insurer notice of continuance of the disability, except in the event of legal incapacity. The period of 6 months following any filing of proof by the insured or any payment by the insurer on account of ~~such~~ the claim or any denial of liability in whole or in part by the insurer ~~shall~~ must be excluded in applying this provision. Delay in ~~the~~ giving of ~~such~~ the notice ~~shall~~ may not impair the insured's right to any indemnity ~~which~~ that would otherwise have accrued during the period of 6 months preceding the date on which ~~such~~ the notice is actually given."

Section 1224. Section 33-22-222, MCA, is amended to read:

"33-22-222. Change of occupation. There may be a provision as follows:

"Change of Occupation: If the insured ~~be~~ is injured or ~~contract~~ contracts sickness after having changed ~~his~~ the insured's occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to ~~an~~ a ~~classified~~ unclassified occupation ~~so~~ not classified, the insurer will pay only ~~such~~ the portion of the indemnities provided in this policy ~~as~~ that the premium paid would have purchased at the rates and within the limits fixed by the insurer for ~~such~~ the more hazardous occupation. If the insured changes ~~his~~ the insured's occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of ~~such~~ the change of occupation, will reduce the premium rate accordingly and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of ~~such~~ the proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates ~~shall~~ must be ~~such~~ as ~~those~~ that have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; ~~but~~ However, if ~~such~~ the filing was not required, then the classification of occupational risk and the premium rates ~~shall~~ must be those last made effective by the insurer in ~~such~~ that state prior to the occurrence of the loss or prior to the date of proof of change in occupation."

Section 1225. Section 33-22-224, MCA, is amended to read:

"33-22-224. Other insurance in this insurer. (1) There may be a provision as follows:

"Other Insurance in This Insurer: If an accident or sickness or accident and sickness policy or policies

previously issued by the insurer to the insured ~~be~~ are in force concurrently ~~herewith~~ with this policy, making the aggregate indemnity for (insert type of coverage or coverages) in excess of \$.... (insert maximum limit of indemnity or indemnities), the excess insurance ~~shall be~~ is void and all premiums paid for ~~such~~ the excess ~~shall~~ must be returned to the insured or to ~~his~~ the insured's estate."

(2) ~~Or, in lieu thereof~~ Instead of the provision in subsection (1), there may be the following:

"Insurance effective at any one time on the insured under a ~~like~~ similar policy or policies in this insurer is limited to the one ~~such~~ policy elected by the insured, ~~his~~ the insured's beneficiary, or ~~his~~ the insured's estate, ~~as the case may be appropriate~~, and the insurer will return all premiums paid for all other ~~such~~ policies."

Section 1226. Section 33-22-227, MCA, is amended to read:

"33-22-227. Relation of earnings to insurance. (1) There may be a provision as follows:

"Relation of Earnings to Insurance: If the total monthly amount of loss-of-time benefits promised for the same loss under all valid loss-of-time coverage upon the insured, whether payable on a weekly or monthly basis, ~~shall exceed~~ exceeds the monthly earnings of the insured at the time disability commenced or ~~his~~ the insured's average monthly earnings for the period of 2 years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for ~~such~~ the proportionate amount of ~~such~~ benefits under this policy ~~as that~~ the amount of ~~such~~ the monthly earnings or ~~such~~ the average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all ~~such~~ coverage upon the insured at the time ~~such~~ the disability commences and for the return of ~~such~~ the part of the premiums paid during ~~such~~ the 2 years ~~as shall~~ that exceed the pro rata amount of the premiums for the benefits actually paid ~~hereunder; under this policy. but~~ However, this ~~shall~~ may not operate to reduce the total monthly amount of benefits payable under all ~~such~~ coverage upon the insured below the sum of \$200 or the sum of the monthly benefits specified in ~~such~~ the coverages, whichever is the lesser, ~~nor shall it~~ and may not operate to reduce benefits other than those payable for loss of time."

(2) The ~~foregoing~~ policy provision in subsection (1) may be inserted only in a policy ~~which~~ that the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age 50; or, in the case of a policy issued after age 44, for at least 5 years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage", approved as to form by the commissioner, ~~which~~ The definition ~~shall~~ must be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada or to any other coverage the inclusion of which may be

approved by the commissioner or any combination of ~~such~~ coverages. In the absence of ~~such a~~ definition, ~~such~~ the term shall may not include any coverage provided for ~~such the~~ insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, or benefits provided by union welfare plans or by employer or employee benefit organizations."

Section 1227. Section 33-22-502, MCA, is amended to read:

"33-22-502. Required provisions of group policies. Each group disability insurance policy delivered or issued for delivery in this state must contain in substance the following provisions:

(1) a provision that, in the absence of fraud, all statements made by applicants or the policyholder or by an insured person ~~shall~~ must be deemed considered representations and not warranties and that ~~no a~~ statement made for the purpose of effecting insurance ~~shall may not~~ avoid ~~such the~~ insurance or reduce benefits unless contained in a written instrument signed by the policyholder or the insured person, a copy of which has been furnished to ~~such the~~ policyholder or to ~~such the insured~~ person or ~~his the insured person's~~ beneficiary;

(2) a provision that the insurer will furnish to the policyholder for delivery to each employee or member of the insured group a statement in summary form of the essential features of the insurance coverage of ~~such the~~ employee or member and to whom benefits ~~thereunder~~ are payable. If dependents are included in the coverage, only one certificate ~~need is required~~ be issued for each family unit.

(3) a provision that to the group originally insured may be added from time to time eligible new employees or members or dependents, as the case may be, in accordance with the terms of the policy;

(4) a provision or the equivalent ~~thereto~~ that reads:

"Conformity with Montana statutes. The provisions of this policy conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy."

Section 1228. Section 33-22-507, MCA, is amended to read:

"33-22-507. Continuing group coverage after reduction of work schedule. A person covered by a group disability insurance policy issued or renewed after October 1, 1981, under 33-22-501(1) may, for a period of 1 year, with the consent of the employer or the trustees, continue coverage under group disability policy during ~~his the person's~~ employment notwithstanding any reduction of ~~his the person's~~ regular work schedule to less than the minimum time required to qualify for membership in the group, and the premium charged ~~him shall the person~~ must be equal to that charged other members of the group of the same risk class."

Section 1229. Section 33-22-510, MCA, is amended to read:

"33-22-510. Insured's family -- conversion entitlement. Subject to the conditions set forth in this section, the conversion privilege is also available:

(1) to the surviving spouse, if any, at the death of the employee or member, with respect to the spouse and ~~such~~ children whose coverage under the group policy terminates by reason of ~~such~~ the death, otherwise to each surviving child whose coverage under the group policy terminates by reason of ~~such~~ the death, or if the group policy provides for continuation of dependent's coverage following the employee's or member's death, at the end of ~~such~~ the continuation;

(2) to the spouse of the employee or member upon termination of coverage of the spouse, by reason of ceasing to be a qualified family member under the group policy, while the employee or member remains under the group policy, including ~~such~~ children whose coverage under the group policy terminates at the same time; or

(3) to a child solely with respect to ~~himself~~ the child upon termination of ~~his~~ child's coverage by reason of ceasing to be a qualified family member under the group policy; if a conversion privilege is not otherwise provided ~~above~~ in this section with respect to ~~such~~ the termination."

Section 1230. Section 33-22-604, MCA, is amended to read:

"33-22-604. Payment of claims -- discharge. (1) ~~(a) All~~ Subject to subsection (1)(b), all benefits under ~~any a~~ blanket disability policy ~~shall~~ must be payable to:

(i) the person insured or to ~~his~~ the person's designated beneficiary or beneficiaries or to ~~his~~ the person's estate; ~~except that if the person insured be is a minor or mental is mentally incompetent, such the~~ benefits may be made payable to ~~his~~ the parent, guardian, or other person actually supporting ~~him~~ the person; or

(ii) ~~the employer,~~ if the entire cost of the insurance has been borne by the employer ~~such benefits may be made payable to the employer.~~

~~(b) Provided, however, that the~~ The policy may provide that all or any portion of any indemnities provided by ~~such the~~ policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option, be paid directly to the hospital or person rendering ~~such the~~ services; ~~but the policy may not require that the service be rendered by a particular hospital or person.~~

(2) Payment ~~so~~ made ~~shall discharge~~ as provided in subsection (1) discharges the insurer's obligation with respect to the amount of insurance ~~so~~ paid."

Section 1231. Section 33-22-1001, MCA, is amended to read:

"33-22-1001. Definition of home health care. "Home health care" means services provided by a licensed home health agency to an insured in ~~his~~ the insured's place of residence that is prescribed by the insured's attending physician as part of a written plan of care. Services provided by home health care include:

- (1) nursing;
- (2) home health aide services;
- (3) physical therapy;
- (4) occupational therapy;
- (5) speech therapy;
- (6) hospice service;
- (7) medical supplies and equipment suitable for use in the home; and
- (8) medically necessary personal hygiene, grooming, and dietary assistance."

Section 1232. Section 33-22-1602, MCA, is amended to read:

"33-22-1602. Notice -- shared costs of third-party action -- limitation. (1) If an insured intends to institute an action for damages against a third party, the insured shall give the insurer reasonable notice of ~~his~~ the intention to institute the action.

(2) The insured may request that the insurer pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

(3) An insurer may elect not to participate in the cost of the action. If ~~such~~ an election is made, the insurer waives 50% of any subrogation rights granted to it by 33-22-1601.

(4) The insurer's right of subrogation granted in 33-22-1601 may not be enforced until the injured insured has been fully compensated for ~~his~~ the insured's injuries."

Section 1233. Section 33-23-201, MCA, is amended to read:

"33-23-201. Motor vehicle liability policies to include uninsured motorist coverage -- rejection by insured. (1) ~~No~~ A motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle may not be delivered or issued for delivery in this state, with respect to any motor vehicle registered and principally garaged in this state, unless coverage is provided ~~therein in the policy~~ or supplemental ~~thereto to the policy~~, in limits for bodily injury or death set forth in 61-6-103, under provisions filed with and approved by the

commissioner, for the protection of persons insured ~~thereunder~~ under the policy who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting ~~therefrom~~ from the injury, sickness, or disease, caused by an accident arising out of the operation or use of ~~such~~ the motor vehicle. An uninsured motor vehicle is a land motor vehicle, the ownership, the maintenance, or the use of which is not insured or bonded for bodily injury liability at the time of the accident.

(2) The named insured ~~shall have~~ has the right to reject ~~such~~ the coverage. Unless the named insured requests ~~such~~ the coverage in writing, ~~such~~ the coverage need not be provided in or supplemental to a renewal policy ~~where~~ when the named insured had rejected the coverage in connection with the policy previously issued to ~~him~~ the named insured by the same insurer."

Section 1234. Section 33-23-213, MCA, is amended to read:

"33-23-213. Notice to insured of ground for cancellation -- commissioner to ensure compliance.

Whenever an insurer gives notice of cancellation of a motor vehicle liability policy, upon request of the insured, the insurer, within 15 days of receipt of the request, shall furnish to the insured a statement setting forth the ground or grounds upon which the notice of cancellation is based. If the insurer fails to comply with the provisions of this section, the insured may apply to the commissioner for a certificate of the facts or information desired. The commissioner shall exercise any power conferred upon ~~him~~ the commissioner by law ~~as~~ that may be necessary to ensure compliance with this section."

Section 1235. Section 33-23-216, MCA, is amended to read:

"33-23-216. Retention and proof of notice. (1) A notice of cancellation or of intention not to renew or of reasons for cancellation of insurance issued under terms of this chapter must be retained for a period of 3 years by the insurer or ~~his~~ the insurer's insurance producer within this state and must be made available within this state for examination or inspection by the commissioner or ~~his~~ the insurer's insurance producers at any time within ~~such~~ the 3-year period upon reasonable notice.

(2) Proof of mailing of notice of cancellation or of intention not to renew or of reasons for cancellation to the named insured at the address shown in the policy or to the named insured's ~~latest known~~ last-known address is sufficient proof of notice."

Section 1236. Section 33-24-102, MCA, is amended to read:

"33-24-102. Insuring improvements -- insurance equal to true value. Whenever any policy of

insurance ~~shall be~~ is written to insure any improvements upon real property in this state against loss or damage and the property insured is considered to be a total loss, without criminal fault on the part of the insured or ~~his~~ the insured's assigns, the amount of insurance written in ~~such~~ the policy ~~shall~~ must be taken conclusively to be the true value of the property insured and the true amount of loss and measure of damages. The payment of money as a premium for insurance ~~shall~~ must be prima facie evidence that the party paying ~~such~~ the insurance premium is the owner of the property insured; ~~provided~~ However, ~~that~~ any insurance company may ~~set up~~ assert fraud in obtaining the policy as a defense to a suit ~~thereon~~ on the policy."

Section 1237. Section 33-25-216, MCA, is amended to read:

"33-25-216. Notice of issuance of mortgagee policy. (1) A title insurer or title insurance producer that issues a mortgagee's policy of title insurance on a loan made simultaneous to the purchase of all or part of the property securing the loan, when ~~no~~ an owner's policy has not been ordered, ~~must~~ shall inform the borrower in writing that the mortgagee's policy is to be issued, that the mortgagee's policy does not protect the borrower, and that the borrower may obtain an owner's title insurance policy for ~~his~~ the borrower's protection. This notice must be provided, on a form prescribed by the commissioner, before issuance of the mortgagee's policy.

(2) If the borrower elects not to purchase an owner's title insurance policy, the title insurer or title insurance producer ~~must~~ shall obtain from ~~him~~ the borrower a statement in writing that the notice has been received and that the borrower waives the right to purchase an owner's title insurance policy. If the buyer refuses to provide the statement and waiver, the title insurer or title insurance producer ~~must so note~~ shall indicate the refusal in the file. The statement and waiver must be on a form prescribed by the commissioner and must be retained by the title insurer or title insurance producer for at least 5 years after receipt."

Section 1238. Section 33-25-302, MCA, is amended to read:

"33-25-302. Disapproval of agency contracts. (1) The commissioner may disapprove a title agency contract between a title insurance producer and title insurer, upon appropriate notice to the parties to the contract, if ~~he~~ the commissioner finds that the contract, together with all amendments and related documents:

- (a) does not provide for adequate monitoring of the insurance producer's financial transactions; or
- (b) provides for inadequate, unreasonable, or excessive amounts to be paid to or retained by the title insurance producer. Factors the commissioner may consider in this determination include but are not limited to the insurance producer's duties under the contract and the general level of amounts paid to or retained by other title insurance producers in the state performing or assuming comparable duties.

(2) A person may not act as a title insurance producer under an agency contract that has been disapproved by the commissioner."

Section 1239. Section 33-25-401, MCA, is amended to read:

"33-25-401. Prohibited practices -- referrals -- splitting charges -- exemptions. (1) Except as provided in subsection (2), a person may not:

(a) give or accept a fee, rebate, or thing of value pursuant to an agreement or understanding that title insurance business will be referred to a title insurance producer; or

(b) give or accept a portion, split, or percentage of a charge made or received for title insurance business in connection with a transaction involving real property in this state, other than for services actually performed.

(2) (a) A person may pay a return on an investment, based on a percentage of an ownership interest in a title insurance agency, if:

(i) at or prior to the time of a referral, a disclosure of the existence of the arrangement is made to the person being referred and, in connection with the referral, the person is provided a written estimate of the charge or range of charges generally made by the title insurance producer to which the person is referred; and

(ii) the person is not required to use a particular insurance producer.

(b) The following arrangements are not a violation of subsection (2)(a)(ii):

(i) an arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by a lender to represent the lender's interest in a real estate transaction; or

(ii) an arrangement by which an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as insurance producer or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to ~~his~~ the attorney's or ~~its~~ firm's law practice.

(c) Failure to disclose a controlled business relationship is not a violation of subsection (2)(a)(i) if the failure was not intentional and resulted from a bona fide error, proven by a preponderance of the evidence.

(3) This section does not prohibit:

(a) the payment of a fee to an attorney for services actually rendered or by a title insurance producer for services actually performed in the issuance of a title insurance policy; or

(b) payment of a bona fide salary, compensation, or other payment for goods or facilities actually furnished or for services actually performed."

Section 1240. Section 33-26-101, MCA, is amended to read:

"33-26-101. Corporations as sureties. (1) In all cases where an undertaking or bond, with any number of sureties, is authorized or required by any law of this state, any corporation with a paid-up capital of not less than \$100,000, incorporated under the laws of this state for the purpose of making, guaranteeing, or becoming a surety upon bonds or undertakings required or authorized by law, may become and ~~shall~~ must be accepted as security or as a sole and sufficient security upon ~~such the~~ the undertaking or bond, and ~~such the~~ the corporate surety ~~shall~~ must be subject to all liabilities and entitled to all the rights of natural persons as ~~such~~ the sureties.

(2) Whenever the liabilities of any ~~such~~ the corporation ~~shall~~ described in subsection (1) exceed its assets, the state auditor shall require the deficiency to be paid up in 60 days, and if it is not ~~so~~ paid up, then ~~he~~ the state auditor shall issue a certificate showing the extent of ~~such the~~ the deficiency; and ~~he~~ shall publish the ~~same~~ certificate once a week for 3 weeks in a daily paper published in the town or city ~~wherein in which~~ in which the principal office of ~~such the~~ the corporation is, ~~and until located until~~ such the deficiency is paid up, ~~such the~~ the company ~~shall~~ may not be accepted as a surety on any undertaking or bond. In estimating the condition of ~~any such a~~ the company, the state auditor shall allow as assets only ~~such as~~ assets that are allowed under existing laws at the time and shall charge as liabilities, in addition to 80% of the capital stock, all outstanding indebtedness of the company and the premium reserved equal to 50% of the premiums charged by ~~said the~~ the company on all risks then in force."

Section 1241. Section 33-26-107, MCA, is amended to read:

"33-26-107. Deposit of money in bank for safekeeping by executors and other fiduciaries on agreement with surety. It ~~shall be~~ is lawful for any executor, administrator, guardian, receiver, trustee, or other party of whom a bond, undertaking, or other obligation is required to agree with ~~his~~ the entity's surety or sureties for the deposit of any or all ~~moneys~~ money and assets for which ~~he~~ the entity and ~~his~~ the surety or sureties are or may be held responsible with a bank, savings bank, safe-deposit, or trust company, authorized by law to do business ~~as such~~, or with ~~other~~ another depository approved by the court or a judge ~~thereof~~, if ~~such the~~ the deposit is otherwise proper, for ~~the safekeeping thereof~~, and in ~~such a~~ such a manner ~~as to prevent that prevents~~ the withdrawal of ~~such the~~ the money or assets or any part ~~thereof~~ of the money or assets without the written consent of ~~such the~~ the surety or sureties or an order of court or a judge ~~thereof~~ made on ~~such~~ such notice to ~~such the~~ the surety or sureties ~~as such that the~~ that the court or judge may direct. ~~Such The~~ The agreement ~~shall~~ may not in any manner release from or change the liability of the principal or sureties as established by the terms of the bond."

Section 1242. Section 33-30-105, MCA, is amended to read:

"33-30-105. Examination of a health service corporation. (1) If the commissioner believes a health service corporation is unable or potentially unable to fulfill its contractual obligations to its members, the commissioner may conduct an examination of that corporation.

(2) In addition to the examination authorized in subsection (1), at least once every 4 years, the commissioner shall conduct an examination of each health service corporation to determine if the corporation is fulfilling its contractual obligations by prompt satisfaction of claims at the highest monetary level consistent with reasonable dues or fees; and that the corporation's management exercises appropriate fiscal controls, operations, and personnel policies to ~~assure~~ ensure that efficient and economic administration restrains overhead costs for the benefit of its members.

(3) Each health service corporation examined; and its officers, employees, and insurance producers; shall produce and make available to the commissioner or ~~his~~ the commissioner's examiners the accounts, records, documents, files, information, assets, and matters in its possession or control relating to the subject of the examination.

(4) The commissioner or ~~his~~ the commissioner's examiner shall make a verified report of the examination.

(5) The report ~~shall~~ must comprise only facts appearing from the books, papers, records, or documents of the corporation examined or ascertained from the testimony, under oath, of individuals concerning its affairs and conclusions and recommendations as warranted by those facts.

(6) The commissioner shall furnish a copy of the proposed report to the corporation examined not less than 20 days prior to its filing in ~~his~~ the commissioner's office. If the corporation requests a hearing, in writing, within the 20-day period, the commissioner shall grant ~~one~~ a hearing with respect to the report and ~~shall~~ may not file the report until after the hearing and after modifications, if any, that the commissioner ~~deems~~ considers proper.

(7) The health service corporation shall pay for each examination conducted pursuant to subsections (1) and (2) in accordance with 33-1-413."

Section 1243. Section 33-30-303, MCA, is amended to read:

"33-30-303. Grievance procedure for members. Any individual member of a corporation, subject to the provisions of this chapter, who believes ~~himself to be~~ that the member is aggrieved by any act or omission of the corporation or its officers, directors, or employees may file a statement in writing of ~~his~~ the grievance in the office of the commissioner, and the commissioner may investigate the grievance. ~~No~~ An investigation by the

commissioner ~~shall~~ may not act as a bar to any suit in a court of competent jurisdiction instituted by an aggrieved member or as a bar to any defense by the involved corporation."

Section 1244. Section 33-30-1002, MCA, is amended to read:

"33-30-1002. Disability coverage of services received in state institutions -- coverage of persons eligible for public medical assistance. (1) ~~From and after February 14, 1973, it shall be~~ It is unlawful for any health service corporation issuing membership contracts in Montana to exclude from coverage in a membership contract services rendered the insured while a resident in a Montana state institution, ~~provided~~ if the services to the insured would be covered by the membership contract if rendered to ~~him~~ the insured outside a Montana state institution.

(2) A membership contract is considered issued in Montana if the insured purchasing the membership contract is, at the time of ~~such~~ purchase, residing in the state of Montana.

(3) If the exclusion prohibited by this section ~~should appear~~ appears in a membership contract issued in Montana after February 14, 1973, the provision is void and the membership contract will be considered to cover services rendered the insured in a Montana state institution if the services would have been covered if rendered to an insured outside ~~of~~ a Montana state institution.

(4) Payment for services rendered in a Montana state institution ~~shall~~ must be to the same extent and at the same rates, according to the provisions of the membership contract, ~~which~~ that would be paid for the services if rendered outside a Montana state institution.

(5) ~~No~~ A membership contract issued by a health service corporation on or after July 1, 1979, may not deny or reduce benefits to any member on the ground that the person insured is eligible for or receiving public medical assistance provided under Title 53, chapter 2."

Section 1245. Section 33-30-1005, MCA, is amended to read:

"33-30-1005. Right of rescission. Each membership contract, other than a group contract, issued for delivery in this state on or after January 1, 1980, ~~shall~~ must contain a notice stating in substance that if the person to whom the contract is issued is not satisfied for any reason, ~~he~~ the person is permitted to return the contract within 10 days of its delivery; or ~~such a~~ longer period ~~as~~ that the contract may provide; and to have refunded the amount of the premium paid. A contract returned pursuant to this section is void from the beginning."

Section 1246. Section 33-30-1006, MCA, is amended to read:

"33-30-1006. Continuing group coverage after termination. A person covered by a group hospital or medical service plan contract, issued or renewed by a health service corporation after October 1, 1981, may, for a period of 1 year with the consent of the employer or the trustees, continue coverage under the group contract during ~~his~~ the person's employment notwithstanding any reduction of ~~his~~ the person's regular work schedule to less than the minimum time required to qualify for membership in the group, and the premium charged ~~him~~ shall must be equal to that charged the members of the group."

Section 1247. Section 33-30-1009, MCA, is amended to read:

"33-30-1009. Insured's family -- conversion entitlement. Subject to the conditions set forth in this section, the conversion privilege is also available:

(1) to the surviving spouse, if any, at the death of the employee or member, with respect to the spouse and ~~such~~ children whose coverage under the group policy terminates by reason of ~~such~~ the death, otherwise to each surviving child whose coverage under the group policy terminates by reason of ~~such~~ the death, or if the group policy provides for continuation of dependent's coverage following the employee's or member's death, at the end of ~~such~~ the continuation;

(2) to the spouse of the employee or member upon termination of coverage of the spouse, by reason of ceasing to be a qualified family member under the group policy, while the employee or member remains under the group policy, including ~~such~~ children whose coverage under the group policy terminates at the same time; or

(3) to a child solely with respect to ~~himself~~ the child upon termination of ~~his~~ the child's coverage by reason of ceasing to be a qualified family member under the group policy; if a conversion privilege is not otherwise provided ~~above~~ in this section with respect to ~~such~~ the termination."

Section 1248. Section 33-30-1102, MCA, is amended to read:

"33-30-1102. Notice -- shared costs of third-party action -- limitation. (1) If an insured intends to institute an action for damages against a third party, the insured shall give the health service corporation reasonable notice of ~~his~~ the intention to institute the action.

(2) The insured may request that the health service corporation pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

(3) A health service corporation may elect not to participate in the cost of the action. If ~~such an~~ that election is made, the health service corporation waives 50% of any subrogation rights granted to it by 33-30-1101.

(4) The health service corporation's right of subrogation granted in 33-30-1101 may not be enforced until the injured insured has been fully compensated for ~~his~~ the insured's injuries."

Section 1249. Section 33-31-201, MCA, is amended to read:

"33-31-201. Establishment of health maintenance organizations. (1) Notwithstanding any law of this state to the contrary, a person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. A person may not establish or operate a health maintenance organization in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner. A foreign person may qualify for a certificate of authority if it first obtains from the secretary of state a certificate of authority to transact business in this state as a foreign corporation under 35-1-1028.

~~(2) Each health maintenance organization operating in this state as of October 1, 1987, shall submit an application for a certificate of authority under subsection (3) within 30 days after the effective date of rules adopted by the commissioner as provided in 33-31-103. Each such applicant may continue to operate in this state until the commissioner acts upon the application. If an application is denied under 33-31-202, the applicant must be treated as a health maintenance organization whose certificate of authority has been revoked.~~

~~(3)~~(2) Each application of a health maintenance organization, whether separately licensed or not, for a certificate of authority must:

- (a) be verified by an officer or authorized representative of the applicant;
- (b) be in a form prescribed by the commissioner;
- (c) contain:
 - (i) the applicant's name;
 - (ii) the location of the applicant's home office or principal office in the United States₁ (if a foreign person);
 - (iii) the date of organization or incorporation;
 - (iv) the form of organization₁ (including whether the providers affiliated with the health maintenance organization will be salaried employees or group or individual contractors);
 - (v) the state or country of domicile; and
 - (vi) any additional information that the commissioner may reasonably require; and
- (d) set forth the following information or be accompanied by the following documents, as applicable:
 - (i) a copy of the applicant's organizational documents, such as its corporate charters or articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents,

and all amendments ~~thereto~~ to those documents, certified by the public officer with whom the originals were filed in the state or country of domicile;

(ii) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the applicant's internal affairs, certified by its secretary or other officer having custody ~~thereof~~ of the documents;

(iii) a list of the names, addresses, and official positions of the persons responsible for the conduct of the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee; the principal officers in the case of a corporation; and the partners or members in the case of a partnership or association;

(iv) a copy of any contract made or to be made between:

(A) any provider and the applicant; or

(B) any person listed in subsection ~~(3)(d)(iii)~~ (2)(d)(iii) and the applicant. The applicant may file a list of providers executing a standard contract and a copy of the contract instead of copies of each executed contract.

(v) the extent to which any of the following will be included in provider contracts and the form of any provisions that:

(A) limit a provider's ability to seek reimbursement for basic health care services or health care services from an enrollee;

(B) permit or require a provider to assume a financial risk in the health maintenance organization, including any provisions for assessing the provider, adjusting capitation or fee-for-service rates, or sharing in the earnings or losses; and

(C) govern amending or terminating an agreement with a provider;

(vi) a financial statement showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent certified financial statement satisfies this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of this chapter.

(vii) a description of the proposed method of marketing, a financial plan that includes a projection of operating results anticipated until the organization has had net income for at least 1 year, and a statement as to the sources of working capital as well as any other source of funding;

(viii) a power of attorney executed by the applicant, on a form prescribed by the commissioner, appointing the commissioner, ~~his~~ the commissioner's successors in office, and ~~his~~ the commissioner's authorized deputies as the applicant's attorney to receive service of legal process issued against it in this state;

(ix) a statement reasonably describing the geographic service area or areas to be served, by county,

including:

(A) a chart showing the number of primary and specialty care providers, with locations and service areas by county;

(B) the method of handling emergency care, with the location of each emergency care facility; and

(C) the method of handling out-of-area services;

(x) a description of the way in which the health maintenance organization provides services to enrollees in each geographic service area, including the extent to which a provider under contract with the health maintenance organization provides primary care to those enrollees;

(xi) a description of the complaint procedures to be used as required under 33-31-303;

(xii) a description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under 33-31-222;

(xiii) a summary of the way in which administrative services will be provided, including the size and qualifications of the administrative staff and the projected cost of administration in relation to premium income. If the health maintenance organization delegates management authority for a major corporate function to a person outside the organization, the health maintenance organization shall include a copy of the contract in its application for a certificate of authority. Contracts for delegated management authority must be filed with the commissioner in accordance with the filing provisions of 33-31-301(2); ~~however~~ However, ~~nothing in~~ this subsection ~~deprives~~ does not deprive the health maintenance organization of its right to confidentiality of any proprietary information, and the commissioner may not disclose that proprietary information to any other person.

All contracts must include:

(A) the services to be provided;

(B) the standards of performance for the manager;

(C) the method of payment, including any provisions for the administrator to participate in the profits or losses of the plan;

(D) the duration of the contract; and

(E) any provisions for modifying, terminating, or renewing the contract.

(xiv) a summary of all financial guaranties by providers, sponsors, affiliates, or parents within a holding company system or any other guaranties that are intended to ensure the financial success of the plan, including hold harmless agreements by providers, insolvency insurance, reinsurance, or other guaranties;

(xv) a summary of benefits to be offered enrollees, including any limitations and exclusions and the renewability of all contracts to be written;

(xvi) evidence that it can meet the requirement of 33-31-216(10); and

(xvii) any other information that the commissioner may reasonably require to make the determinations required in 33-31-202.

~~(4)~~(3) Each health maintenance organization shall file each substantial change, alteration, or amendment to the information submitted under subsection ~~(3)~~ (2) with the commissioner at least 30 days prior to its effective date, including changes in articles of incorporation and bylaws, organization type, geographic service area, provider contracts, provider availability, plan administration, financial projections and guaranties, and any other change that might affect the financial solvency of the plan. The commissioner may, after notice and hearing, disapprove any proposed change, alteration, or amendment to the business plan. The commissioner may ~~make~~ adopt reasonable rules exempting from the filing requirements of this subsection those items ~~he~~ that the commissioner considers unnecessary.

~~(5)~~(4) An applicant or a health maintenance organization holding a certificate of authority shall file with the commissioner all contracts of reinsurance and any modifications ~~thereto~~ to the contracts. An agreement between a health maintenance organization and an insurer is subject to Title 33, chapter 2, part 12. A reinsurance agreement must remain in full force and effect for at least 90 days following written notice of cancellation by either party by certified mail to the commissioner.

~~(6)~~(5) Each health maintenance organization shall maintain, at its administrative office, and make available to the commissioner upon request executed copies of all provider contracts.

~~(7)~~(6) The commissioner may ~~make~~ adopt reasonable rules exempting an insurer or health service corporation operating a health maintenance organization as a plan from the filing requirements of this section if information requested in the application has been submitted to the commissioner under other laws and rules administered by the commissioner."

Section 1250. Section 33-31-221, MCA, is amended to read:

"33-31-221. Powers of health maintenance organizations. (1) The powers of a health maintenance organization include but are not limited to the following:

(a) the purchase, lease, construction, renovation, operation, or maintenance of a hospital, a medical facility, or both, its ancillary equipment, and ~~such property as~~ that may reasonably be required for its principal office or for ~~such purposes as~~ that may be necessary in the transaction of the business of the organization;

(b) the making of loans to a medical group under contract with it in furtherance of its program or the making of loans to a corporation under its control for the purpose of acquiring or constructing a medical facility

or hospital or in furtherance of a program providing health care services to enrollees;

(c) the furnishing of health care services through a provider who is under contract with or employed by the health maintenance organization;

(d) the contracting with a person for the performance on its behalf of certain functions, such as marketing, enrollment, and administration;

(e) the contracting with an insurer authorized to transact insurance in this state, or with a health service corporation authorized to do business in this state, for the provision of insurance, indemnity, or reimbursement against the cost of health care services provided by the health maintenance organization; and

(f) the offering of other health care services in addition to basic health care services.

(2) A health maintenance organization shall file notice, with adequate supporting information, with the commissioner before exercising a power granted in subsection (1)(a), (1)(b), or (1)(d). The commissioner may, after notice and hearing, within 60 days disapprove the exercise of a power under subsection (1)(a), (1)(b), or (1)(d) only if, in ~~his~~ the commissioner's opinion, it would substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations. The commissioner may make reasonable rules exempting from the filing requirement of this subsection those activities having a de minimis effect. The commissioner may exempt certain contracts from the filing requirement whenever exercise of the authority granted in this section would have little or no effect on the health maintenance organization's financial condition and ability to meet obligations.

(3) ~~Nothing in this~~ This section exempts does not exempt the activities of a health maintenance organization from any applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3."

Section 1251. Section 33-31-312, MCA, is amended to read:

"33-31-312. Prohibited practices. (1) A health maintenance organization; or representative ~~thereof,~~ of a health maintenance organization may not cause or knowingly permit the use of advertising that is untrue or misleading, solicitation that is untrue or misleading, or any form of evidence of coverage that is deceptive. For purposes of this chapter:

(a) a statement or item of information is considered to be misleading, whether or not it may be literally untrue; if, in the total context in which the statement is made or the item of information is communicated, a reasonable person not possessing special knowledge regarding health care coverage may reasonably understand the statement or item of information as indicating a benefit or advantage or the absence of an exclusion, limitation, or disadvantage of possible significance to an enrollee of or person considering enrollment

in a health maintenance organization if the benefit or advantage or absence of limitation, exclusion, or disadvantage does not in fact exist; and

(b) an evidence of coverage is considered to be deceptive if, when taken as a whole and with consideration given to typography, format, and language, it can cause a reasonable person not possessing special knowledge regarding health maintenance organizations to expect benefits, services, charges, or other advantages that the evidence of coverage does not provide or ~~which~~ that the health maintenance organization issuing the evidence of coverage does not regularly make available to enrollees covered under the evidence of coverage.

(2) Title 33, chapter 18, applies to health maintenance organizations and evidences of coverage issued by a health maintenance organization, except to the extent that the commissioner determines that the nature of health maintenance organizations and evidences of coverage render the chapter clearly inappropriate.

(3) A health maintenance organization shall clearly disclose in the evidence of coverage the circumstances under which it may disenroll, cancel, or refuse to renew an enrollee. A health maintenance organization may disenroll, cancel, or refuse to renew an enrollee only if the enrollee:

(a) has failed to pay required premiums by the end of the grace period;

(b) has committed acts of physical or verbal abuse that pose a threat to providers or other enrollees of the health maintenance organization;

(c) has allowed a nonenrollee to use the health maintenance organization's certification card to obtain services or has knowingly provided fraudulent information in applying for coverage;

(d) has moved outside of the geographical service area of the health maintenance organization;

(e) has violated rules of the health maintenance organization stated in the evidence of coverage;

(f) has violated rules adopted by the commissioner for enrollment in a health maintenance organization;

or

(g) is unable to establish or maintain a satisfactory physician-patient relationship with the physician responsible for the enrollee's care. Disenrollment of an enrollee for this reason must be permitted only if the health maintenance organization can demonstrate that it provided the enrollee with the opportunity to select an alternate primary care physician, made a reasonable effort to assist the enrollee in establishing a satisfactory physician-patient relationship, and informed the enrollee that ~~he~~ the enrollee may file a grievance on this matter.

(4) A health maintenance organization may not disenroll an enrollee under subsection (3) for reasons related to the physical or mental condition of the enrollee or for any of the following reasons:

(a) failure of the enrollee to follow a prescribed course of treatment; or

(b) administrative actions, such as failure to keep an appointment.

(5) (a) A health maintenance organization that disenrolls a group certificate holder for any reason not listed in subsection (3) or provided in rules adopted by the commissioner shall make arrangements to provide similar alternate insurance coverage to enrollees. The insurance coverage must be continued until the disenrolled group certificate holder finds its own coverage or a period of 12 months elapses, whichever comes first. The premium on the individual coverage must be at the then-customary rate applicable to the individual coverage offered by the insurer, health service corporation, or health maintenance organization that provides the alternate insurance coverage.

(b) If a health maintenance organization disenrolls an enrollee covered on an individual basis for any reason not listed in subsection (3) or provided in rules adopted by the commissioner, coverage must be continued until the anniversary date of the policy or for 1 year, whichever is earlier. A health maintenance organization that disenrolls an individual enrollee for failure to pay a required premium or for fraudulent statements on the enrollment form need not provide alternate insurance coverage to that enrollee.

(6) A health maintenance organization may not refer to itself as an insurer unless licensed as an insurer or use a name deceptively similar to the name or description of an insurer authorized to transact insurance in this state.

(7) A person may not refer to itself as a health maintenance organization or HMO unless it holds a valid certificate of authority issued by the commissioner."

Section 1252. Section 33-31-402, MCA, is amended to read:

"33-31-402. Suspension or revocation of certificate of authority. (1) The commissioner may in ~~his discretion~~ suspend or revoke any certificate of authority issued to a health maintenance organization under this chapter if ~~he~~ the commissioner finds that any of the following conditions exist:

(a) The health maintenance organization is operating in contravention of its basic organizational document or in a manner contrary to that described in any other information submitted under 33-31-201 and ~~provided that such~~ the operation adversely affects the health maintenance organization's ability to provide benefits and operate under the application approved by the commissioner, unless amendments to ~~such~~ the submissions have been filed with and approved by the commissioner.

(b) The health maintenance organization issues evidences of coverage or uses a schedule of charges for health care services that do not comply with the requirements of 33-31-301.

(c) The health maintenance organization does not provide or arrange for basic health care services.

(d) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees.

(e) The health maintenance organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation under 33-31-222.

(f) The health maintenance organization has failed to implement the complaint system required by 33-31-303 to resolve valid complaints in a reasonable manner.

(g) The health maintenance organization; or any person on its behalf; has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner.

(h) The continued operation of the health maintenance organization would be hazardous to its enrollees.

(i) The health maintenance organization has otherwise failed to substantially comply with this chapter.

(2) The commissioner may ~~in his discretion~~ suspend or revoke a certificate of authority only if ~~he~~ the commissioner complies with the requirements of 33-31-404.

(3) When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization may not, during the period of ~~such~~ suspension, enroll any additional enrollees except newborn infants or other newly acquired dependents of existing enrollees and may not engage in any advertising or solicitation.

(4) If the commissioner revokes the certificate of authority of a health maintenance organization, the health maintenance organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs and may not transact further business except as may be essential to the orderly conclusion of its affairs. It may not engage in further advertising or solicitation following the effective date of the order of revocation. The commissioner may by written order permit further operation of the health maintenance organization if ~~he~~ the commissioner finds further operation to be in the best interest of enrollees to the extent that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage."

Section 1253. Section 33-31-403, MCA, is amended to read:

"33-31-403. Supervision, rehabilitation, or liquidation of a health maintenance organization. (1) The supervision, rehabilitation, or liquidation of a health maintenance organization is considered to be the supervision, rehabilitation, or liquidation of an insurer and must be conducted under the supervision of the commissioner pursuant to chapter 2, part 13. The commissioner may apply for an order directing ~~him~~ the commissioner to supervise, rehabilitate, or liquidate a health maintenance organization upon any one or more grounds set out in 33-2-1321, 33-2-1331, or 33-2-1341 or when in ~~his~~ the commissioner's opinion the continued

operation of the health maintenance organization would be hazardous either to the enrollees or to the people of this state. Enrollees ~~shall~~ have the same priority in the event of liquidation or rehabilitation as the law provides to policyholders of an insurer.

(2) A claim by a health care provider for an uncovered expenditure has the same priority as a claim by an enrollee if the provider of services agrees not to assert the claim against any enrollee of the health maintenance organization."

Section 1254. Section 33-31-404, MCA, is amended to read:

"33-31-404. Administrative procedures. (1) When the commissioner has cause to believe that grounds for the denial of an application for a certificate of authority exist or that grounds for the suspension or revocation of a certificate of authority exist, ~~he~~ the commissioner shall give written notice to the health maintenance organization specifically stating the grounds for denial, suspension, or revocation and fixing a time of at least 30 days after the notice for a hearing on the matter.

(2) After the hearing; or upon the failure of the health maintenance organization to appear at the hearing, the commissioner shall make written findings and act as ~~he~~ the commissioner considers advisable. The commissioner shall mail the written findings to the health maintenance organization. The action of the commissioner is subject to review by the district court having jurisdiction. The court may, in disposing of the issue before it, modify, affirm, or reverse the order of the commissioner in whole or in part.

(3) ~~Where~~ When notice and hearing are required with regard to actions taken by the commissioner under this chapter, the requirements of 33-1-314 through 33-1-316 and Title 33, chapter 1, part 7, apply, except that the formal rules of pleading and evidence must be observed. To the extent that 33-1-314 through 33-1-316 and Title 33, chapter 1, part 7, do not address the notice and hearing requirements of this chapter, the provisions of Title 2, chapter 4, parts 6 and 7, apply."

Section 1255. Section 33-31-405, MCA, is amended to read:

"33-31-405. Penalties and enforcement. (1) The commissioner may, in addition to suspension or revocation of a certificate of authority under 33-31-402, after notice and hearing, impose an administrative penalty in an amount not less than \$500 or more than \$10,000 if ~~he~~ the commissioner gives reasonable notice in writing of the intent to levy the penalty and the health maintenance organization has a reasonable time within which to remedy the defect in its operations that gave rise to the penalty citation.

(2) If the commissioner has cause to believe that a violation of this chapter has occurred or is threatened,

the commissioner may:

(a) give notice to the health maintenance organization and to the representatives or other persons who appear to be involved in the suspected violation;

(b) arrange a conference with the alleged violators or their authorized representatives to attempt to ascertain the facts relating to the suspected violation; and

(c) if it appears that a violation has occurred or is threatened, arrive at an adequate and effective means of correcting or preventing the violation.

(3) (a) The commissioner may issue an order directing a health maintenance organization or its representative to cease and desist from engaging in an act or practice in violation of this chapter.

(b) Within 15 days after service of the cease and desist order, the respondent may request a hearing to determine whether acts or practices in violation of this chapter have occurred. The hearing must be conducted pursuant to Title 2, chapter 4, part 6, and judicial review must be available as provided by Title 2, chapter 4, part 7.

(4) If a health maintenance organization violates a provision of this chapter and the commissioner elects not to issue a cease and desist order or if the respondent does not comply with a cease and desist order issued pursuant to subsection (3), the commissioner may institute a proceeding to obtain injunctive or other appropriate relief in the district court of Lewis and Clark County."

Section 1256. Section 35-1-418, MCA, is amended to read:

"35-1-418. General standards for directors. (1) A director shall discharge his the duties as a director, including the director's duties as a member of a committee:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner that the director reasonably believes to be in the best interests of the corporation.

(2) In discharging duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) attorneys, public accountants, or other persons with regard to matters that the director reasonably believes are within the person's professional or expert competence; or

(c) a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A director is not liable for any action taken as a director or for any failure to take any action if ~~he~~ the director performed the duties of the director's office in compliance with this section."

Section 1257. Section 35-1-421, MCA, is amended to read:

"35-1-421. Terms of directors generally. (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under 35-1-422.

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4) A director elected or appointed to fill a vacancy is elected or appointed for the unexpired term of ~~his~~ the director's predecessor in office.

(5) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualifies or until there is a decrease in the number of directors."

Section 1258. Section 35-1-423, MCA, is amended to read:

"35-1-423. Resignation of directors. (1) A director may resign at any time by delivering written notice to the board of directors, ~~to its chairman~~ presiding officer, or to the corporation.

(2) A resignation is effective when the notice is delivered unless the notice specified a later effective date."

Section 1259. Section 35-1-424, MCA, is amended to read:

"35-1-424. Removal of directors. (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove the director.

(3) Any director or the entire board of directors may be removed only by a vote of the holders of two-thirds of the shares entitled to vote at an election of directors unless otherwise provided by the articles of

incorporation or bylaws. If the shareholders have the right to cumulate their votes when electing directors and if less than the entire board is to be removed, a director may not be removed if the votes cast against the director's removal would be sufficient to elect ~~him~~ the director if cumulatively voted at an election of the entire board of directors or, if there are classes of directors, at an election of the class of directors of which the director is a part. If the corporation has fewer than 100 shareholders, the entire board of directors may be removed only by a vote of a majority of the shares then entitled to vote.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director. The meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director."

Section 1260. Section 35-1-428, MCA, is amended to read:

"35-1-428. Penalty for signing false document. (1) The execution of any document required to be filed with the secretary of state under this chapter constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated ~~therein~~ in the document are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by ~~him~~ the secretary of state under this chapter."

Section 1261. Section 35-1-435, MCA, is amended to read:

"35-1-435. Quorum -- voting. (1) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors consists of:

(a) a majority of the fixed number of directors if the corporation has a fixed board size; or

(b) a majority of the number of directors prescribed or, if ~~no~~ a number is not prescribed, the number in office immediately before the meeting begins; if the corporation has a variable-range size board.

(2) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(4) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is considered to have assented to the action taken unless:

(a) the director objects at the beginning of the meeting or promptly upon the director's arrival to holding

the meeting or transacting business at the meeting and delivers written notice of the director's objection to the presiding officer before its adjournment or to the corporation immediately after adjournment of the meeting;

(b) the director's dissent or abstention from the action taken is entered in the minutes of the meeting;

or

(c) the director delivers written notice of ~~his~~ the dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting.

(5) The right of dissent or abstention is not available to a director who votes in favor of the action taken."

Section 1262. Section 35-1-443, MCA, is amended to read:

"35-1-443. Standards of conduct for officers. (1) An officer with discretionary authority shall discharge ~~his~~ duties under that authority:

(a) in good faith;

(b) with the care that an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner the officer reasonably believes to be in the best interests of the corporation.

(2) In discharging ~~his~~ an officer's duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(b) attorneys, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(3) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) An officer is not liable for any action taken as an officer or for any failure to take any action if the officer performed the duties of ~~his~~ office in compliance with this section."

Section 1263. Section 35-1-451, MCA, is amended to read:

"35-1-451. Definitions. As used in 35-1-451 through 35-1-459, the following definitions apply:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) (a) "Director" means an individual who is or was a director of a corporation or an individual who, while

a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation include duties or services by ~~him~~ the director to the plan or to participants in or beneficiaries of the plan.

(b) ~~Director~~ The term includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include attorney fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, or fine, including an excise tax assessed with respect to an employee benefit plan, or to pay reasonable expenses incurred with respect to a proceeding.

(5) (a) "Official capacity" means:

(i) when used with respect to a director, the office of director in a corporation; or

(ii) when used with respect to an individual other than a director, as contemplated in 35-1-457, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation.

(b) ~~Official capacity~~ The term does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal."

Section 1264. Section 35-1-452, MCA, is amended to read:

"35-1-452. Authority to indemnify. (1) Except as provided in subsection (4), an individual made a party to a proceeding because ~~he~~ the individual is or was a director may be indemnified against liability incurred in the proceeding if:

(a) ~~he conducted himself~~ the individual engaged in good faith conduct;

(b) ~~he~~ the individual reasonably believed:

(i) in the case of conduct in ~~his~~ an official capacity with the corporation, that ~~his~~ the individual's conduct was in the corporation's best interests; and

(ii) in all other cases, that ~~his~~ the individual's conduct was at least not opposed to the corporation's best interests; and

(c) in the case of any criminal proceeding, ~~he had no~~ the individual did not have reasonable cause to believe ~~his~~ the conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (1)(b)(ii).

(3) The termination of a proceeding by judgment, order, settlement, or conviction; or upon a plea of nolo contendere or its equivalent is not, of itself, a determination that the director did not meet the standard of conduct described in this section.

(4) A corporation may not indemnify a director under this section:

(a) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(b) in connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding."

Section 1265. Section 35-1-453, MCA, is amended to read:

"35-1-453. Mandatory indemnification. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because ~~he~~ the individual is or was a director of the corporation, against reasonable expenses incurred by the director in connection with the proceeding."

Section 1266. Section 35-1-458, MCA, is amended to read:

"35-1-458. Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by ~~him~~ the individual in that capacity

or arising from ~~his~~ the individual's status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify ~~him~~ the individual against the same liability under 35-1-452 or 35-1-453."

Section 1267. Section 35-1-461, MCA, is amended to read:

"35-1-461. Definitions. As used in 35-1-461 through 35-1-464, the following definitions apply:

(1) "Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest if:

(a) regardless of whether the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that ~~he~~ the director or a related person is a party to the transaction or has a beneficial financial interest in or is so closely linked to the transaction and the transaction is of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction; or

(b) the transaction is brought, or is of a character and significance to the corporation that it would in the normal course be brought, before the board of directors of the corporation for action and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or is so closely linked to the transaction and the transaction is of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction:

(i) an entity, other than the corporation, of which the director is a director, general partner, agent, or employee;

(ii) a person who controls one or more of the entities specified in subsection (1)(b)(i) or an entity that is controlled by, or is under common control with, one or more of the entities specified in subsection (1)(b)(i); or

(iii) an individual who is a general partner, principal, or employer of the director.

(2) "Director's conflicting interest transaction", with respect to a corporation, means a transaction effected or proposed to be effected by the corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest in which transaction a director of the corporation has a conflicting interest.

(3) "Related person" means:

(a) the spouse or a parent or sibling of a spouse of the director;

(b) a child, grandchild, sibling, parent or spouse of any child, grandchild, sibling, or parent of the director;

- (c) an individual having the same residence as the director;
- (d) a trust or estate of which an individual specified in this subsection (3) is a substantial beneficiary; or
- (e) a trust, estate, incompetent person, conservatee, or minor for whom the director is a fiduciary.

(4) "Required disclosure" means disclosure by a director, who has a conflicting interest, of:

- (a) the existence and nature of ~~his~~ the conflicting interest; and
- (b) all facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

(5) "Time of commitment" respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation or its subsidiary or the entity in which it has a controlling interest becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage."

Section 1268. Section 35-1-464, MCA, is amended to read:

"35-1-464. Shareholders' action. (1) Shareholders' action respecting a transaction is effective for purposes of 35-1-462(2)(b) if a majority of the votes entitled to be cast by the holders of all qualified shares were cast in favor of the transaction after:

- (a) notice to shareholders describing the director's conflicting interest transaction;
- (b) provision of the information referred to in subsection (3); and
- (c) required disclosure to the shareholders who voted on the transaction, to the extent the information was not known by them.

(2) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this section. Subject to the provisions of subsections (3) and (4), shareholders' action that otherwise complies with this section is not affected by the presence of ~~shareholders,~~ ~~or the voting,~~ holders of shares that are not qualified shares or the voting of those shares.

(3) For purposes of compliance with subsection (1), a director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other office or agent of the corporation authorized to tabulate votes of the number of all shares and the identity of persons holding or controlling the vote of all shares that the director knows are beneficially owned by or the voting of which is controlled by the director or by a related person of the director, or both.

(4) If a shareholders' vote does not comply with subsection (1) solely because of a failure of a director

to comply with subsection (3) and if the director establishes that ~~his~~ the failure did not determine and was not intended by ~~him~~ the director to influence the outcome of the vote, the court may, with or without further proceedings respecting 35-1-462(2)(c), take action respecting the transaction and the director and give effect, if any, to the shareholders' vote as it considers appropriate in the circumstances.

(5) For purposes of this section, "qualified shares" means any shares entitled to be voted with respect to the director's conflicting interest transaction except shares that, to the knowledge, before the vote, of the secretary or other officer or agent of the corporation authorized to tabulate votes, are beneficially owned by or the voting of which is controlled by a director who has a conflicting interest respecting the transaction or by a related person of the director, or both."

Section 1269. Section 35-1-535, MCA, is amended to read:

"35-1-535. Shareholders' preemptive rights. (1) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent provided in the articles of incorporation.

(2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights", or similar words, means that all of the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them and to acquire proportional amounts of the corporation's issued shares acquired by the corporation pursuant to 35-1-630 upon the decision of the board of directors to convey them.

(b) A shareholder may waive ~~his~~ the shareholder's preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(c) Shareholders of a corporation do not have ~~no~~ a preemptive right to acquire proportional amounts of shares with respect to:

(i) shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

(ii) shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

(iii) shares authorized in articles of incorporation that are issued within 6 months from the effective date

of incorporation; or

(iv) shares sold otherwise than for money.

(d) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets do not have ~~no~~ preemptive rights with respect to shares of any class.

(e) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets do not have ~~no~~ preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of 1 year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of 1 year is subject to the shareholders' preemptive rights.

(g) Shares acquired by the corporation pursuant to 35-1-630 do not have ~~no~~ preemptive rights as long as they are owned by the corporation.

(3) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares."

Section 1270. Section 35-1-828, MCA, is amended to read:

"35-1-828. Dissent by nominees and beneficial owners. (1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in ~~his~~ the shareholder's name only if ~~he~~ the shareholder dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf ~~he~~ the shareholder asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which ~~he~~ the shareholder dissents and ~~his~~ the shareholder's other shares were registered in the names of different shareholders.

(2) A beneficial shareholder may assert dissenters' rights as to shares held on ~~his~~ the beneficial shareholder's behalf only if the beneficial shareholder:

(a) ~~he~~ submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(b) ~~he~~ does so with respect to all shares of which ~~he~~ the beneficial shareholder is the beneficial shareholder or over which ~~he~~ the beneficial shareholder has power to direct the vote."

Section 1271. Section 35-1-830, MCA, is amended to read:

"35-1-830. Notice of intent to demand payment. (1) If proposed corporate action creating dissenters' rights under 35-1-827 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights:

(a) shall deliver to the corporation before the vote is taken written notice of ~~his~~ the intent to demand payment for ~~his~~ the shareholder's shares if the proposed action is effectuated; and

(b) may not vote ~~his~~ the shareholder's shares in favor of the proposed action.

(2) A shareholder who does not satisfy the requirements of subsection (1)(a) is not entitled to payment for ~~his~~ the shareholder's shares under 35-1-826 through 35-1-839."

Section 1272. Section 35-1-831, MCA, is amended to read:

"35-1-831. Dissenters' notice. (1) If proposed corporate action creating dissenters' rights under 35-1-827 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of 35-1-830.

(2) The dissenters' notice must be sent no later than 10 days after the corporate action was taken and must:

(a) state where the payment demand must be sent and where and when certificates for certified shares must be deposited;

(b) inform shareholders of uncertificated shares to what extent transfer of the shares will be restricted after the payment is received;

(c) supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and that requires the person asserting dissenters' rights to certify whether or not ~~he~~ the person acquired beneficial ownership of the shares before that date;

(d) set a date by which the corporation must receive the payment demand, which may not be fewer than 30 nor more than 60 days after the date the required notice under subsection (1) is delivered; and

(e) be accompanied by a copy of 35-1-826 through 35-1-839."

Section 1273. Section 35-1-832, MCA, is amended to read:

"35-1-832. Duty to demand payment. (1) A shareholder sent a dissenters' notice described in 35-1-831 shall demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the

date required to be set forth in the dissenters' notice pursuant to 35-1-831(2)(c), and deposit ~~his~~ the shareholder's certificates in accordance with the terms of the notice.

(2) The shareholder who demands payment and deposits ~~his~~ the shareholder's certificates under subsection (1) retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

(3) A shareholder who does not demand payment or deposit ~~his~~ the shareholder's certificates ~~where~~ when required, each by the date set in the dissenters' notice, is not entitled to payment for ~~his~~ the shareholder's shares under 35-1-826 through 35-1-839."

Section 1274. Section 35-1-836, MCA, is amended to read:

"35-1-836. After-acquired shares. (1) A corporation may elect to withhold payment required by 35-1-834 from a dissenter unless the dissenter was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(2) To the extent the corporation elects to withhold payment under subsection (1), after taking the proposed corporate action, the corporation shall estimate the fair value of the shares plus accrued interest and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of ~~his~~ the dissenter's demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under 35-1-837."

Section 1275. Section 35-1-837, MCA, is amended to read:

"35-1-837. Procedure if shareholder dissatisfied with payment or offer. (1) A dissenter may notify the corporation in writing of the dissenter's own estimate of the fair value of the dissenter's shares and the amount of interest due and may demand payment of the dissenter's estimate, less any payment under 35-1-834, or reject the corporation's offer under 35-1-836 and demand payment of the fair value of the dissenter's shares and the interest due if:

(a) the dissenter believes that the amount paid under 35-1-834 or offered under 35-1-836 is less than the fair value of the dissenter's shares or that the interest due is incorrectly calculated;

(b) the corporation fails to make payment under 35-1-834 within 60 days after the date set for demanding payment; or

(c) the corporation, having failed to take the proposed action, does not return the deposited certificates

or release the transfer restrictions imposed on uncertificated shares within 60 days after the date set for demanding payment.

(2) A dissenter waives the right to demand payment under this section unless ~~he~~ the dissenter notifies the corporation of ~~his~~ the demand in writing under subsection (1) within 30 days after the corporation made or offered payment for ~~his~~ the dissenter's shares."

Section 1276. Section 35-1-941, MCA, is amended to read:

"35-1-941. Receivership or custodianship. (1) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) the receiver may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court and may sue and defend in the receiver's own name as receiver of the corporation in all courts of this state; and

(b) the custodian may exercise all of the powers of the corporation through or in place of its board of directors or officers to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(4) The court during a receivership may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the corporation and its shareholders and creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and ~~his~~ the receiver's or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets."

Section 1277. Section 35-1-943, MCA, is amended to read:

"35-1-943. Deposit with state treasurer. Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them must be reduced to cash and deposited with the state treasurer or other appropriate state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay ~~him~~ the creditor, claimant, or shareholder or ~~his~~ the creditor's, claimant's, or shareholder's representative that amount."

Section 1278. Section 35-1-1310, MCA, is amended to read:

"35-1-1310. Appeal from secretary of state's refusal to file document. (1) If the secretary of state refuses to file a document delivered to the secretary of state's office for filing, the domestic or foreign corporation may appeal the refusal to the district court for the first judicial district. The appeal is begun by petitioning the court to compel the filing of the document and by attaching to the petition the document and the secretary of state's explanation of ~~his~~ the refusal to file.

(2) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings."

Section 1279. Section 35-2-416, MCA, is amended to read:

"35-2-416. General standards for directors. (1) A director shall discharge ~~his~~ the duties as a director, including ~~his~~ the director's duties as a member of a committee:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner the director reasonably believes to be in the best interests of the corporation.

(2) In discharging ~~his~~ the duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data; if prepared or presented by:

(a) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) attorneys, public accountants, or other persons with regard to matters that the director reasonably believes are within the person's professional or expert competence;

(c) a committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence; or

(d) in the case of religious corporations, religious authorities, ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director if the director acted in compliance with this section.

(5) A director may not be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including but not limited to property that may be subject to restrictions imposed by the donor or transferor of the property.

(6) This chapter does not modify any limitation of liability of directors provided by Title 27."

Section 1280. Section 35-2-441, MCA, is amended to read:

"35-2-441. Standards of conduct for officers. (1) An officer with discretionary authority shall discharge ~~his~~ the duties under that authority:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.

(2) In discharging ~~his~~ the duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation who the officer reasonably believes to be reliable and competent in the matters presented;

(b) attorneys, public accountants, or other persons as to matters that the officer reasonably believes are within the person's professional or expert competence; or

(c) in the case of religious corporations, religious authorities, ministers, priests, rabbis, or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and who the officer believes to be reliable and competent in the matters presented.

(3) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) An officer is not liable to the corporation, any member, or any other person for an action taken or not taken as an officer if the officer acted in compliance with this section.

(5) This part does not modify any limitation of liability of officers provided by Title 27."

Section 1281. Section 35-2-447, MCA, is amended to read:

"35-2-447. Authority to indemnify. (1) Except as provided in subsection (4), an individual made a party to a proceeding because the individual is or was a director may be indemnified against liability incurred in the proceeding if the individual:

(a) ~~conducted himself~~ engaged in good faith conduct;

(b) reasonably believed:

(i) in the case of conduct in ~~his~~ the individual's official capacity with the corporation, that ~~his~~ the conduct was in its best interests; and

(ii) in all other cases, that ~~his~~ the conduct was at least not opposed to its best interests; and

(c) in the case of any criminal proceeding, had no reasonable cause to believe ~~his~~ the conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subsection (1)(b)(ii).

(3) The termination of a proceeding by judgment, order, settlement, or conviction; or upon a plea of nolo contendere or its equivalent is not, of itself, a determination that the director did not meet the standard of conduct described in this section.

(4) A corporation may not indemnify a director under this section:

(a) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(b) in connection with any other proceeding that charges improper personal benefit to the director, whether or not involving action in ~~his~~ the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding."

Section 1282. Section 35-2-448, MCA, is amended to read:

"35-2-448. Mandatory indemnification. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because ~~he~~ the individual is or was a director of the corporation, against reasonable expenses actually incurred by the director in connection with the proceeding."

Section 1283. Section 35-2-449, MCA, is amended to read:

"35-2-449. Advance for expenses. (1) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) the director furnishes the corporation with a written affirmation of ~~his~~ the director's good faith belief that ~~he~~ the director has met the standard of conduct described in 35-2-447;

(b) the director furnishes the corporation with a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and

(c) a determination is made that the facts then known to those making the determination would not preclude indemnification under 35-2-446 through 35-2-454.

(2) The undertaking required by subsection (1)(b) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section must be made in the manner specified in 35-2-451."

Section 1284. Section 35-2-453, MCA, is amended to read:

"35-2-453. Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise; against liability asserted against or incurred by ~~him~~ the individual in that capacity or arising from ~~his~~ the individual's status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the ~~person~~ individual against the same liability under 35-2-447 or 35-2-448."

Section 1285. Section 35-2-510, MCA, is amended to read:

"35-2-510. Admission. (1) The articles or bylaws may establish criteria or procedures for admission of members.

(2) A person may not be admitted as a member without ~~his~~ the person's consent."

Section 1286. Section 35-2-722, MCA, is amended to read:

"35-2-722. Notices to the attorney general. (1) Except as provided in subsection (4), a public benefit corporation or religious corporation shall give the attorney general written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the secretary of state. The notice must include a copy or summary of the plan of dissolution.

(2) Assets may not be transferred or conveyed by a public benefit corporation or religious corporation as part of the dissolution process until 20 days after it has given the written notice required by subsection (1) to the attorney general or until the attorney general has consented in writing to the dissolution or indicated in writing that ~~he~~ the attorney general will not take action in respect to the transfer or conveyance, whichever is earlier.

(3) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the attorney general a list showing those, other than creditors, to whom the assets were transferred or conveyed. The list must indicate the address of each person, other than creditors, who received assets and indicate what assets each received.

(4) A public benefit corporation or religious corporation that is considered a nonprofit health entity, as defined in 50-4-701, is subject to the provisions of Title 50, chapter 4, part 7."

Section 1287. Section 35-2-727, MCA, is amended to read:

"35-2-727. Unknown claims against dissolved corporations. (1) The dissolution of a corporation, including by the expiration of its term, does not take away or impair any remedy available to or against the corporation; or its officers, directors, or members for any claim or right, whether or not the claim or right existed or accrued prior to the dissolution. Any action or proceeding by or against the corporation referred to in this subsection may be prosecuted or defended by the corporation in its corporate name. Members, directors, and officers may take corporate or other action as is appropriate to protect a remedy, right, or claim.

(2) A claim may be enforced under ~~this section or~~ 35-2-726 or this section:

(a) against the dissolved corporation; to the extent of its undistributed assets; or

(b) if the assets have been distributed in liquidation, against a member of the dissolved corporation to

the extent of the member's pro rata share of the claim or the corporate assets distributed to ~~him~~ the member in liquidation, whichever is less. However, a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

(3) Subsections (1) and (2) apply to a foreign corporation transacting business in this state, and its members, for any claims otherwise arising or accruing under Montana law."

Section 1288. Section 35-2-732, MCA, is amended to read:

"35-2-732. Deposit with state treasurer. Assets of a dissolved corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them must be reduced to cash, subject to known trust restrictions, and deposited with the state treasurer for safekeeping. However, in the state treasurer's discretion, property may be received and held in kind. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited or property held in kind, the state treasurer shall deliver to the creditor, claimant, member, or other person as ~~his~~ the creditor's, claimant's, or member's representative that amount or property."

Section 1289. Section 35-2-831, MCA, is amended to read:

"35-2-831. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) the fact that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) the fact that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this state;

(d) a mailing address to which the secretary of state may mail a copy of any process served on ~~him~~ the secretary of state under subsection (2)(c); and

(e) a commitment to notify the secretary of state, in the future, of any change in the mailing address."

Section 1290. Section 35-3-205, MCA, is amended to read:

"35-3-205. Powers of corporation sole. Every corporation sole organized under the provisions of this chapter, for the purpose of the trust ~~hereinafter mentioned~~ described in this section, ~~shall have~~ has power:

(1) to continue to exist perpetually by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) to sue and be sued, complain, and defend; in its corporate name;

(3) to have a corporate seal ~~which that~~ that may be altered at pleasure and to use the ~~same seal~~ seal by causing it or a facsimile ~~thereof~~ to be impressed or affixed or in any other manner reproduced;

(4) to purchase, take, receive, lease, take by gift, devise, or bequest or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest ~~therein~~ in real or personal property, wherever situated, provided that all ~~such~~ property ~~shall~~ must be in trust for the use, purpose, and benefit of ~~such the~~ religious denomination, society, or church for which and in whose behalf ~~such the~~ corporation sole is organized;

(5) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(6) to lend money to its employees other than its officers and otherwise assist its employees and officers;

(7) to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental district, or municipality or of any instrumentality ~~thereof~~ of a governmental entity;

(8) to make contracts and incur liabilities, borrow money at ~~such~~ rates of interest ~~as~~ that the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(9) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds ~~so~~ loaned or invested;

(10) to conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country;

(11) to elect or appoint officers and agents of the corporation, including attorneys-in-fact, and to define their duties and fix their compensation;

(12) to make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this

state, for the administration and regulation of the affairs of the corporation;

(13) unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, religious, scientific, or educational purposes;

(14) to indemnify any officer or agent or any person who may have served at its request as an officer or agent or as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor against claims, liabilities, expenses, and costs necessarily incurred by ~~him~~ the person in connection with the defense, compromise, or settlement of any action, suit, or proceeding, civil or criminal, in which ~~he~~ the person is made a party by reason of being or having been ~~such a~~ director or officer, except in relation to matters as to which ~~he shall be~~ the person is adjudged in ~~such the~~ action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation; ~~and to make any other indemnification that shall be~~ is authorized by the articles of incorporation or by any bylaw or resolution promulgated by the incorporator or ~~his~~ the incorporator's successor;

(15) to pay pensions and retirement benefits and establish pension plans, pension trusts, insurance plans, and incentive plans for all or any of its officers and employees;

(16) to cease its corporate activities and surrender its corporate franchise;

(17) to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized."

Section 1291. Section 35-3-206, MCA, is amended to read:

"35-3-206. Amendment of articles of incorporation. (1) Whenever any bishop, chief priest, or presiding elder ~~shall have~~ has filed in the office of the secretary of state articles of incorporation, under the provisions of an act entitled "An Act Authorizing and Regulating the Incorporation of Sole Corporations and Defining Their Powers", approved February 27, 1899, or amendments ~~thereto~~ to that act or under this chapter, ~~such the~~ corporation sole may amend its articles of incorporation from time to time in any and as many respects as may be desired, ~~so as~~ as long as its articles of incorporation as amended contain only ~~such~~ provisions ~~as that~~ are lawful under this chapter.

(2) ~~Such~~ The articles of amendment ~~shall~~ must be promulgated by the incorporator or ~~his~~ a successor by setting forth a statement of the facts authorizing ~~such the~~ amendment and the date upon which ~~said the~~ amendment was promulgated, and ~~his~~ the incorporator's or successor's affidavit that the ~~same~~ amendment is a true copy or translation ~~thereof shall be deemed~~ of the amendment is considered a sufficient attestation ~~thereof~~."

Section 1292. Section 35-3-207, MCA, is amended to read:

"35-3-207. Succession. (1) In the event of the death or resignation from office of any bishop, chief priest, or presiding elder or of ~~his that individual's~~ transfer or removal ~~therefrom from office~~ by the person or body having the authority to remove ~~him that individual, his the individual's~~ successor in office ~~shall succeed~~ succeeds to the powers, rights, and obligations of the office and ~~shall become~~ becomes vested with the title to the property with like power and authority over the ~~same property~~ and subject to all the legal liabilities and obligations with reference ~~thereto to the property~~.

(2) Succession ~~shall be~~ is effected when the successor ~~shall file~~ files in the office of the secretary of state the original or a copy or translation of ~~his the successor's~~ commission, certificate, or letters of appointment as ~~such~~ bishop, chief priest, or presiding elder, duly attested, and ~~his the successor's~~ affidavit that the ~~same document~~ is a true copy or translation ~~shall be deemed~~ is considered sufficient attestation ~~thereof of the document~~."

Section 1293. Section 35-4-403, MCA, is amended to read:

"35-4-403. Rendering services. A professional corporation, domestic or foreign, may render professional services in this state only through natural persons permitted to render ~~such the~~ services in this state; ~~however~~ However, nothing in this chapter requires any person employed by a professional corporation to be licensed to perform services for which ~~no a~~ license is not otherwise required or prohibits the rendering of professional services by a licensed natural person acting in ~~his an~~ individual capacity, even if ~~such the~~ person is a shareholder, director, officer, employee, or agent of a professional corporation, domestic or foreign."

Section 1294. Section 35-4-404, MCA, is amended to read:

"35-4-404. Responsibility for services. (1) An individual who renders professional services as an employee of a domestic or foreign professional corporation is liable for any negligent or wrongful act or omission in which ~~he the individual~~ personally participates to the same extent as if ~~he the individual~~ had rendered ~~such the~~ services as a sole practitioner. An employee of a professional corporation is not liable for the conduct of other employees unless ~~he the employee~~ is at fault in appointing, supervising, or cooperating with them.

(2) A domestic or foreign professional corporation whose employee performs professional services within the scope of ~~his the employee's~~ employment or apparent authority to act for the corporation is liable to the same extent as that employee.

(3) Except as otherwise provided by statute, the personal liability of a shareholder of a domestic or

foreign professional corporation is no greater in any respect than that of a shareholder of a corporation organized under the Montana Business Corporation Act."

Section 1295. Section 35-9-201, MCA, is amended to read:

"35-9-201. Notice of statutory close corporation status on issued shares. (1) The following statement must appear conspicuously on each share certificate issued by a statutory close corporation:

The rights of shareholders in a statutory close corporation may differ materially from the rights of shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders' agreements, and other documents, any of which may restrict transfers and affect voting and other rights, may be obtained by a shareholder on written request to the corporation.

(2) Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the shareholders a written notice containing the information required by subsection (1).

(3) The notice required by this section satisfies all requirements ~~of this chapter and~~ of 35-1-628 and of this chapter that notice of share transfer restrictions be given.

(4) A person claiming an interest in shares of a statutory close corporation that has complied with the notice requirement of this section is bound by the documents referred to in the notice. A person claiming an interest in shares of a statutory close corporation that has not complied with the notice requirement of this section is bound by any documents of which ~~he~~ the person or ~~a~~ another person through whom ~~he~~ the person claims has knowledge or notice.

(5) A corporation shall provide to any shareholder upon ~~his~~ the shareholder's written request and without charge copies of provisions that restrict transfer or affect voting or other rights of shareholders appearing in articles of incorporation, bylaws, or shareholders' or voting trust agreements filed with the corporation."

Section 1296. Section 35-9-202, MCA, is amended to read:

"35-9-202. Share transfer prohibition. (1) An interest in shares of a statutory close corporation may not be voluntarily or involuntarily transferred, by operation of law or otherwise, except to the extent permitted by the articles of incorporation or under 35-9-203.

(2) Except to the extent the articles of incorporation provide otherwise, this section does not apply to a transfer:

- (a) to the corporation or to any other holder of the same class or series of shares;
- (b) to members of the shareholder's immediate family or to a trust, all of whose beneficiaries are

members of the shareholder's immediate family, which immediate family consists of ~~his~~ the shareholder's spouse, parents, lineal descendants including adopted children and stepchildren and the spouse of any lineal descendant, and brothers and sisters;

(c) that has been approved in writing by all of the holders of the corporation's shares having general voting rights;

(d) to an executor or administrator upon the death of a shareholder or to a trustee or receiver as the result of a bankruptcy, insolvency, dissolution, or similar proceeding brought by or against a shareholder;

(e) by merger or share exchange under Title 35, chapter 1, part 8, or an exchange of existing shares for other shares of a different class or series in the corporation;

(f) by a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor; and

(g) made after termination of the corporation's status as a statutory close corporation."

Section 1297. Section 35-9-203, MCA, is amended to read:

"35-9-203. Share transfer after first refusal by corporation. (1) A person desiring to transfer shares of a statutory close corporation subject to the transfer prohibition of 35-9-202 ~~must~~ shall first offer them to the corporation by obtaining an offer to purchase the shares for cash from a third person who is eligible to purchase the shares under subsection (2). The offer by the third person must be in writing and state the offeror's name and address, the number and class or series of shares offered, the offering price per share, and the other terms of the offer.

(2) A third person is eligible to purchase the shares if:

(a) ~~he~~ the third person is eligible to become a qualified shareholder under any federal or state tax statute the corporation has adopted and ~~he~~ agrees in writing not to terminate ~~his~~ that qualification without the approval of the remaining shareholders; and

(b) ~~his~~ the purchase of the shares will not impose a personal holding company tax or similar federal or state penalty tax on the corporation.

(3) The person desiring to transfer shares shall deliver the offer to the corporation and by doing so offers to sell the shares to the corporation on the terms of the offer. Within 20 days after the corporation receives the offer, the corporation shall call a special shareholders' meeting, to be held not more than 40 days after the call, to decide whether the corporation should purchase all but not less than all of the offered shares. The offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting,

excluding votes in respect of the shares covered by the offer.

(4) The corporation ~~must~~ shall deliver to the offering shareholder written notice of acceptance within 75 days after receiving the offer or the offer is rejected. If the corporation makes a counteroffer, the shareholder ~~must~~ shall deliver to the corporation written notice of acceptance within 15 days after receiving the counteroffer or the counteroffer is rejected. If the corporation accepts the original offer or the shareholder accepts the corporation's counteroffer, the shareholder shall deliver to the corporation duly endorsed certificates for the shares, or instruct the corporation in writing to transfer the shares if uncertificated, within 20 days after the effective date of the notice of acceptance. The corporation may specifically enforce the shareholder's delivery or instruction obligation under this subsection.

(5) A corporation accepting an offer to purchase shares under this section may allocate some or all of the shares to one or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase approve the allocation. However, if the corporation has more than one class or series of shares, the remaining holders of the class or series of shares being purchased are entitled to a first option to purchase the shares not purchased by the corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(6) If an offer to purchase shares under this section is rejected, the offering shareholder, for a period of 120 days after the corporation received ~~his~~ the offer, is entitled to transfer to the third-person offeror all but not less than all of the offered shares in accordance with the terms of ~~his~~ the offer to the corporation."

Section 1298. Section 35-9-204, MCA, is amended to read:

"35-9-204. Attempted share transfer in breach of prohibition. (1) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer binding on the transferee is ineffective.

(2) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer that is not binding on the transferee, either because the notice required by 35-9-201 was not given or because the prohibition is held unenforceable by a court, gives the corporation an option to purchase the shares from the transferee for the same price and on the same terms that ~~he~~ the transferee purchased them. To exercise its option, the corporation ~~must~~ shall give the transferee written notice within 30 days after the shares are presented for registration in the transferee's name. The corporation may specifically enforce the transferee's sale obligation upon exercise of its purchase option."

Section 1299. Section 35-9-205, MCA, is amended to read:

"35-9-205. Compulsory purchase of shares after death of shareholder. (1) ~~This section and Sections 35-9-206 through 35-9-208~~ and this section apply to a statutory close corporation only if so provided in its articles of incorporation. If these sections apply, the executor or administrator of the estate of a deceased shareholder may require the corporation to purchase or cause to be purchased all but not less than all of the decedent's shares or to be dissolved.

(2) The provisions of 35-9-206 through 35-9-208 may be modified only if the modification is set forth or referred to in the articles of incorporation.

(3) An amendment to the articles of incorporation to provide for application of 35-9-206 through 35-9-208 or to modify or delete the provisions of these sections must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the corporation has no shareholders when the amendment is proposed, it must be approved by at least two-thirds of the subscribers for shares, if any, or if none, by all of the incorporators.

(4) A shareholder who votes against an amendment to modify or delete the provisions of 35-9-206 through 35-9-208 is entitled to dissenters' rights under 35-1-826 through 35-1-839 if the amendment upon adoption terminates or substantially alters ~~his~~ the shareholder's existing rights under these sections to have ~~his~~ the shareholder's shares purchased.

(5) A shareholder may waive ~~his~~ the shareholder's and ~~his~~ the shareholder's estate's rights under 35-9-206 through 35-9-208 by a signed writing.

(6) Sections 35-9-206 through 35-9-208 do not prohibit any other agreement providing for the purchase of shares upon a shareholder's death, nor do they prevent a shareholder from enforcing any remedy ~~he~~ that the shareholder has independently of 35-9-206 through 35-9-208."

Section 1300. Section 35-9-302, MCA, is amended to read:

"35-9-302. Elimination of board of directors. (1) A statutory close corporation may operate without a board of directors if its articles of incorporation contain a statement to that effect.

(2) An amendment to articles of incorporation eliminating a board of directors must be approved by:

- (a) all the shareholders of the corporation, whether or not otherwise entitled to vote on amendments;
- (b) if no shares have been issued, by all the subscribers for shares, if any; or
- (c) if there are no subscribers, by all the incorporators.

(3) While a corporation is operating without a board of directors as authorized by subsection (1):

(a) all corporate powers must be exercised by or under the authority of and the business and affairs of the corporation managed under the direction of the shareholders;

(b) unless the articles of incorporation provide otherwise:

(i) action requiring director approval or both director and shareholder approval is authorized if approved by the shareholders; and

(ii) action requiring a majority or greater percentage vote of the board of directors is authorized if approved by the majority or greater percentage of the votes of shareholders entitled to vote on the action;

(c) a shareholder is not liable for ~~his~~ the shareholder's act or omission, even though a director would be, unless the shareholder was entitled to vote on the action;

(d) a requirement by a state or the United States that a document delivered for filing contain a statement that specified action has been taken by the board of directors is satisfied by a statement that the corporation is a statutory close corporation without a board of directors and that the action was approved by the shareholders; and

(e) the shareholders may by resolution appoint one or more shareholders to sign documents as designated directors.

(4) An amendment to articles of incorporation deleting the statement eliminating a board of directors must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. The amendment must also specify the number, names, and addresses of the corporation's directors or describe who will perform the duties of a board under 35-1-416."

Section 1301. Section 35-9-503, MCA, is amended to read:

"35-9-503. Extraordinary relief -- share purchase. (1) If the court finds that the ordinary relief described in 35-9-502(1) is or would be inadequate or inappropriate, it may order the corporation dissolved under 35-9-504 unless the corporation or one or more of its shareholders purchases all the shares of the shareholder for their fair value and on terms determined under subsection (2).

(2) If the court orders a share purchase, it shall:

(a) determine the fair value of the shares, considering among other relevant evidence:

(i) the going concern value of the corporation;

(ii) any agreement among some or all of the shareholders fixing the price or specifying a formula for determining share value for any purpose;

- (iii) the recommendations of appraisers, if any, appointed by the court; and
 - (iv) any legal constraints on the corporation's ability to purchase the shares;
 - (b) specify the terms of the purchase, including if appropriate:
 - (i) terms for installment payments;
 - (ii) subordination of the purchase obligation to the rights of the corporation's other creditors;
 - (iii) security for a deferred purchase price; and
 - (iv) a covenant not to compete or other restriction on the seller;
 - (c) require the seller to deliver all ~~his~~ the seller's shares to the purchaser upon receipt of the purchase price or the first installment of the purchase price;
 - (d) provide that after the seller delivers ~~his~~ the shares, ~~he~~ the seller has no further claim against the corporation, or its directors, officers, or shareholders; other than a claim to any unpaid balance of the purchase price and a claim under any agreement with the corporation or the remaining shareholders that is not terminated by the court; and
 - (e) provide that if the purchase is not completed in accordance with the specified terms, the corporation is to be dissolved under 35-9-504.
- (3) After the purchase order is entered, any party may petition the court to modify the terms of the purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.
- (4) If the corporation is dissolved because the share purchase was not completed in accordance with the court's order, the selling shareholder has the same rights and priorities in the corporation's assets as if the sale had not been ordered."

Section 1302. Section 35-10-506, MCA, is amended to read:

"35-10-506. Partner's application to discharge attachment -- undertaking. (1) If a writ of attachment is levied upon the interest in a partnership of one or more of the partners, the other partners who are not defendants in the action or any of them may, at any time before final judgment, apply to the judge who granted the writ or to the court, upon an affidavit showing the facts, for an order to discharge the attachment as to that interest.

(2) Upon ~~such~~ an application, the applicant shall give an undertaking, with at least two sufficient sureties, to the effect that they will pay to the sheriff, on demand, the amount of any judgment ~~which that~~ may be recovered against the partner who is defendant in the action or ~~which that~~ may be recovered against ~~him~~ that partner in any

other action in which the other partners are not defendants and in which a writ of attachment or an execution may come into the sheriff's hands at any time before the writ of attachment ~~which that~~ was ~~so~~ levied is vacated and annulled, not exceeding the sum specified in the undertaking, which may not be less than the value of the interest of the defendant in the partnership as fixed by the court or judge. If, in the opinion of the court or judge, the value is uncertain, the sum must be ~~such as~~ an amount that the court or judge determines. For the purpose of fixing the sum or to determine the sufficiency of its sureties, the court or judge may receive affidavits or oral testimony or may direct a reference."

Section 1303. Section 35-11-201, MCA, is amended to read:

"35-11-201. Register of names to be kept by county clerk. ~~Every~~ Each county clerk ~~must~~ shall keep a register of the names of firms and persons mentioned in the certificates filed with ~~him~~ the clerk, pursuant to 35-11-101 through 35-11-103 prior to repeal by section 18, Chapter 260, Laws of 1979, entering in alphabetical order the name of every ~~such~~ partnership and of each partner ~~therein~~ in the partnership."

Section 1304. Section 35-11-202, MCA, is amended to read:

"35-11-202. Certified copies of register and proof of publication to be evidence. Copies of the entries of a county clerk, when certified by ~~him~~ the clerk, and affidavits of publication pursuant to 35-11-101 through 35-11-103 prior to repeal by section 18, Chapter 260, Laws of 1979, made by the printer, publisher, or chief clerk of a newspaper are presumptive evidence of the facts ~~therein~~ stated in the certificate or affidavits."

Section 1305. Section 35-12-504, MCA, is amended to read:

"35-12-504. Definitions. In this chapter, the following definitions apply:

(1) "Certificate of limited partnership" means the certificate referred to in 35-12-601, as that certificate is amended or restated from time to time.

(2) "Contribution" means any cash, property, or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services, ~~which that~~ a partner contributes to a limited partnership in ~~his~~ the capacity as a partner.

(3) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in 35-12-802.

(4) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.

(5) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and who is named in the certificate of limited partnership as a general partner.

(6) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(7) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(8) "Partner" means any limited partner or general partner.

(9) "Partnership agreement" means the agreement, written or, to the extent not prohibited by law, oral, or both, of the partners as to the affairs of a limited partnership and the conduct of its business.

(10) "Partnership interest" has the meaning specified in 35-12-1101.

(11) "Person" means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

(12) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico."

Section 1306. Section 35-12-506, MCA, is amended to read:

"35-12-506. Reservation of name. (1) The exclusive right to the use of a name may be reserved by:

(a) any person intending to organize a limited partnership under this chapter and to adopt that name;

(b) any domestic limited partnership or any foreign limited partnership registered in this state ~~which~~ that, in either case, intends to adopt that name;

(c) any foreign limited partnership intending to register in this state and to adopt that name; and

(d) any person intending to organize a foreign limited partnership and intending to have it registered in this state and to adopt that name.

(2) The reservation must be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, ~~he~~ the secretary of state shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having reserved a name, the applicant may not again reserve the name until more than 60 days after the expiration of the last 120-day period for which that applicant had reserved that name. The right to the exclusive use of a name so reserved may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was

reserved and specifying the name and address of the transferee."

Section 1307. Section 35-12-804, MCA, is amended to read:

"35-12-804. Contributions by a general partner. A general partner may make contributions to a limited partnership and share in the profits and losses of and in distributions from the limited partnership as a general partner. A general partner may also make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has all the rights and powers and is subject to all the restrictions and liabilities of a general partner and also has, except as otherwise provided in the partnership agreement, all powers and is subject to the restrictions of a limited partner to the extent ~~he~~ the person is participating in the partnership as a limited partner."

Section 1308. Section 35-12-1002, MCA, is amended to read:

"35-12-1002. Withdrawal of general partner. A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to ~~him~~ the withdrawing partner."

Section 1309. Section 35-12-1006, MCA, is amended to read:

"35-12-1006. Right to distributions. At the time a partner becomes entitled to receive a distribution, ~~he~~ the partner has the status of and is entitled to all of the remedies available to a creditor of the limited partnership with respect to the distribution."

Section 1310. Section 35-12-1102, MCA, is amended to read:

"35-12-1102. Assignment of partnership interest. Except as otherwise provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become a partner or to exercise any of the rights ~~thereof of a partner~~. An assignment only entitles the assignee to receive, to the extent assigned, any distributions to which the assignor would be entitled. Except as otherwise provided in the partnership agreement, a partner ceases to be a partner upon assignment of all ~~his~~ the partner's partnership interest."

Section 1311. Section 35-12-1103, MCA, is amended to read:

"35-12-1103. Rights of creditors. On due application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment debt, with interest ~~thereon~~. To the extent ~~so~~ charged, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not deprive any partner of the benefit of any exemption laws applicable to ~~his~~ the partner's partnership interest."

Section 1312. Section 35-12-1105, MCA, is amended to read:

"35-12-1105. Power of estate of deceased or incompetent partner. If a partner who is a natural person dies or a court of competent jurisdiction adjudges ~~him~~ that partner to be incompetent to manage ~~his~~ the partner's person or ~~his~~ property, the partner's personal representative, guardian, conservator, or other legal representative may exercise all of the partner's rights for the purpose of settling ~~his~~ the partner's estate or administering ~~his~~ the partner's property, including any power the partner had to give an assignee the right to become a limited partner. If a partner that is a corporation, trust, or other entity other than a natural person is dissolved or terminated, those powers may be exercised by the legal representative or successor of the partner."

Section 1313. Section 35-12-1203, MCA, is amended to read:

"35-12-1203. Winding up. Unless otherwise provided in the partnership agreement, the general partners who have not wrongfully dissolved the limited partnership or, if none, the limited partners may wind up the limited partnership's affairs; ~~but~~ However, any partner, ~~his~~ a partner's legal representative, or ~~his~~ a partner's assignee, upon cause shown, may obtain winding up by the district court."

Section 1314. Section 35-12-1404, MCA, is amended to read:

"35-12-1404. Expenses. If a derivative action is successful, in whole or in part, or anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable ~~attorney's~~ attorney fees, and shall direct ~~him~~ the plaintiff to account to the limited partnership for the remainder of the proceeds ~~so~~ received by ~~him~~ the plaintiff."

Section 1315. Section 35-13-204, MCA, is amended to read:

"35-13-204. Profits and losses -- how shared. A member of a mining partnership shares in the profits and losses ~~thereof~~ of the partnership in the proportion ~~which~~ that the interest or share ~~he~~ the member owns in the mine bears to the whole partnership capital or whole number of shares."

Section 1316. Section 35-13-205, MCA, is amended to read:

"35-13-205. Lien of partner for debts due creditors. Each member of a mining partnership has a lien on the partnership property for the debts due the creditors ~~thereof of the partnership~~ and for money advanced by ~~him~~ the member for its uses. This lien exists notwithstanding ~~there is~~ an agreement among the partners that it ~~must~~ may not exist."

Section 1317. Section 35-13-206, MCA, is amended to read:

"35-13-206. Partnership not dissolved by sale of interest -- purchaser becomes partner. One of the partners in a mining partnership may convey ~~his~~ the partner's interest in the mine and business without dissolving the partnership. The purchaser from the date of ~~his~~ purchase becomes a member of the partnership."

Section 1318. Section 35-13-207, MCA, is amended to read:

"35-13-207. Purchaser takes subject to liens -- exception for good faith purchaser. A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors ~~thereof of the partnership~~ or advances made for the benefit of the partnership unless ~~he~~ the purchaser purchased in good faith for a valuable consideration without notice of ~~such~~ the lien."

Section 1319. Section 35-15-303, MCA, is amended to read:

"35-15-303. Stockholder voting by mail. At any regularly called general or special meeting of the stockholders of cooperative associations, a written vote received by mail from any absent stockholder and signed by ~~him~~ the stockholder may be read in ~~such~~ the meeting and ~~shall~~ must be equivalent to a vote of each of the ~~signing~~ stockholders ~~so signing~~, provided ~~he~~ the stockholder has been previously notified in writing of the exact motion or resolution upon which ~~such~~ the vote is taken and a copy of the ~~same~~ motion or resolution is forwarded with and attached to the mailed vote ~~so mailed by him.~~"

Section 1320. Section 35-15-403, MCA, is amended to read:

"35-15-403. Assignment of stock. ~~No~~ An assignment of stock ~~shall~~ may not be made to any person who already owns stock, except by the consent of the board of directors, but stock may be assigned to the association at any time with the consent of the directors. On ~~no~~ a question ~~shall~~ a stockholder may not have more than one vote. Every assignment of stock on which there remains any portion unpaid ~~shall~~ must be recorded in the books of the association, and each stockholder ~~shall be~~ is jointly and severally liable with the association for

the debts of the association to the extent of the amount ~~which shall be~~ that is unpaid upon the share held by ~~him~~ the stockholder. ~~No An assignor shall~~ may not be released from ~~any such the~~ indebtedness by reason of any assignment of ~~his the assignor's~~ share but ~~shall remain~~ remains jointly liable ~~therefor~~ with the assignee."

Section 1321. Section 35-15-404, MCA, is amended to read:

"35-15-404. Share exempt from attachment and execution -- sale upon death of member. (1) The share, not exceeding the par value of \$500, of each member ~~shall be~~ is exempt from seizure on attachment or sale under execution.

(2) Upon ~~his~~ a member's death, the share ~~shall~~ must be sold by the association and the proceeds, after deducting all liabilities to the association, ~~shall~~ must be delivered to ~~his~~ the deceased member's heirs."

Section 1322. Section 35-15-505, MCA, is amended to read:

"35-15-505. Effect of merger or consolidation -- rights and obligations -- rights of creditors not impaired. (1) After the effective date, the associations ~~which~~ that are parties to the plan become a single association. In the case of a merger, the surviving association is that association ~~so~~ designated in the plan. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations ~~which~~ that are parties to the plan, except the surviving or new association, then ceases.

(2) The surviving or new association possesses all the rights and all the property of each of the individual associations and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment ~~thereof~~ of the title caused by the merger or consolidation. ~~No~~ The right of any creditor may not be impaired by the merger or consolidation without ~~his~~ the creditor's consent.

(3) ~~Nothing in this~~ This part ~~shall~~ may not be construed to impair the obligation of any contract to which any of ~~such the~~ constituents was a party at the date of ~~said~~ consolidation."

Section 1323. Section 35-16-210, MCA, is amended to read:

"35-16-210. Existing associations -- reorganization under this chapter. (1) Any cooperative or other corporation, association, society, or group of individuals on or before March 5, 1921, associated together for purposes and objects similar to those contemplated by the provisions ~~hereof~~ of this chapter desiring to come within the provisions ~~hereof~~ of this chapter may, by resolution of their board of directors, direct written notice to be given to each stockholder or member of their corporation or group of individuals of the proposal to organize

a corporation or district under the provisions ~~hereof~~ of this chapter and request 10 or more of their members qualified as ~~herein~~ provided for in this chapter to prepare and file, in ~~such the county as that~~ such the county as that they ~~shall~~ select to make their principal place of business, a petition in accordance with the provisions of 35-16-202. If ~~thereafter~~ after petitioning not less than two-thirds of the stockholders or members ~~as such of such the~~ of such the cooperative or other corporation, association, society, or group of individuals ~~shall~~ either file with the corporation or district their written consent to ~~such the~~ such the reorganization or petition to become members ~~thereof~~, in accordance with the provisions ~~hereof~~ of this chapter, or both, the board of directors or other governing board of ~~such the~~ such the existing cooperative or other corporation, association, society, or group of individuals ~~shall~~ must be authorized to, through proper officers, transfer to ~~such the~~ such the new corporation or district, when organized, their corporate assets, real, personal, and mixed.

(2) Any stockholder or member of any cooperative or other corporation or society reorganized under the provisions ~~hereof~~ of this section, consenting to ~~such the~~ such the reorganization but not including lands ~~therein~~ in the reorganized corporation or district, ~~shall be~~ is entitled to a certificate or shares of stock or other evidence of membership in ~~such the~~ such the reorganized corporation or district of the par value equal to the value of ~~his the~~ the stockholder's or member's certificate or shares of stock or membership right in the previous existing cooperative or other corporation or society's assets at the time of ~~such the~~ such the reorganization and ~~shall be~~ is to this extent a stockholder or member; ~~provided~~ However, any stockholder or member of the corporation or group of individuals that are reorganizing ~~shall~~ may not be considered as increasing the stock of the new corporation so as to require consent of a majority of its members or stockholders to their admission."

Section 1324. Section 35-16-211, MCA, is amended to read:

"35-16-211. Stockholders dissenting from reorganization of existing association -- appraisal remedy. ~~In the event~~ If any stockholder or member of ~~such an~~ such an existing cooperative or other corporation, association, society, or group of individuals ~~shall decline~~ declines to consent to ~~such the~~ such the transfer or ~~refuse~~ refuses to become a member of ~~such the~~ such the new organization, ~~he must~~ the stockholder or member shall, within 30 days ~~from~~ and after receiving written notice of the transfer of ~~said~~ said assets to the new corporation or district, serve upon the officers of the newly created corporation or district and file in the district court of the county of its principal place of business ~~his a~~ a petition praying for the net value of ~~his the~~ the stockholder's or member's equity ~~as a stockholder or member~~ in said the cooperative or other corporation, association, society, or group of individuals in its assets, determined and valued as of the date when the ~~said the~~ said the property was transferred by the directors or executive officers to the new corporation or district. Upon a failure to, within the time and in the manner specified ~~herein~~ in

this section, file ~~such a~~ claim for appraisal and settlement, it ~~shall be forever~~ is barred."

Section 1325. Section 35-16-212, MCA, is amended to read:

"35-16-212. Association operating two or more enterprises in different parts of state -- control by delegates. (1) ~~Any~~ An agricultural association or company, either cooperative stock or nonprofit nonstock, ~~agricultural association or company~~ existing on July 1, 1921, or ~~thereafter~~ organized under the laws of Montana ~~after that date~~ may own and operate two or more cooperative enterprises in different parts of the state and may exercise and possess the following powers by providing in their articles of incorporation or in their bylaws that:

(a) all powers of the association members or stockholders ~~shall~~ must be exercised by duly elected delegates at any meeting of ~~such~~ delegates ~~which~~ that may be called. They shall elect ~~such~~ officers and transact ~~such~~ business in the same manner ~~as~~ that the association members or stockholders are empowered to do. ~~Such~~ The officers and board of directors ~~as~~ that the delegates may elect ~~shall~~ must be known as "general officers" or "general board of directors".

(b) stockholders or members of ~~such~~ the cooperative stock or nonprofit nonstock agricultural associations or companies ~~shall~~ must be grouped into locals in ~~such~~ the districts ~~as~~ that the general board of directors may from time to time direct;

(c) each local, with territorial limits as determined by the general board of directors, shall elect from among its stockholders or members one delegate and one alternate to represent the local at any meeting of the association or company. ~~Such~~ The delegate and alternate shall serve for 1 year. The alternate shall serve as delegate at all meetings where the delegate may not be in attendance.

(d) each delegate may have only one vote, regardless of the number of stockholders or members ~~which~~ he that the delegate represents.

(2) Nothing in this section limits the powers of the board of directors of any corporation."

Section 1326. Section 35-16-302, MCA, is amended to read:

"35-16-302. Procedure for receiving other members. (1) Whenever any corporation or district has been formed under the provisions ~~hereof~~ of this chapter, it is authorized and directed to permit other holders of title or evidence of title of similar or like agricultural, horticultural, or farm ~~lands~~ land within this state to become members ~~thereof~~, upon ~~such~~ the holder of title or evidence of title, in manner and form ~~as~~ that may be required by the laws of Montana and the rules of ~~such~~ the corporation or district or its bylaws, applying for membership ~~therein~~ to the officers ~~thereof~~ of the corporation or district by written application, duly acknowledged:

(a) containing a full, true, and correct description of the ~~lands~~ land owned by ~~him~~ the applicant and proposed to be contained in ~~said~~ the corporation or district;

(b) containing a statement of ~~his~~ the applicant's desire to become a member ~~thereof~~ and ~~his~~ the applicant's consent to submit ~~his lands~~ the applicant's land to the provisions ~~hereof~~ of this chapter and to the administration of ~~said~~ the corporation or district and its bylaws and to its objects and purposes; and

(c) accompanied by a map of the ~~lands so~~ land owned by ~~him~~ the applicant and proposed to be submitted to ~~said~~ the corporation or district, its objects and purposes.

(2) If ~~said~~ the application ~~shall be~~ is in proper form and the applicant ~~be~~ is the holder of title or evidence of title to the ~~lands~~ land described and the uses of ~~said~~ the land as represented in ~~said~~ the petition ~~be~~ are similar to the uses of ~~lands~~ land already included in ~~said~~ the corporation or district, a full, true, and correct copy of ~~his~~ the application ~~shall~~ must be made and filed in the office of principal place of business of the corporation or district and ~~his~~ the original application ~~shall~~ must be filed and recorded in the office of the county clerk and recorder of the county in which the ~~lands~~ land or the greater portion ~~thereof~~ of the land is ~~situate~~ located. ~~He shall thereupon~~ be Upon filing, the applicant is entitled to evidence of temporary membership, in shares or units of membership, in a similar manner as the original members ~~thereof~~ and the ~~lands~~ land described in the petition ~~shall thereafter~~ must be construed to be a part of ~~said~~ the corporation or district to all intents and purposes as though originally incorporated ~~therein~~ in the corporation or district. Upon the consent of a majority of the members or stockholders given in the annual meeting or at a special meeting called as provided by law for that purpose, ~~such~~ the new member or stockholder ~~shall be~~ is entitled to full membership in ~~such~~ the corporation or district."

Section 1327. Section 35-16-303, MCA, is amended to read:

"35-16-303. Withdrawal of membership ~~lands~~ land -- procedure. Any person holding title or evidence of title to membership ~~lands~~ land included in a corporation or district organized under the provisions ~~hereof~~ subsequently of this chapter desiring to withdraw ~~his lands~~ the person's land from ~~such~~ the corporation or district may do so upon presenting to the board of directors ~~his~~ a verified petition stating that ~~he~~ the person is the holder of title or evidence of title to membership ~~lands~~ land included ~~therein~~ in the corporation or district, particularly describing the ~~same~~ land with a map or plat ~~thereof~~, that ~~he~~ the person ~~is desirous of withdrawing~~ wishes to withdraw from ~~such~~ the corporation or district, and tendering to ~~said~~ the board the pro rata amount of liability of ~~his lands~~ the person's land for all of the corporation's lawfully created and existing lien liabilities together with ~~his~~ the person's pro rata amount of interest due and to become due upon any ~~such~~ such liabilities to the maturity of the ~~same~~ liabilities. If the matters and things set forth in ~~said~~ the petition ~~shall be~~ are true and ~~said~~ the petitioner ~~shall~~

~~deposit deposits~~ with the board ~~his~~ the petitioner's pro rata amount of the liabilities ~~as before herein set out~~ or ~~furnish furnishes~~ a receipt for ~~such the~~ amount from the mortgage or lien holders holding liens against ~~such the~~ lands, the proper officers of the corporation or district shall make, execute, acknowledge, and deliver a release of ~~said the~~ lands from ~~incorporation~~ the corporation or district and its liabilities. Upon presentation of ~~such the~~ release to the mortgage holder or ~~lien holder~~ lienholder claiming a right against ~~said the~~ membership lands, they shall furnish their release ~~thereof~~, which ~~said release or releases~~ may be filed and recorded in any county or counties in which ~~said lands may be situated~~ the land is located. The board of directors and corporate assets of the corporation ~~shall~~ must be responsible to any mortgage or ~~lien holder~~ lienholder and the withdrawee for the payments of ~~such~~ funds on their debt or liability."

Section 1328. Section 35-16-304, MCA, is amended to read:

"35-16-304. Withdrawal -- application to court for order. ~~in the event~~ If the board of directors ~~shall refuse refuses~~ or ~~fail fails~~ for a period of 30 days to act upon ~~such a~~ petition of withdrawal, the petitioner ~~shall be~~ is entitled to apply to the district court in the county ~~wherein said~~ in which the lands land or the larger proportion of the ~~same shall be~~ land is situated for an order of withdrawal, and upon ~~his~~ payment to the clerk of the court for the use and benefit of the holders of mortgages or other liens against ~~said the~~ corporation or its membership ~~lands land~~ of the pro rata amount of ~~his~~ the petitioner's land's liabilities ~~therefor~~, ~~he shall be~~ the petitioner is entitled to an order of withdrawal and release of ~~his~~ the petitioner's land lands from ~~said court~~. The filing with the clerk and recorder of a duly certified copy of ~~such the~~ order permitting withdrawal ~~shall operate~~ operates to release the membership ~~lands land~~ described ~~therein~~ in the order from any liens of the corporation under the provisions ~~hereof~~ of this chapter."

Section 1329. Section 35-16-311, MCA, is amended to read:

"35-16-311. Meetings -- voting -- proxies. At the organization meeting or any meeting of the stockholders or members of a corporation or district organized under the provisions ~~hereof~~ of this chapter, each member and each unit of membership in acres, production, or other evidence of membership ~~shall be~~ is entitled to vote in person or by proxy. Corporate action at ~~such a~~ meeting ~~shall~~ must be determined by a majority of the membership and a majority of the acres, production, or units of membership, as may have been adopted. Any group of members of a subdivision or subdistrict of the corporation or district as may be defined and designated by the board of directors or the bylaws shall, at a subdivision or subdistrict meeting called for the purpose, elect a delegate or proxy to represent all of the membership in the subdivision or subdistrict at any ~~such~~ organization

meeting ~~or meeting of the stockholders or members.~~ ~~Where~~ If any subdivision or subdistrict fails to elect ~~such a~~ delegate, any individual member may give a proxy; ~~provided no~~ However, a person shall be who is not a member of the corporation or district and a resident agricultural or horticultural freeholder in the state of Montana for at least 3 years immediately preceding the meeting is not entitled to act as proxy ~~who is not himself a member of the corporation or district and a resident agricultural or horticultural freeholder in the state of Montana for not less than 3 years immediately preceding such meeting."~~

Section 1330. Section 35-16-314, MCA, is amended to read:

"35-16-314. Qualifications of directors -- quorum -- vacancies. (1) ~~No~~ A person shall be is not eligible to be a director of any corporation or district organized under the provisions ~~hereof who is not himself of this chapter unless the person is~~ a member of the corporation or district and a resident agricultural freeholder in the state of Montana.

(2) A quorum of the board of directors ~~shall at all times be is~~ necessary for the transaction of business; ~~provided~~ However, if the bylaws or board of directors ~~shall~~ provide for an executive committee, a quorum of ~~such that committee shall have authority to~~ may carry on business.

(3) Whenever a vacancy occurs in the office of a director, unless the bylaws ~~shall otherwise~~ provide ~~otherwise,~~ such the vacancy may be filled by appointment by the board of directors."

Section 1331. Section 35-17-206, MCA, is amended to read:

"35-17-206. Bylaws. (1) Each association incorporated under this chapter ~~must shall,~~ within 30 days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with the powers granted by this chapter. A majority vote of the members or stockholders or their written assent is necessary to adopt ~~such the~~ bylaws. The bylaws may be amended at any regular or special meeting if approved by a majority vote of the stockholders ~~voting thereon.~~

(2) Each association under its bylaws may also provide for any or all of the following matters:

- (a) the time, place, and manner of calling and conducting its meetings;
- (b) the number of stockholders or members constituting a quorum;
- (c) the right of members or stockholders to vote by proxy or by mail or by both and the conditions, manner, form, and effects of ~~such those~~ votes;
- (d) the number of directors constituting a quorum;
- (e) the qualifications, compensation, duties, and term of office of directors and officers, the time of their

election, and the mode and manner of giving notice ~~thereof~~ of these matters;

(f) penalties for violations of the bylaws;

(g) the amount of entrance, organization, and membership fees, if any, the manner and method of collection of the ~~same~~ fees, and the purposes for which they may be used;

(h) the amount ~~which that~~ each member or stockholder ~~shall be~~ is required to pay annually or from time to time, if at all, to carry on the business of the association, the charge, if any, to be paid by each member or stockholder for services rendered by the association to ~~him~~ the stockholder or member and the time of payment and the manner of collection, and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign;

(i) the number and qualifications of members or stockholders of the association and the conditions precedent to membership or ownership of common stock_; the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock_; the manner of assignment and transfer of the interest of members and the shares of common stock_; and the conditions upon which and the time when membership of any member ~~shall cease~~ ceases;

(j) the automatic suspension of the rights of a member when ~~he~~ the member ceases to be eligible ~~to~~ for membership in the association and the mode, manner, and effect of the expulsion of a member;

(k) the manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder or upon the expulsion of a member or forfeiture of ~~his~~ membership or, at the option of the association, by conclusive appraisal by the board of directors."

Section 1332. Section 35-17-303, MCA, is amended to read:

"35-17-303. Limited liability of members. Except for debts lawfully contracted between ~~him~~ a member and the association, ~~no a member shall be~~ is not liable for the debts of the association ~~to~~ for an amount exceeding the sum remaining unpaid on ~~his~~ the member's membership fee or ~~his~~ subscription to the capital stock, including any unpaid balance on any promissory notes given in payment ~~thereof~~ of the subscription."

Section 1333. Section 35-17-311, MCA, is amended to read:

"35-17-311. Directors -- election -- compensation -- interest in contracts -- vacancies. (1) The affairs of the association ~~shall~~ must be managed by a board of not less than five directors elected by the members or stockholders from their own number. The bylaws may provide that the territory in which the association has members ~~shall~~ must be divided into districts and that the directors ~~shall~~ must be elected according to ~~such~~ the

districts. In ~~such a~~ that case, the bylaws ~~shall~~ must specify the number of directors to be elected by each district, the manner and method of reapportioning the directors, and the manner and method of redistricting the territory covered by the association. The bylaws may provide that primary elections ~~should~~ must be held in each district to elect the directors apportioned to ~~such~~ the districts, and the result of all ~~such~~ primary elections must be ratified by the next regular meeting of the association.

(2) An association may provide a fair remuneration for the time actually spent by its officers and directors in its service.

(3) ~~No~~ A director during the term of ~~his~~ office ~~shall~~ may not be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association or to any other kind of contract differing from terms generally current in that district.

(4) When a vacancy on the board of directors occurs, other than by expiration of a term, the remaining members of the board by a majority vote shall fill the vacancy unless the bylaws ~~provided~~ provide for an election of directors by district. In ~~such a~~ that case, the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy."

Section 1334. Section 35-17-313, MCA, is amended to read:

"35-17-313. Removal of officer or director. (1) Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by 10% of the members, requesting the removal of the officer or director in question. The removal ~~shall~~ must be voted upon at the next regular or special meeting of the association, and by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom ~~such~~ charges have been brought ~~shall~~ must be informed in writing of the charges previous to the meeting and ~~shall~~ must have an opportunity at the meeting to be heard in person or by counsel and to present witnesses, and the person or persons bringing the charges against ~~him~~ the director or officer ~~shall~~ must have the same opportunity.

(2) ~~In case~~ If the bylaws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by 12% of the members residing in the district from which ~~he~~ the director was elected. The board of directors ~~must~~ shall call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question ~~shall be~~ is removed from office."

Section 1335. Section 35-17-401, MCA, is amended to read:

"35-17-401. Marketing contracts. (1) The association and its members may make and execute marketing contracts requiring the members to sell, for any period of time not over 10 years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members with or without taking title ~~thereto~~ to the products and pay over to its members the resale price after deducting all necessary selling, overhead, and other costs and expenses.

(2) The bylaws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by ~~him~~ the member or stockholder of any provisions of the marketing contract regarding the sale or delivery or withholding of products and may further provide that the member or stockholder will pay all costs, premiums for bonds, expenses, and fees in case any action is brought upon the contract by the association, and ~~any such these~~ these provisions ~~shall be~~ are valid and enforceable in the courts of this state.

(3) In the event of any ~~such~~ breach or threatened breach of ~~such a~~ marketing contract by a member, the association ~~shall be~~ is entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance ~~thereof~~. Pending the adjudication of ~~such~~ an action and upon filing a verified complaint showing the breach or threatened breach and upon filing a sufficient bond, the association ~~shall be~~ is entitled to a temporary restraining order and preliminary injunction against the member or stockholder."

Section 1336. Section 35-17-505, MCA, is amended to read:

"35-17-505. Effect of merger or consolidation -- rights and obligations -- rights of creditors not impaired. (1) On the effective date, the associations ~~which~~ that are parties to a plan adopted pursuant to this part become a single association. In the case of a merger, the surviving association is that association ~~so~~ designated in the plan. The articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations ~~which~~ that are parties to the plan, except the surviving or new association, then ceases.

(2) The surviving or new association possesses all the rights and all the property of each of the individual associations and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment ~~thereof~~ of title caused by the merger or consolidation.

(3) ~~No~~ The right of any creditor may not be impaired by the merger or consolidation without ~~his~~ the creditor's consent."

Section 1337. Section 35-18-312, MCA, is amended to read:

"35-18-312. Trustees -- term -- quorum -- powers. (1) The trustees of a cooperative named in any articles of incorporation, consolidation, merger, or conversion, ~~as the case may be,~~ shall hold office until the next ~~following~~ annual meeting of the members or until their successors ~~shall~~ have been elected and qualified. At each annual meeting or, in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect trustees who may serve for 1-, 2-, or 3-year terms. Each trustee shall ~~hold~~ holds office for the term for which ~~he~~ the trustee is elected or until ~~his~~ a successor ~~shall have been~~ is elected and qualified.

(2) A majority of the board of trustees ~~shall constitute~~ constitutes a quorum.

(3) The board of trustees may exercise all of the powers of a cooperative, except ~~such as~~ powers that are conferred upon the members by this chapter or its articles of incorporation or bylaws."

Section 1338. Section 35-18-314, MCA, is amended to read:

"35-18-314. Officers. The officers of a cooperative ~~shall~~ consist of a president, ~~vice-president~~ vice president, secretary, and treasurer who ~~shall~~ must be elected annually by and from the board of trustees. ~~No A~~ person ~~shall~~ may not continue to hold any ~~of the above offices~~ office after ~~he~~ he ~~shall have ceased~~ the person ceases to be a trustee. The offices of secretary and of treasurer may be held by the same person. The board of trustees may also elect or appoint ~~such~~ other officers, agents, or employees ~~as that it shall deem~~ considers necessary or advisable and shall prescribe the powers and duties ~~thereof~~ of those offices. Any officer may be removed from office and ~~his~~ a successor elected in the manner prescribed in the bylaws."

Section 1339. Section 35-18-405, MCA, is amended to read:

"35-18-405. Dissolution and winding up of cooperative which that has commenced business. A cooperative ~~which~~ that has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

(1) The board of trustees shall first recommend that the cooperative be dissolved voluntarily, and ~~thereafter~~ then the proposition that the cooperative be dissolved ~~shall~~ must be submitted to the members of the cooperative at any annual or special meeting, the notice of which ~~shall~~ must set forth ~~such~~ the proposition. The proposed voluntary dissolution ~~shall~~ must be ~~deemed~~ considered to be approved upon the affirmative vote of not less than two-thirds of all of the members of the cooperative.

(2) Upon ~~such~~ approval, a certificate of election to dissolve, ~~hereinafter~~ designated the "certificate", ~~shall~~

must be executed on behalf of the cooperative by its president or ~~vice-president~~ vice president and its corporate seal ~~shall~~ must be affixed ~~thereto~~ to the certificate and attested by its secretary or assistant secretary. The certificate ~~shall~~ must state the name of the cooperative, the address of its principal office, the names and addresses of its trustees, and the total number of members who voted for and against the voluntary dissolution of the cooperative. The president or ~~vice-president~~ vice president executing the certificate shall also make and ~~annex thereto~~ attach to the certificate an affidavit stating that the provisions of this subsection were ~~duly~~ complied with. ~~Such~~ The certificate and affidavit ~~shall~~ must be submitted to the secretary of state for filing as provided in this chapter.

(3) Upon the filing of the certificate and affidavit by the secretary of state, the cooperative ~~shall~~ must cease to carry on its business except ~~insofar as may be~~ to the extent necessary for the winding up ~~thereof~~ of the cooperative, but its corporate existence ~~shall continue~~ continues until articles of dissolution have been filed by the secretary of state.

(4) After the filing of the certificate and affidavit by the secretary of state, the board of trustees shall immediately cause notice of the winding up proceedings to be mailed to each known creditor and claimant and to be published once a week for 2 successive weeks in a newspaper of general circulation in the county in which the principal office of the cooperative is located.

(5) The board of trustees ~~shall have~~ has full power to wind up and settle the affairs of the cooperative and shall proceed to collect the debts owing to the cooperative, convey and dispose of its property and assets, pay, satisfy, and discharge its debts, obligations, and liabilities, and do all other things required to liquidate its business and affairs and after paying or adequately providing for the payment of all its debts, obligations, and liabilities shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each ~~such~~ member during the 7 years ~~next~~ preceding the date of ~~such~~ filing of the certificate or, if the cooperative ~~shall~~ has not ~~have~~ been in existence for ~~such period~~ 7 years, during the period of its existence.

(6) When all debts, liabilities, and obligations of the cooperative have been paid and discharged or adequate provision ~~shall have~~ has been made ~~therefor~~ for payment or discharge and all of the remaining property and assets of the cooperative ~~shall~~ have been distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution, which ~~shall thereupon~~ must be executed on behalf of the cooperative by its president or ~~vice-president~~ vice president and its corporate seal ~~shall~~ must be affixed ~~thereto~~ to the articles and attested by its secretary. ~~Such~~ The articles of dissolution ~~shall~~ must recite in the caption that they are executed pursuant to this chapter and ~~shall~~ must state:

- (a) the name of the cooperative;
- (b) the address of the principal office of the cooperative;
- (c) that the cooperative has ~~heretofore~~ previously delivered to the secretary of state a certificate of election to dissolve and the date on which the certificate was filed by the secretary of state in the records of ~~his~~ that office;
- (d) that all debts, obligations, and liabilities of the cooperative have been paid and discharged or that adequate provision has been made ~~therefor~~ for payment or discharge;
- (e) that all the remaining property and assets of the cooperative have been distributed among the members in accordance with the provisions of this section; and
- (f) that there are no actions or suits pending against the cooperative. The president or ~~vice-president~~ vice president executing the articles of dissolution shall also make and ~~annex thereto~~ attach to the articles an affidavit stating that the provisions of this subsection (6) were ~~duly~~ complied with. ~~Such~~ The articles of dissolution and affidavit, accompanied by proof of the publication required in this subsection (6), ~~shall~~ must be submitted to the secretary of state for filing as provided in this chapter."

Section 1340. Section 35-18-501, MCA, is amended to read:

"35-18-501. Filings relative to incorporation, amendment, conversion, merger, consolidation, and dissolution -- effect of filing -- transmittal to county clerk. (1) Articles of incorporation, amendment, consolidation, merger, conversion, or dissolution, ~~as the case may be~~, when executed and accompanied by ~~such~~ affidavits ~~as that~~ as may be required by applicable provisions of this chapter, ~~shall~~ must be presented to the secretary of state for filing ~~in the records of his office~~. If the secretary of state ~~shall find~~ finds that the articles presented conform to the requirements of this chapter, ~~he~~ the secretary of state shall upon the payment of the fees as provided in this chapter ~~provided~~ file the articles ~~so presented in the records of his office~~, and upon ~~such~~ filing, the incorporation, amendment, consolidation, merger, conversion, or dissolution ~~provided for therein~~ shall be is in effect.

(2) The secretary of state, immediately upon the filing ~~in his office~~ of any articles pursuant to this chapter, shall transmit a certified copy ~~thereof~~ to the county clerk of the county in which the principal office of each cooperative or corporation affected by ~~such~~ the incorporation, amendment, consolidation, merger, conversion, or dissolution ~~shall be~~ is located. The clerk of any county, upon receipt of any ~~such~~ certified copy, shall file and index the ~~same~~ copy in the records of ~~his~~ that office, but the failure of the secretary of state or of a clerk of a county to comply with the provisions of this section ~~shall~~ does not invalidate ~~such~~ the articles.

(3) The provisions of this section ~~shall also~~ apply to certificates of election to dissolve and affidavits of compliance executed pursuant to 35-18-405(2)."

Section 1341. Section 35-20-101, MCA, is amended to read:

"35-20-101. Permissible purposes for association -- first meeting -- election of trustees. Any ~~number~~ A group of seven persons or more residing in any county in the state of Montana; ~~not less than seven;~~ who desire to form an association for the purpose of procuring and holding lands to be used exclusively for a cemetery or place of burial of the dead; may meet at ~~such a~~ such a time and place ~~as that~~ as that they or a majority of them agree upon and appoint a ~~chairman~~ presiding officer and secretary by a vote of the majority of the persons present at the meeting and may proceed to form an association by agreeing upon a corporate name by which the association ~~shall~~ must be known and by determining upon the number of trustees to manage the affairs of the association; ~~which~~ The number shall of trustees may not be less than three or more than nine. ~~Thereupon~~ Upon determining the number of trustees they may proceed to elect ~~by ballot the number of the~~ by ballot the number of the trustees ~~so determined upon by ballot.~~"

Section 1342. Section 35-20-102, MCA, is amended to read:

"35-20-102. Classification of trustees -- staggered terms. The ~~chairman~~ presiding officer and secretary of ~~such the~~ the meeting described in 35-20-101 shall immediately after ~~such the~~ the election divide the trustees by lot into three classes, those in the first class to hold their office for 1 year; ~~those in the second class; for 2 years;~~ and those in the third class; for 3 years; ~~but~~ However, the trustees of each class may be reelected if they possess the qualifications ~~hereinafter~~ mentioned in this part. ~~Such~~ The meeting shall must also determine on what day in each year the future annual election of trustees ~~shall~~ will be held."

Section 1343. Section 35-20-103, MCA, is amended to read:

"35-20-103. Document of incorporation -- contents -- filing. (1) The ~~chairman~~ presiding officer and secretary of ~~such the~~ the meeting described in 35-20-101 shall within 5 days after the holding of the ~~same meeting~~ make a written certificate, which ~~shall~~ must state:

- (a) the names of the associates who attended ~~such the~~ the meeting;
- (b) the corporate name of the association determined ~~upon~~ by a majority of the persons who met;
- (c) the number of persons ~~fixed~~ agreed upon to manage the concerns of the association;
- (d) the names of the trustees chosen at the meeting and their classification;

(e) the day of the year ~~fixed upon~~ identified for the annual election of trustees and the manner of their election.

(2) In addition to provisions required in subsection (1), the document of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-216(2)(d).

(3) ~~Such~~ The certificate ~~shall~~ must be signed by the ~~chairman~~ presiding officer and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause ~~such~~ the acknowledged certificate ~~so acknowledged~~ to be recorded in the office of the county clerk and recorder of the county in which ~~said~~ the meeting was held, and a certified copy of ~~such~~ the recorded certificate ~~so recorded~~ shall must be filed with the secretary of state of the state of Montana, who shall ~~thereupon~~ issue ~~his~~ a certificate ~~therefor~~ of filing without charge."

Section 1344. Section 35-20-208, MCA, is amended to read:

"35-20-208. Trustees to manage -- quorum -- officers -- bond of treasurer. (1) The affairs and property of the association ~~shall~~ must be managed by the trustees, a majority of whom is a quorum for the transaction of business.

(2) The trustees shall annually appoint from among their number a president, ~~vice-president~~ vice president, secretary, and treasurer who shall hold their offices ~~during~~ at the pleasure of the board of trustees. The trustees may require the treasurer to give security for the faithful performance of the duties of ~~his~~ that office."

Section 1345. Section 35-20-209, MCA, is amended to read:

"35-20-209. Duties of secretary -- record of interments. The secretary shall perform all the duties of a secretary of a corporation and shall, in addition, keep a record of interments in which ~~he~~ the secretary shall enter as correctly and carefully as may be the name, age, sex, ~~nativity~~ place of birth, and cause of death with date of burial of every person interred in ~~such~~ the cemetery; ~~which facts he~~ The secretary shall procure these facts from ~~such~~ friends or relatives of the deceased or the undertaker ~~as that give~~ gives the order for ~~such~~ interment at ~~the~~ that time ~~thereof~~ or, ~~in case~~ if the deceased is a pauper, a stranger, or criminal, from the coroner, ~~county~~ physician, ~~overseer of the poor~~, or other public officer directing the burial of the ~~same~~ deceased."

Section 1346. Section 35-20-216, MCA, is amended to read:

"35-20-216. Inalienability of lots. (1) Whenever the ~~lands~~ land of ~~such~~ an association ~~are~~ is laid out in lots and the lots or any of them are transferred to individual proprietors and there has been an interment in a

~~transferred~~ lot ~~so transferred~~, that lot from the time of ~~such~~ interment ~~shall forever be~~ is inalienable and ~~shall~~ must, upon the death of the proprietor, descend to ~~his~~ to the proprietor's heirs. However, any one or more of those heirs may release to any other of the heirs ~~his~~ that individual's or their interest in the lot. A copy of the release ~~shall~~ must be filed with the secretary of the association or with the county clerk and recorder of the county within which the lot is situated. Except by consent of all persons having an interest in the lot, the body of a deceased person may not be interred in that lot unless it is the body of:

- (a) a person having an interest in that lot at the time of ~~his decease~~ that person's death;
- (b) a relative of some person having ~~such an~~ an interest;
- (c) the wife or husband of ~~such~~ a person having an interest; or
- (d) a relative of ~~such the~~ the husband or wife.

(2) However, the person or persons in whom the title to ~~such the~~ the lot or lots or part ~~thereof~~ of the lot or lots is vested may at any time sell, convey, and release the lot or lots or parts ~~thereof~~ of the lot or lots to the cemetery association maintaining the cemetery in which the lots are situated. A copy of the instruments of ~~such~~ conveyance ~~shall~~ must be filed in the same manner provided for release from one heir to another. The cemetery association may use any funds under its control for ~~such~~ filing purposes and ~~shall hold~~ holds and may convey ~~such the lot or~~ lots or parts ~~thereof~~ of the lot or lots to other purchasers in the same manner and with the same effect as it holds and conveys any other of its cemetery lots. This ~~proviso~~ subsection does not allow or authorize the conveyance to the cemetery association of a piece of ground in which the body of a deceased person lawfully interred actually remains interred at the time of the attempted conveyance."

Section 1347. Section 35-20-302, MCA, is amended to read:

"35-20-302. Trustees of fund -- appointment by district court -- qualifications -- powers. (1) Whenever ~~moneys to the amount of~~ at least \$100 ~~shall have~~ has been received by ~~such a cemetery~~ a cemetery corporation or association, ~~formed, before or after February 16, 1905,~~ either from the sale of lots or from direct payments of ~~such the~~ the corporation or association toward ~~such~~ a fund by lot owners or otherwise, the trustees of ~~such that~~ the association shall immediately make application to the judge of the district court for the judicial district in which the cemetery for which ~~such the~~ the trust fund exists for the appointment of a trustee or of a board of trustees of ~~such the~~ the fund. The judge of ~~such court~~ the court shall ~~thereupon~~ upon appoint a trustee or a board of trustees from a list submitted ~~to him~~ by the trustees of ~~such the~~ the association. ~~Such~~ The trust fund trustee or ~~such~~ the board ~~shall~~ must consist of not less than one or more than five persons, the exact number to rest in the discretion of the trustees of ~~said the~~ the association.

(2) ~~Such~~ The trustee or the members of ~~such~~ the board of trustees of ~~such~~ the trust funds must be citizens and freeholders of the state of Montana during all the time they exercise the powers of ~~such~~ the trust. Upon the election, appointment, and qualification ~~as hereinafter provided~~ of the trustees of ~~such~~ the fund, all of the title to the funds included in ~~said~~ the trust and all of the rights, powers, authorities, franchises, and trusts ~~of whatsoever thereunto appertaining shall at once~~ relating to the trust vest in ~~him~~ the trustee or them; board. or However, in case of the failure of ~~if~~ any of those ~~so~~ chosen and appointed ~~as trustees fail~~ to qualify within 30 days after their appointment, the ~~same shall~~ rights, powers, authorities, franchises, and trusts vest in ~~the one or more~~ those who ~~shall~~ qualify. ~~In case of the failure of~~ If any of those ~~so~~ chosen and appointed ~~so fail~~ to qualify within ~~such time~~ 30 days, a vacancy ~~shall exist~~ exists and the judge of ~~said~~ the district court shall ~~forthwith~~ appoint a trustee to fill the vacancy from a list submitted ~~to him~~ by the trustees of ~~such~~ the association ~~some person~~ possessing the above qualifications to fill vacancy or vacancies in said board of trustees of such fund; ~~provided,~~ however, that trustees of such fund heretofore appointed by such cemetery associations or district courts shall continue to hold their office ~~as such trustees until terminated in one of the manners in this chapter provided.~~

(3) The board of trustees ~~shall also have the power and authority to~~ of the association may nominate any bank ~~which~~ that is authorized to act as a trust company in Montana under state or federal law to be trustee of ~~such~~ the trust fund. ~~And in that event~~ In that case, the district court shall ~~make appointment of such~~ appoint the nominee ~~which~~ that shall serve ~~in such capacity~~ without bond but ~~shall be~~ is required to make all reports and discharge all the duties and obligations required of individual trustees."

Section 1348. Section 35-20-304, MCA, is amended to read:

"35-20-304. Trustees of fund -- bond required -- renewal of bond -- deposit with county treasurer.

(1) Before exercising or having any of the powers, duties, rights, titles, authorities, or franchises appertaining to ~~such~~ the trust or to ~~such~~ trusteeship, each person chosen to be a trustee of ~~such~~ the fund shall give to the cemetery association for which the trust is maintained a bond in a sum equaling at least 1 1/3 times the value of the property on hand at the time of giving ~~such~~ the bond, with good and sufficient sureties ~~thereto,~~ who shall justify in the aggregate in at least double the amount of ~~such~~ the bond; ~~the same to~~ The bond must be conditioned for the due and faithful performance of ~~his~~ the trustee's trust until July 1 of the next even-numbered year after the year in which ~~such~~ the bond ~~shall be~~ is given and until ~~such~~ the trustee ~~shall give~~ gives a new bond ~~as hereinafter provided.~~

(2) Upon July 1 in each even-numbered year, each trustee shall give a new bond conditioned in the same way, the amount ~~thereof~~ to be determined by the same rule, and with sureties as ~~above~~ provided in

subsection (1).

(3) Any failure ~~to~~ to renew bonds within 30 days after the time ~~hereinbefore~~ provided ~~shall be~~ is a sufficient ground for removal of any trustee within the discretion of the district court. ~~Such~~ The bonds ~~shall~~ must all be approved by a judge of the district court for the judicial district in which the cemetery for ~~such~~ the trust exists or some part ~~thereof shall be situated~~ of the cemetery is located and ~~shall~~ must be filed with the clerk of the district court of the county in which ~~such~~ the cemetery is located.

(4) The value of the property on hand may be reduced for the purpose of fixing the amount of the bond in an amount equal to the value of the money, bonds, and securities ~~which~~ that the trustee or trustees of the permanent care and improvement fund may elect to and do deposit with the county treasurer as ~~hereinafter~~ provided in subsection (5).

(5) The trustee or trustees of ~~such~~ the fund may deposit ~~such~~ money, bonds, and securities as ~~he or they~~ the trustee or trustees see fit with the county treasurer of the county in which ~~said~~ the cemetery or some part ~~thereof of the cemetery is situated~~ located for safekeeping, and it is the duty of the county treasurer to receive and safely keep all ~~such moneys~~ money, bonds, and securities and pay them out or deliver them ~~up~~, or any part ~~thereof of them~~, upon the order of ~~such~~ the trustee or a majority of the trustees, when countersigned by a judge of ~~said~~ the judicial district ~~and not otherwise~~, and to keep an account with ~~such~~ the trustee or trustees of all ~~such~~ transactions. For the safekeeping and payment and delivery of all ~~such moneys~~ money, bonds, and securities ~~as herein provided~~, the treasurer and ~~his~~ the treasurer's sureties are liable upon ~~his~~ the treasurer's official bond."

Section 1349. Section 37-1-205, MCA, is amended to read:

"37-1-205. Licensure on completion of supervision. Completion of probation or parole supervision without any subsequent criminal conviction ~~shall be~~ is evidence of rehabilitation; ~~provided, however~~ However, ~~that~~ the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought, ~~and provided that nothing herein shall~~ this chapter may not be construed to prohibit licensure of a person while ~~he~~ the person is under state supervision if the licensing agency finds insufficient evidence to preclude ~~such~~ licensure."

Section 1350. Section 37-2-102, MCA, is amended to read:

"37-2-102. Practices declared unlawful between drug companies and medical practitioners. It ~~shall~~ be is unlawful:

(1) for a drug company to give or sell to a medical practitioner any legal or beneficial interest in the

company or in the income ~~thereof~~ of the company with the intent or for the purpose of inducing ~~such~~ the medical practitioner to prescribe to his patients the drugs of the company. The giving or selling of ~~such~~ an interest by the company to a medical practitioner without ~~such~~ the interest first having been publicly offered to the general public ~~shall be~~ is prima facie evidence of ~~such~~ the intent or purpose.

(2) for a medical practitioner to acquire or own a legal or beneficial interest in any drug company, provided it ~~shall~~ is not be unlawful for a medical practitioner to acquire or own ~~such~~ an interest solely for investment; and the acquisition of an interest ~~which~~ that is publicly offered to the general public ~~shall be~~ is prima facie evidence of its acquisition solely for investment;

(3) for a medical practitioner to solicit or to knowingly receive from a drug company or for a drug company to pay or to promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon the volume of wholesale or retail sales, at any place, of drugs manufactured, processed, packaged, or distributed by the company."

Section 1351. Section 37-2-103, MCA, is amended to read:

"37-2-103. Practices declared unlawful between medical practitioners and pharmacies. (1) It ~~shall~~ be is unlawful for a medical practitioner to own, directly or indirectly, a community pharmacy. ~~Nothing in this~~ This subsection ~~shall~~ does not prohibit a medical practitioner from dispensing a drug ~~which he~~ that the medical practitioner is permitted to dispense under 37-2-104.

(2) It ~~shall be~~ is unlawful for a medical practitioner, directly or indirectly, to solicit or to knowingly receive from a community pharmacy or for a community pharmacy knowingly to pay or promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by ~~such~~ the community pharmacy of drugs to patients of ~~any~~ a medical practitioner."

Section 1352. Section 37-2-106, MCA, is amended to read:

"37-2-106. Existing ownership of pharmacy. The provisions of 37-2-103(1) ~~shall~~ do not apply to a medical practitioner ~~as~~ with respect to any interest ~~which he~~ that the medical practitioner owns ~~as set forth in said~~ subsection on July 1, 1971; ~~provided that~~ However, transfer of this interest to another person ~~shall result~~ results in immediate termination of ~~such~~ the exemption."

Section 1353. Section 37-2-201, MCA, is amended to read:

"37-2-201. Nonliability -- evidential privilege -- application to nonprofit corporations. (1) ~~No~~ A member of a utilization review or medical ethics review committee of a hospital or long-term care facility or of a professional utilization committee, peer review committee, medical ethics review committee, or professional standards review committee of a society composed of persons licensed to practice a health care profession is not liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to ~~him~~ the member after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) The proceedings and records of professional utilization, peer review, medical ethics review, and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within ~~his~~ the individual's knowledge, but ~~he~~ the individual ~~cannot~~ may not be questioned about ~~his~~ the individual's testimony or other proceedings before the committee or about opinions or other actions of the committee or any member ~~thereof~~ of the committee.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, medical ethics review, or professional standards review committee."

Section 1354. Section 37-2-303, MCA, is amended to read:

"37-2-303. Immunity from liability. A physician or other person reporting pursuant to 37-2-302 ~~shall~~ be ~~is~~ presumed to be acting in good faith and in ~~so doing shall be~~ reporting is immune from any liability, civil or criminal, unless ~~he~~ the individual acted in bad faith or with malicious purpose."

Section 1355. Section 37-2-311, MCA, is amended to read:

"37-2-311. Report to department of justice by physician. (1) Any physician who diagnoses a physical or mental condition that, in the physician's judgment, will significantly impair a person's ability to safely operate a motor vehicle may voluntarily report the person's name and other information relevant to ~~his~~ the person's condition to the department of justice. The department, upon receiving the report, shall require the person ~~so~~ reported to be examined or investigated as provided for in 61-5-207.

(2) (a) The physician's report may be introduced as evidence in any proceeding involving the granting,

suspension, or revocation of the person's driver's license, driving privilege, or commercial driver's license before the department or a court.

(b) The physician's report may not be utilized in a criminal proceeding or in a civil proceeding, other than as provided in this subsection (2), without the consent of the patient."

Section 1356. Section 37-2-312, MCA, is amended to read:

"37-2-312. Physician's immunity from liability. ~~Any~~ A physician reporting in good faith is immune from any liability, civil or criminal, that otherwise might result by reason of ~~his~~ the physician's actions pursuant to 37-2-311 except for damages occasioned by gross negligence. ~~No~~ An action may not be brought against a physician for not making a report pursuant to 37-2-311."

Section 1357. Section 37-3-310, MCA, is amended to read:

"37-3-310. Notice of change of address or name -- applicants -- licensees. When a person applies for a license of any type to practice medicine in this state, the person shall designate in ~~his~~ the application ~~his~~ the person's correct and official address to which the department shall send communications, notices, orders, citations, or other process, if any, affecting ~~him~~ the person. A person licensed to practice medicine in this state shall keep the department advised at all times of ~~his~~ the person's correct mailing address and of ~~his~~ the person's correct name. If the person changes ~~his~~ the person's address or when the name of a licensee is changed by marriage or otherwise, the person shall within 30 days notify the department in writing of ~~his~~ the old and new address or of the former name and new name. This information ~~shall~~ must be entered promptly by the department in the official records of the department."

Section 1358. Section 37-3-321, MCA, is amended to read:

"37-3-321. Refusal of license. If the board determines that an applicant for a license to practice medicine does not possess the qualifications or character required by this chapter or that ~~he~~ the applicant has committed unprofessional conduct, it shall refrain from authorizing the department to issue a license. The department shall mail to the applicant, at ~~his~~ the applicant's last address of record with the department, written notification of the board's decision, together with notice of a time and place of a hearing before the board. If the applicant without cause fails to appear at the hearing or if after the hearing the board determines ~~he~~ that the applicant is not entitled to a license, the board shall refuse to grant the license."

Section 1359. Section 37-3-325, MCA, is amended to read:

"37-3-325. Violations -- penalties. (1) A person practicing medicine in this state without complying with parts 1 through 3 of this chapter or an association or corporation, ~~(except a professional service corporation under Title 35, chapter 4)~~, practicing medicine in this state or a person, association, or corporation violating parts 1 through 3 of this chapter or an officer or director of an association or corporation violating parts 1 through 3 of this chapter is guilty of a misdemeanor and on conviction shall be fined not less than \$250 or more than \$1,000 or be imprisoned in the county jail for not less than 90 days or more than 1 year, or both. Each daily failure to comply with or each daily violation of parts 1 through 3 of this chapter constitutes a separate offense.

(2) A person presenting or attempting to file as ~~his~~ the person's own the diploma, license, certificate, or credentials of another or who gives false or forged evidence to the board, a member of the board, or the department in connection with an application for a license to practice medicine or who practices medicine under a false or assumed name or who falsely impersonates another licensee is guilty of a felony and on conviction shall be imprisoned in the state penitentiary for a term of not less than 1 year or more than 10 years."

Section 1360. Section 37-3-326, MCA, is amended to read:

"37-3-326. Injunctive relief -- manner of charging violation. Notwithstanding any other provision in this chapter, the board may maintain an action to enjoin a person from engaging in the practice of medicine until a license to practice medicine is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court. The injunction does not relieve the person practicing medicine without a license from a criminal prosecution. The remedy by injunction is in addition to remedies provided for the criminal prosecution of the offender. In charging a person in a complaint for injunction or in an affidavit, information, or indictment with a violation of this law by practicing medicine without a license, it is sufficient to charge that ~~he~~ the person did, on a certain day and in a certain county, engage in the practice of medicine not having a license to do so, without averring further or more particular facts concerning the violation."

Section 1361. Section 37-3-328, MCA, is amended to read:

"37-3-328. Failure to appear or testify. Any A person subpoenaed in the manner provided in 37-3-327 who fails or refuses to appear and testify ~~shall~~ must be dealt with by the district court from which ~~such~~ the subpoena was issued in the same manner and to the same effect as though the subpoena had commanded ~~him~~ the person to appear and testify in a cause on trial in ~~said~~ that court."

Section 1362. Section 37-4-322, MCA, is amended to read:

"37-4-322. When publishing professional cards not unprofessional conduct. (1) It ~~shall~~ is not be considered unprofessional for a dentist to place in any newspaper or publication, subject to the limitations stated ~~hereafter in this section~~, a card bearing ~~his~~ the dentist's name only, together with ~~his~~ the dentist's degree or the word "dentist" and giving office location, hours, and telephone numbers. If ~~he~~ the dentist limits ~~his~~ the dentist's practice to a specialty, ~~he~~ the dentist may ~~so~~ announce it or ~~he~~ the dentist may announce ~~his~~ an absence from or ~~his~~ a return to practice in the same manner.

(2) A dentist may publish a list of ~~his~~ fees, but ~~such~~ the listing must include full and complete information stating if the published fee is minimum, maximum, or usual and whether or not any additional charges may be made for the services published. All announcements or publications must be done in a professional manner that will in no way coerce or confuse the public."

Section 1363. Section 37-4-325, MCA, is amended to read:

"37-4-325. Witness fees and mileage. (1) Each witness who ~~shall appear~~ appears by order of the board or any member ~~thereof shall be~~ of the board is entitled to receive, if demanded, for ~~his~~ attendance the same fees and mileage allowed by law to a witness in civil cases in the district court, ~~which~~ The amount ~~shall~~ must be paid by the party at whose request ~~such~~ the witness is subpoenaed unless otherwise ordered by the board. When any witness who has not been required to attend at the request of any party is subpoenaed by the board, ~~his~~ the witness's fees and mileage may be paid from the funds of the board in the same manner as other expenses of the board are paid.

(2) Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the board, may at the time of service demand the fee to which ~~he~~ the witness is entitled for travel to and from the place at which ~~he~~ the witness is required to appear and 1 day's attendance. If ~~such~~ the witness demands ~~such~~ the fees at the time of service and they are not at that time paid or tendered, ~~he shall~~ the witness may not be required to attend before the board, ~~or a member thereof of the board,~~ or a referee as directed in the subpoena."

Section 1364. Section 37-4-501, MCA, is amended to read:

"37-4-501. Work order for construction or repair of appliances. (1) A licensed dentist who employs or engages the services of a person, firm, or corporation to construct, reproduce, make, alter, or repair bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances shall furnish the person, firm, or corporation with a written work authorization on forms prescribed by the board ~~which shall~~ that

must contain:

- (a) the name and address of the person, firm, or corporation to which the work authorization is directed;
 - (b) the patient's name or identification number, but if only a number is used, the patient's name ~~shall~~ must be written on the duplicate copy of the work authorization retained by the dentist;
 - (c) the date on which the work authorization was written;
 - (d) a description of the work to be done, including diagrams if necessary;
 - (e) a specification of the type and quality of the materials to be used; and
 - (f) the signature of the dentist and the number of ~~his~~ the dentist's license to practice dentistry.
- (2) The person, firm, or corporation receiving a work authorization from a licensed dentist shall retain the original work authorization, and the dentist shall retain the duplicate copy for inspection at a reasonable time by the board for a period of 2 years from date of issuance."

Section 1365. Section 37-4-511, MCA, is amended to read:

"37-4-511. Limitations on the administration of general anesthetics and practices involving general anesthesia. (1) ~~No~~ A person engaged in the practice of dentistry or oral surgery may not perform any dental or surgical procedure upon another person if a general anesthetic is administered unless ~~such~~ the anesthetic is administered and monitored by:

- (a) an anesthesiologist licensed to practice medicine by the state board of medical examiners;
- (b) a nurse anesthetist recognized in that specialty by the state board of nursing; or
- (c) another health professional who has received at least 1 year of postgraduate training in the administration of general anesthesia.

(2) ~~No~~ A person engaged in the practice of dentistry or oral surgery may not conduct any dental or surgical procedure upon another person under full general anesthesia unless the vital signs of the patient are continually monitored by another health professional who meets the qualifications for an anesthesiologist, nurse anesthetist, or other trained health professional as provided for in subsection (1).

(3) ~~No~~ A person engaged in the practice of dentistry or oral surgery may not conduct any dental or surgical procedure upon another person under light general anesthesia unless the vital signs of the patient are continually monitored by another person who has been examined by the board or its agent in life support skills and who has demonstrated a satisfactory level of proficiency as established by the board.

(4) ~~No~~ A person engaged in the practice of dentistry or oral surgery may not administer a general anesthetic to any other person unless ~~he~~ the administering person satisfies the requirements for a person

qualified to administer a general anesthetic, as provided in subsection (1), and meets any additional standards established by the board of dentistry for training in the administration of general anesthesia and in the treatment of the complications ~~thereof~~ of general anesthesia. This subsection does not affect the requirements for monitoring of vital signs by another health professional under subsection (2) or (3).

(5) The facility in which general anesthesia is to be administered as part of a dental or surgical procedure must be equipped with proper drugs and equipment to safely administer anesthetic agents, to monitor the well-being of the patient under general anesthesia, and to treat the complications that may arise from general anesthesia."

Section 1366. Section 37-6-103, MCA, is amended to read:

"37-6-103. Application of chapter. This chapter ~~shall~~ does not apply to any physician licensed to practice ~~his~~ the profession in this state or to surgeons of the United States army, navy, ~~and/or~~ or public health service when in actual performance of their duties."

Section 1367. Section 37-6-301, MCA, is amended to read:

"37-6-301. License required for practice. ~~It~~ Except as otherwise provided in this chapter, it is unlawful for a person to profess to be a podiatrist, to practice or assume the duties incident to podiatry, or to advertise in any form or hold ~~himself~~ out to the public ~~as~~ that the person is a podiatrist; or in a sign or advertisement to use the word "podiatrist" or "foot correctionist" or any other term, terms, or letters indicating to the public that ~~he~~ the person is holding ~~himself~~ out ~~as~~ to the public that the person is a podiatrist or foot correctionist in any manner; without first obtaining from the board a license authorizing the practice of podiatry in this state, ~~except under this chapter.~~"

Section 1368. Section 37-7-506, MCA, is amended to read:

"37-7-506. Notice to purchaser. (1) A pharmacist who selects a drug product₁, as provided in 37-7-505₁, shall notify the person presenting the prescription that ~~he~~ the person may refuse the product selection as provided in 37-7-505.

(2) Each pharmacy shall display in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign stating: "This pharmacy may be able to select a less expensive drug product ~~which~~ that is equivalent to the one prescribed by your physician unless you or your physician request otherwise." The printing on the sign ~~shall~~ must be in block letters not less than 1 inch in height."

Section 1369. Section 37-7-509, MCA, is amended to read:

"37-7-509. Limitations on liability. (1) A pharmacist making a product selection under the provisions of this part assumes no greater responsibility for selecting the dispensed drug product than ~~he~~ the pharmacist would incur in filling a prescription for a drug product prescribed by a generic name.

(2) When a pharmacist selects a drug product, the prescriber may not be held liable in an action for loss, damage, injury, or death to a person caused by the use of the selected drug product, except that if the original drug product was incorrectly prescribed, the prescriber is not relieved of liability."

Section 1370. Section 37-9-201, MCA, is amended to read:

"37-9-201. Organization and compensation of board. (1) The board shall elect from its membership a ~~chairman~~ presiding officer, ~~vice-chairman~~ vice presiding officer, and secretary-treasurer and shall adopt rules to govern its proceedings.

(2) Each board member ~~shall~~ must receive compensation and travel expenses as provided for in 37-1-133."

Section 1371. Section 37-9-301, MCA, is amended to read:

"37-9-301. Qualifications for licensure -- examination. (1) The department shall register and issue licenses to qualified persons as nursing home administrators, and the board shall establish qualification criteria for nursing home administrators. ~~No~~ A registration or license ~~shall~~ may not be issued to a person as a nursing home administrator unless ~~he~~ the person:

(a) is of good character, is of sound physical and mental health, and has received a high school diploma or its equivalent; and

(b) (i) has satisfactorily completed a course of instruction and training prescribed by the board, which ~~shall~~ must be designed and administered to present sufficient knowledge of the needs properly served by long-term care facilities, laws governing the operation of long-term care facilities and the protection of the interests of patients, and the elements of good nursing home administration; or

(ii) has presented evidence satisfactory to the board of sufficient education, training, or experience, or a combination of education, training, and experience, in the fields referred to in subsection (1)(b)(i) to administer, supervise, and manage a long-term care facility; and

(c) has passed an examination designed to test for competence in the subject matters referred to in subsection (1)(b)(i).

(2) The minimum standards for qualification ~~shall~~ must comply with the requirements, if any, set forth in ~~Title XIX of the Social Security Act, Public Law 90-248, as amended~~ 42 U.S.C. 1396g."

Section 1372. Section 37-9-312, MCA, is amended to read:

"37-9-312. Violation. It ~~shall be~~ is unlawful for any person to act or serve in the capacity of a nursing home administrator unless ~~he~~ the person is the holder of a registration and license as a nursing home administrator, issued in accordance with the provisions of this chapter. A person who violates the provisions of this chapter ~~shall be~~ is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months, ~~or by both such fine and imprisonment.~~"

Section 1373. Section 37-11-311, MCA, is amended to read:

"37-11-311. Display of license. Each licensee shall display ~~his~~ the licensee's original license or an official duplicate issued by the department and a renewal certificate in a conspicuous place in the principal office where ~~he~~ the licensee practices physical therapy. A reproduction displayed in lieu of the ~~above~~ original or official duplicate is not authorized unless the reproduction is signed and notarized by a notary public."

Section 1374. Section 37-12-324, MCA, is amended to read:

"37-12-324. Penalty for violation. Any A person who ~~shall practice~~ practices or ~~attempt~~ attempts to practice chiropractic or ~~any a~~ a person who ~~shall buy~~ buys, ~~sell~~ sells, or fraudulently ~~obtain~~ obtains any diploma or license to practice chiropractic, whether recorded or not, or who ~~shall use~~ uses the title "chiropractor", "D.C.", "Ph.C.", or any word title to influence belief that ~~he~~ the person is engaged in the practice of chiropractic without first complying with the provisions of this chapter or ~~any a~~ a person who ~~shall violate~~ violates any of the provisions of this chapter ~~shall be~~ is guilty of a misdemeanor and upon conviction ~~thereof~~ shall be punished by a fine of not less than \$100 or more than \$700 or by imprisonment in a county jail for not less than 30 days or more than 7 months, ~~or by both such fine and imprisonment.~~ Prosecutions for the violation of this chapter ~~shall~~ must be instituted in the district courts."

Section 1375. Section 37-13-315, MCA, is amended to read:

"37-13-315. Enjoining unlawful practice. The practice of acupuncture in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In ~~any such~~ the proceeding, it ~~shall~~ is not ~~be~~ necessary to show that any person is individually injured by the actions complained of. If the respondent

is found to have ~~so~~ practiced improperly, the court shall enjoin ~~him~~ the respondent from ~~so~~ practicing ~~unless and~~ until ~~he~~ the respondent has been ~~duly~~ licensed. Procedure in ~~such~~ these cases ~~shall be~~ is the same as in any other injunction suit. The remedy by injunction is in addition to criminal prosecution and punishment."

Section 1376. Section 37-14-307, MCA, is amended to read:

"37-14-307. Duty to carry; or display license or permit. Each radiologic technologist or limited permit technician shall carry or display ~~his~~ the person's license or permit while at work. The license or permit ~~shall~~ must be displayed on request."

Section 1377. Section 37-15-301, MCA, is amended to read:

"37-15-301. License required. (1) A license ~~shall~~ must be issued to qualified persons either in speech-language pathology or audiology. A person may be licensed in both areas if ~~he~~ the person meets the respective qualifications, and in ~~such~~ those instances, the license fee ~~shall~~ must be as though for one license.

(2) ~~No~~ A person may not practice or represent ~~himself as~~ to the public that the person is a speech-language pathologist or audiologist in this state unless ~~he~~ the person is licensed in accordance with the provisions of this chapter."

Section 1378. Section 37-16-103, MCA, is amended to read:

"37-16-103. Exemptions. (1) This chapter does not apply to a person who is a physician licensed to practice by the state board of medical examiners.

(2) This chapter does not apply to a person while ~~he~~ the person is engaged in the practice of fitting hearing aids if ~~his~~ the person's practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public agency."

Section 1379. Section 37-16-402, MCA, is amended to read:

"37-16-402. Application -- qualifications -- fee. An applicant for a license shall pay a fee fixed by the board and commensurate with the costs of processing and administering ~~his~~ the application and related functions of the board and shall show to the satisfaction of the board that ~~he~~ the applicant:

(1) is a person of good moral character;

(2) has an education equivalent to a 4-year course in an accredited high school or holds a current license as an audiologist under Title 37, chapter 15; and

(3) is free of contagious or infectious disease."

Section 1380. Section 37-17-301, MCA, is amended to read:

"37-17-301. License required. A person may not represent ~~himself to be~~ to the public that the person is a psychologist or engage in the practice of psychology unless ~~he~~ the person is licensed under this chapter."

Section 1381. Section 37-17-313, MCA, is amended to read:

"37-17-313. Injunction for unlawful practice. The practice of psychology in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In ~~any such~~ the proceeding, it ~~shall~~ is not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have ~~so~~ practiced improperly, the court shall enjoin ~~him~~ the respondent from ~~so~~ practicing unless and until ~~he~~ the respondent has been ~~duly~~ licensed. Procedure in ~~such these~~ cases ~~shall be~~ is the same as in any other injunction suit. The remedy by injunction ~~hereby given~~ is in addition to criminal prosecution and punishment."

Section 1382. Section 37-18-102, MCA, is amended to read:

"37-18-102. Veterinary medicine defined. (1) A person is considered practicing veterinary medicine when ~~he~~ the person does any of the following:

(a) represents ~~himself as~~ to the public that the person is a veterinarian or is engaged in the practice of veterinary medicine in any of its branches, either directly or indirectly;

(b) uses words, titles, or letters in this connection or on a display or advertisement or under circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. This use is prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) diagnoses, prescribes, or administers a drug, medicine, appliance, application, or treatment of whatever nature or performs a surgical operation or manipulation for the prevention, cure, or relief of a pain, deformity, wound, fracture, bodily injury, physical condition, or disease of animals;

(d) instructs, demonstrates, or solicits by a notice, sign, or other indication, with contract either express or implied, or otherwise, with or without the necessary instruments, for the administration of biologics or medicines or animal disease cures for the prevention and treatment of disease of animals and remedies for the treatment of internal parasites in animals;

(e) performs a manual or laboratory procedure on livestock for the diagnosis of pregnancy, sterility, or infertility for remuneration or hire;

(f) performs acupuncture, ova or embryo transfer, or dentistry on animals;

(g) instructs others, except those covered under the provisions of 37-18-104(4), for compensation, in any manner how to perform any acts ~~which that~~ constitute the practice of veterinary medicine.

(2) ~~Nothing in subsection~~ Subsection (1)(e) ~~of this section shall~~ may not in any way be construed to prohibit the pregnancy testing by any person of ~~his~~ the person's own farm animals or by ~~his~~ the person's employees regularly employed in the conduct of ~~his~~ the person's business or by other persons whose services are rendered gratuitously.

(3) ~~Nothing in this~~ This section ~~shall~~ may not be construed as modifying, amending, altering, or repealing any part of 37-18-104."

Section 1383. Section 37-18-313, MCA, is amended to read:

"37-18-313. Municipal license fee prohibited. ~~No~~ A license fee or license tax may not be imposed upon a person who practices veterinary medicine, as a condition to the practice of ~~his~~ the profession, by any municipality or other political subdivision of the state, including a local government with self-governing powers."

Section 1384. Section 37-18-501, MCA, is amended to read:

"37-18-501. Penalty. A person practicing veterinary medicine within this state, as defined in this chapter, without first having obtained a license to practice and being registered as required by this chapter or after ~~his~~ the person's license to practice has been suspended or revoked or contrary to the provisions of this chapter in any manner is guilty of a misdemeanor for each violation of the provisions of this chapter or for each act relating to the practice of veterinary medicine in this state, ~~and upon~~ Upon conviction, the person shall be punished by a fine of not less than \$200 or more than \$500; or by imprisonment in the county jail for not less than 30 days or more than 6 months, or by both ~~such fine and imprisonment.~~ Any A person convicted a second time for any violation of this chapter shall be punished by both ~~such~~ fine and imprisonment. The district court has jurisdiction of all prosecutions brought ~~hereunder~~ under this section."

Section 1385. Section 37-18-502, MCA, is amended to read:

"37-18-502. Injunction. The board or any person may bring an action in the district court to enjoin ~~any~~ a person who is not licensed from engaging in the practice of veterinary medicine unless otherwise exempted

under 37-18-104(4). If the court finds that the defendant is violating or threatening to violate any provision of Title 37, chapter 18, it shall enter an order restraining ~~him~~ the defendant from the violation, without regard to any criminal provisions of Title 37, chapter 18."

Section 1386. Section 37-19-201, MCA, is amended to read:

"37-19-201. Organization -- compensation and expenses of members. The board shall elect a ~~chairman~~ presiding officer, secretary-treasurer, and other necessary officers. Board members are entitled to receive compensation and travel expenses as provided for in 37-1-133."

Section 1387. Section 37-21-301, MCA, is amended to read:

"37-21-301. Dietitian -- qualifications. ~~No~~ A person may not use, in connection with ~~his~~ the person's name or place of business, the term "dietitian" or represent in any way that ~~he~~ the person is a dietitian unless ~~he~~ the person:

- (1) has been granted, prior to October 1, 1983, the right to use the term "dietitian" by an authorized agency; or
- (2) (a) is 18 years of age or older;
- (b) has satisfactorily completed appropriate academic requirements for the field of dietetics and related disciplines;
- (c) has received a baccalaureate or higher degree in dietetics or a related field from a college or university accredited by the Northwestern association of schools and colleges; and
- (d) has satisfactorily completed a program of supervised clinical experience of not less than 6 months in length that is designed to train entry-level dietitians through instruction and assignments in a clinical setting. The program must meet minimum requirements established by the department."

Section 1388. Section 37-22-401, MCA, is amended to read:

"37-22-401. Privileged communications -- exceptions. A licensee may not disclose any information ~~he~~ the licensee acquires from clients consulting ~~him~~ the licensee in ~~his~~ a professional capacity except:

- (1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;
- (2) that ~~he~~ the licensee need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in ~~his~~ the licensee's professional opinion

reveals a threat of imminent harm to the client or others;

(3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation ~~thereto~~ to the information in any investigation, trial, or other legal proceeding in which the commission of ~~such~~ that crime is the subject of inquiry;

(4) that if the client or ~~his~~ the client's personal representative or guardian brings an action against a licensee for a claim arising out of the social worker-client relationship, the client is considered to have waived any privilege;

(5) to the extent that the privilege is otherwise waived by the client; and

(6) as may otherwise be required by law."

Section 1389. Section 37-22-411, MCA, is amended to read:

"37-22-411. Violations -- penalties. (1) It is a misdemeanor for a person to:

(a) represent ~~himself as~~ to the public that the person is a licensed social worker without being licensed under this chapter;

(b) obtain or attempt to obtain a license or license renewal by bribery or fraudulent representation; or

(c) knowingly make a false statement on any form used by the board to implement this chapter or the rules adopted under this chapter.

(2) A person convicted under this section shall be imprisoned in the county jail for a period not exceeding 6 months or be fined not more than \$500, or both. A person convicted of a second offense under this section shall be punished by both ~~such~~ fine and imprisonment."

Section 1390. Section 37-23-301, MCA, is amended to read:

"37-23-301. Privileged communications -- exceptions. A licensee may not disclose any information ~~he~~ the licensee acquires from clients consulting ~~him~~ the licensee in ~~his~~ a professional capacity except:

(1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;

(2) that ~~he~~ the licensee need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in ~~his~~ the licensee's professional opinion reveals a threat of imminent harm to the client or others;

(3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation ~~thereto~~ to the information in any

investigation, trial, or other legal proceeding in which the commission of ~~such~~ that crime is the subject of inquiry;

(4) that if the client or ~~his~~ the client's personal representative or guardian brings an action against a licensee for a claim arising out of the counselor-client relationship, the client is considered to have waived any privilege;

(5) to the extent that the privilege is otherwise waived by the client; and

(6) as may otherwise be required by law."

Section 1391. Section 37-24-301, MCA, is amended to read:

"37-24-301. License required. (1) (a) ~~No~~ A person may not hold ~~himself~~ out ~~as to the public that the person is~~ an occupational therapist or ~~as being is~~ able to practice occupational therapy or able to render occupational therapy services in this state unless ~~he~~ the person is licensed as an occupational therapist under the provisions of this chapter.

(b) ~~No~~ A person may not practice or hold ~~himself~~ out ~~as to the public that the person is~~ an occupational therapy assistant in this state unless ~~he~~ the person is licensed as an occupational therapist or as an occupational therapy assistant.

(2) Only an individual may be licensed under this chapter."

Section 1392. Section 37-25-302, MCA, is amended to read:

"37-25-302. Licensing requirements. (1) An applicant for licensure as a licensed nutritionist shall file a written application with the board and demonstrate to the board that ~~he~~ the person is registered by the commission.

(2) An applicant shall pay an application fee; set by the board."

Section 1393. Section 37-25-304, MCA, is amended to read:

"37-25-304. Exemptions from licensure requirements. This chapter does not prevent:

(1) a student or intern in an approved academic program or a paraprofessional with approved dietetic-nutrition training from engaging in the practice of dietetics-nutrition if a licensed nutritionist is available for direct supervision and if the student, intern, or paraprofessional does not represent ~~himself~~ to the public ~~as that the individual is~~ a nutritionist;

(2) a licensed physician or nurse from engaging in the practice of dietetics-nutrition when it is incidental to the practice of ~~his~~ that profession;

(3) a person licensed under any other law from engaging in the profession or business for which ~~he~~ the person is licensed if ~~he~~ the person does not represent ~~himself~~ to the public ~~as~~ that the person is a nutritionist;

(4) an educator or ~~advisor~~ adviser employed by a nonprofit agency acceptable to the board or by an accredited degree-granting institution or an accredited elementary or secondary school from engaging in an activity within the scope of ~~his~~ the individual's salaried position;

(5) a person employed by or under contract with an agency of the state or federal government from discharging ~~his~~ an official duty if ~~he~~ the person does not represent ~~himself~~ to the public ~~as~~ that the person is a nutritionist;

(6) a person from furnishing general nutritional information, including dissemination of literature, as to the use of food, food materials, or dietary supplements or from engaging in the explanation as to the use of foods or food products, including dietary supplements, in connection with the marketing and distribution of those products if ~~he~~ the person does not represent ~~himself~~ to the public ~~as~~ that the person is a nutritionist;

(7) a person from furnishing general nutrition information or disseminating literature if ~~he~~ the person does not represent ~~himself~~ to the public ~~as~~ that the person is a dietitian or a nutritionist; or

(8) a person from fulfilling state or federal regulations governing the delivery or provision of nutritional health services to hospitals or long-term care facilities if ~~he~~ the person does not represent ~~himself~~ to the public ~~as~~ that the person is a nutritionist."

Section 1394. Section 37-26-401, MCA, is amended to read:

"37-26-401. License required -- titles restricted -- enjoining unlawful practice. (1) Except as provided in 37-26-302, a person may not practice naturopathy without a valid and current license issued by the board as provided in this chapter.

(2) (a) A naturopathic physician licensed under this chapter may use the prefix "Dr." or "doctor" as a title.

(b) Only a naturopathic physician licensed under this chapter may use any ~~or all~~ of the following titles or terms:

(i) "doctor of naturopathy", "doctor of naturopathic medicine", "naturopath", "naturopathic physician", and the abbreviation "N.D." when used to imply any of these titles; or

(ii) "naturopathic medicine", "naturopathic health care", "naturopathic", and "naturopathy".

(c) The titles and terms in subsection (2)(b) identify naturopathic physicians and are restricted to describing and identifying licensed practitioners and their practice. A person who uses these titles and terms to represent ~~himself~~ the person or ~~his~~ the person's practice to the public without being licensed pursuant to this

chapter is in violation of this chapter.

(3) A violation of this chapter may be enjoined by the district court on petition by the board."

Section 1395. Section 37-26-402, MCA, is amended to read:

"37-26-402. Qualifications for licensure. A person is qualified to be licensed to practice naturopathic medicine in Montana if ~~he~~ the person:

- (1) is of good moral character as determined by the board;
- (2) is a graduate of an approved naturopathic medical college; and
- (3) has passed an examination prescribed or endorsed by the board for the licensure of naturopathic physicians."

Section 1396. Section 37-29-405, MCA, is amended to read:

"37-29-405. Advertising restrictions. ~~No~~ A person may not represent or hold ~~himself~~ out to the public ~~as that the person is~~ a denturist or ~~as is~~ practicing denturistry unless licensed under this chapter."

Section 1397. Section 37-40-102, MCA, is amended to read:

"37-40-102. Exemptions. Persons exempt from the requirements of this chapter are:

- (1) any person teaching, lecturing, or engaging in research in environmental sanitation, but only insofar as ~~such~~ the activities are performed as part of an academic position in a college or university;
- (2) any person who is a registered professional engineer or engineer intern;
- (3) any public health officer employed pursuant to 50-2-116;
- (4) any person employed by a federal governmental agency, but only at ~~such~~ times ~~as~~ that the person is carrying out the functions of ~~his~~ the employment;
- (5) a state employee unless expressly required by statute, regulation, or position description to be registered as a sanitarian; or
- (6) any person not employed by a governmental entity or not under contract with a governmental entity for the performance of an official regulatory function."

Section 1398. Section 37-40-301, MCA, is amended to read:

"37-40-301. License required. A person may not practice or offer to practice the profession of sanitarian as defined in this chapter or hold ~~himself~~ out to the public in any manner ~~to be~~ that the person is a licensed

sanitarian unless the person is licensed and registered under the provisions of this chapter."

Section 1399. Section 37-40-312, MCA, is amended to read:

"37-40-312. Penalty. (1) A person who offers ~~his~~ the person's services as a sanitarian or uses, assumes, or advertises in any way any title or description tending to convey the impression that ~~he~~ the person is a registered sanitarian who does not hold the license specified by this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed \$500 or by imprisonment for not longer than 6 months, or both.

(2) The board may enforce the provisions of this chapter by injunction or any other appropriate proceeding."

Section 1400. Section 37-42-201, MCA, is amended to read:

"37-42-201. Meetings -- compensation of members -- expenses. (1) Annually, when new members are appointed to the council, a ~~chairman shall~~ presiding officer must be elected at the next council meeting.

(2) Meetings may be called by the ~~chairman~~ presiding officer or on written request of four members of the council when necessary to carry out its function to advise the department under this chapter. Four members constitute a quorum.

(3) Members of the council are entitled to be reimbursed and compensated as are members of advisory councils in 2-15-122(5)."

Section 1401. Section 37-42-305, MCA, is amended to read:

"37-42-305. Certification without examination. The department may consider for certification the holder of a certificate issued by a governmental agency or equivalent certification board of another state on presentation to the department of satisfactory evidence that the applicant is in responsible charge of works located in this state requiring a certified operator and that ~~he~~ the applicant has successfully passed an examination at least equivalent to that required under 37-42-202(2)."

Section 1402. Section 37-43-102, MCA, is amended to read:

"37-43-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Apprentice water well driller" means an individual who is learning the trade of water well drilling and performs labor and services for a licensed water well contractor and whose duties are directly related to well

drilling or drilling rig operation.

(2) "Board" means the board of water well contractors provided for in 2-15-3307.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Geotechnical boring" means a hole intended solely to determine the composition, stability, density, movement, pressure, stratigraphy, or other physical properties of soil or rock.

(5) (a) "Monitoring well" means a well that is used for pollutant recovery or monitoring ground water quality, ground water levels, or flow direction, but whose primary purpose is not the withdrawal or acquisition of ground water.

(b) ~~Monitoring well~~ The term does not include geotechnical borings, perk test holes, and ground water exploration holes that are used to determine suitability of onsite sewage disposal by septic tank drain fields or lagoons.

(6) "Monitoring well constructor" means a natural person who installs monitoring wells.

(7) (a) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

(b) The term does not include:

(i) spring development or excavations, by backhoe or otherwise, for recovery and use of surface waters or for the purpose of stock watering or irrigation ~~where~~ when the depth is 25 feet or less; or

(ii) ~~The term does not include~~ an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying or for inserting media to repressure oil- or natural-gas-bearing formations or for storing petroleum, natural gas, or other products.

(8) "Water well contractor" or "contractor" means a natural person who contracts on behalf of a firm, corporation, partnership, or other business entity to construct, alter, or rehabilitate a water well on lands other than ~~his~~ the person's own for compensation.

(9) "Water well driller" or "driller" means any person, other than an apprentice, at a drilling site causing a water well to be drilled, altered, or rehabilitated."

Section 1403. Section 37-43-201, MCA, is amended to read:

"37-43-201. Organization -- seal -- compensation of members. (1) The board shall annually elect a ~~chairman~~ presiding officer and ~~vice-chairman~~ vice presiding officer.

(2) The board ~~shall~~ must have a seal with the words ~~engraved thereon~~, "Board of Water Well

Contractors" engraved on the seal, and ~~such the seal shall~~ must be affixed to all writs, authentication of records, and other official proceedings of the board. The courts of this state shall take judicial notice of ~~such the~~ the seal.

(3) Each appointed member of the board who is not a government employee ~~shall~~ must receive as compensation for ~~his the member's~~ services ~~the sum of \$50 per a~~ day for each day actually engaged in the performance of the duties of ~~his the~~ office, including time of travel between ~~his the member's~~ home and the places at which ~~he shall perform such the member performs~~ duties, together with mileage and per diem expenses as provided for in 2-18-501 through 2-18-503. The members who are employees of the state of Montana ~~shall may~~ not receive ~~no~~ extra compensation for their services as members of the board."

Section 1404. Section 37-43-302, MCA, is amended to read:

"37-43-302. License required. (1) The drilling, making, or construction of water wells and monitoring wells is declared to be a business and activity affecting the public interest; and requiring reasonable standards of competence. Except as provided in subsection (2), it is unlawful for any water well contractor, water well driller, or monitoring well constructor ~~as defined in this chapter~~ to construct, alter, or rehabilitate a water well or a monitoring well without first having obtained a valid license therefor as provided for in this chapter. An individual who is licensed as a water well contractor is not required to have a separate water well driller's license to perform the actual construction work on the well or a separate license to install monitoring wells.

(2) A license is not required for:

(a) a person who drills, alters, or rehabilitates a water or monitoring well on land that is owned or leased by ~~him the person~~, provided if:

(i) the land is used by ~~him the person~~ for farming, ranching, or agricultural purposes or as ~~his the~~ person's residence;

(ii) the person obtains a permit from the board; and

(iii) the construction of the well conforms to the minimum construction standards for water or monitoring wells set by board rule; or

(b) an apprentice water well driller who performs labor or services for a licensed water well contractor or driller in connection with the drilling of a water well at the direction and under the personal supervision of a licensed water well contractor or driller.

(3) (a) To obtain a permit under subsection (2)(a), a person shall file with the department an application containing the applicant's name; and mailing address, the location of the proposed well, the nature of the applicant's ownership interest in the property on which the well is to be located, the construction or installation

method to be used, and the use for the proposed well.

(b) The board shall promptly issue a permit if it finds that:

(i) the well is located on land that the applicant owns or leases and that ~~he~~ the applicant uses for farming, ranching, or agricultural purposes or as ~~his~~ the applicant's residence; and

(ii) the construction or installation method to be used meets the minimum standards for water wells or monitoring wells set by board rule."

Section 1405. Section 37-43-305, MCA, is amended to read:

"37-43-305. Examination and qualifications. (1) Under board rules pertaining to the business of drilling and contracting for drilling of water wells and monitoring wells, the department shall inquire by examination or otherwise into the qualifications of applicants for licenses. Examinations may be oral, written, or both.

(2) The qualifications for a water well contractor's license are:

(a) familiar knowledge of ground water laws of this state and sanitary standards for water well drilling and construction of water wells;

(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of geology in its relation to well construction;

(e) possession of adequate equipment by the applicant to complete satisfactory water wells under the standards of the board;

(f) financial responsibility of the applicant;

(g) successful completion of an examination given by the department; and

(h) completion of an apprenticeship of 1 year or more under the direct supervision of a licensed water well contractor or equivalent education, experience, or both, as determined by the board.

(3) The qualifications for a water well driller's license are:

(a) familiar knowledge of ground water laws of this state and sanitary standards for water well drilling and water well construction;

(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of geology in its relation to well construction;

(e) employment by a licensed water well contractor;

(f) completion of an apprenticeship of 1 year or more under the direct supervision of a licensed water

well contractor or driller or equivalent education, experience, or both, as determined by the board; and

(g) successful completion of an examination given by the department.

(4) The qualifications for a license to construct monitoring wells are:

(a) familiar knowledge of ground water laws of this state and sanitary standards for drilling and construction of monitoring wells;

(b) knowledge of types of monitoring well construction;

(c) knowledge of types of drilling tools used for monitoring wells and their uses;

(d) knowledge of geology;

(e) financial responsibility of the applicant;

(f) 1 or more years of experience in drilling monitoring wells under the direct supervision of a licensed monitoring well constructor or equivalent education, experience, or both, as determined by the board; and

(g) successful completion of an examination related specifically to drilling of monitoring wells given by the department.

(5) The department shall give examinations at times and places the board determines. Failure of an applicant to successfully complete the examination disqualifies ~~him~~ the applicant from making further application for a period of 3 months. The board shall act within a reasonable time on applications for licenses. An application ~~shall~~ must be accompanied by the initial fee, and failure to successfully meet the requirements of the board does not entitle the applicant to a refund of the fee."

Section 1406. Section 37-43-306, MCA, is amended to read:

"37-43-306. Bond to be required. (1) The department, on issuance of a water well contractor's or monitoring well constructor's license under this chapter, shall require, before the person commences operations in this state, a good and sufficient surety bond or its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, in the sum of \$4,000, conditioned that the licensee will comply with the rules of the board.

(2) A person who is licensed in more than one category need supply only one surety bond or its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, for \$4,000.

(3) A state or federal employee who is bonded by the state or federal government is not required to supply a bond during the course of his employment with the state or federal government. A bond is required if the person ceases government employment.

(4) In lieu of the requirements of subsections (1) through (3), a firm, corporation, or partnership having more than two licensed water well contractors or monitoring well constructors may submit one bond in the amount of \$10,000 for the entire firm, corporation, or partnership."

Section 1407. Section 37-43-308, MCA, is amended to read:

"37-43-308. Reciprocity. If a person holding a license entitling ~~him~~ the person to drill water wells or monitoring wells in another state applies for a Montana water well contractor's, water well driller's, or monitoring well constructor's license, the board may waive the apprenticeship requirements and examination requirements if it finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana. However, the board may require the applicant to successfully complete an examination based on Montana statutes and rules relating to the drilling of water wells or monitoring wells in this state."

Section 1408. Section 37-50-403, MCA, is amended to read:

"37-50-403. Nonliability -- evidential privilege -- application to nonprofit corporations. (1) A member of a peer review, professional standards review, or ethics review committee of a society composed of persons licensed to practice the accounting profession is not liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to ~~him~~ the member after reasonable effort to obtain the facts.

(2) The proceedings and records of peer review, professional standards review, and ethics review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within ~~his that person's~~ the person's knowledge; ~~however~~ However, ~~he~~ the person may not be questioned about ~~his~~ the person's testimony or other proceedings before the committee or about opinions or other actions of the committee or any member of the committee.

(3) This section also applies to ~~any a~~ a member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, professional standards review, or ethics review committee with respect to the profession of accounting."

Section 1409. Section 37-51-201, MCA, is amended to read:

"37-51-201. Chairman Presiding officer -- seal -- records -- prohibition on membership in real estate associations. (1) The members of the board shall elect a ~~chairman~~ presiding officer from among their number.

(2) The board shall adopt a seal of a design ~~as that it shall prescribe~~ prescribes. Copies of records and papers kept by the department, certified by the ~~chairman~~ presiding officer, and authenticated by the seal of the board; ~~shall must~~ be received in evidence in courts with ~~like~~ the same effect as the original. Records of the board are open to public inspection under rules it prescribes.

(3) The department:

(a) shall keep a record of proceedings, transactions, communications, and official acts of the board;

(b) ~~be is~~ is custodian of the records of the board; and

(c) ~~cause to be performed~~ shall perform other duties ~~as that~~ the board, on the written request of two or more members of the board or at other times ~~as that the chairman in his discretion~~ presiding officer, considers necessary.

(4) ~~Neither the chairman nor~~ The presiding officer or an employee of the department hired to provide services to the board may not be an officer or paid employee of any real estate association or group of real estate dealers or brokers."

Section 1410. Section 37-51-323, MCA, is amended to read:

"37-51-323. Penalties -- criminal -- civil. (1) ~~Any An~~ individual acting as a broker or salesperson without a license or while ~~his~~ the individual's license is suspended or revoked or ~~any a~~ person who violates any provision of this chapter ~~shall be is~~ guilty of a misdemeanor and upon conviction ~~thereof~~ by a district court of this state shall be ~~punishable~~ punished by a fine of not less than \$100 or more than \$500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent violation, the person shall be ~~punishable~~ punished by a fine of not less than \$500 or more than \$2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) In case ~~any a~~ person in a civil action is found guilty of having received any money or the equivalent ~~thereof~~ of money as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this chapter, ~~he~~ the person shall in addition be liable to a penalty of not less than the amount of the sum of money ~~so~~ received and not more than three times the sum ~~so~~ received, as may be determined by the court; ~~which~~ The monetary penalty may be recovered in any court of competent jurisdiction by any person

aggrieved."

Section 1411. Section 37-51-503, MCA, is amended to read:

"37-51-503. Claims against fund -- orders for payment. (1) Whenever a person obtains a final judgment in any court of competent jurisdiction against ~~any a~~ a person licensed under this chapter for the conversion of trust funds or arising directly out of any act or transaction ~~occurring on or after July 1, 1985,~~ for which a license is required under this chapter, ~~he~~ the person may after executing on ~~such~~ the final judgment file an application, in accordance with ~~this section and~~ 37-51-504 and this section, with the board for an order directing payment out of the account for any actual and direct loss unpaid on the judgment.

(2) ~~No~~ An application or order for payment from the account may not be made for:

- (a) a judgment ~~which~~ that has been satisfied;
- (b) any amount in excess of \$25,000 for any one licensee, regardless of the number of persons injured by acts of the licensee or number of parcels of real estate involved in the transaction or transactions;
- (c) attorney fees and exemplary or punitive damages; or
- (d) amounts remaining unpaid on any final judgment entered more than 2 years prior to the date of application.

(3) The application must be:

- (a) served by certified mail, return receipt requested, upon the board, the licensee, and any other party to the transaction referred to in the application; and
- (b) filed with the board along with an affidavit of service."

Section 1412. Section 37-51-504, MCA, is amended to read:

"37-51-504. Form of application. The person making application for payment from the account ~~must~~ shall show in the application:

- (1) that ~~he~~ the person is not the spouse of the judgment debtor or the personal representative of ~~such~~ the spouse;
- (2) that ~~he~~ the person has obtained a judgment ~~which~~ that satisfies the requirements of 37-51-503, stating the amount of the judgment and the amount unpaid on the date of the application;
- (3) that ~~he~~ the person has, on the dates and at the times shown by the applicant, diligently pursued the remedies of execution and proceedings in aid of execution provided in Title 25, chapters 13 and 14, ~~respectively~~;
- (4) the amount of any money obtained as a result of the proceedings required to be shown in subsection

(3) and the balance of the judgment remaining unpaid for which application is made; and

(5) that ~~he~~ the person has diligently pursued ~~his~~ the remedies of execution and proceedings in aid of execution against any other person against whom ~~he~~ the person has a judgment as a result of the transaction for which ~~he~~ the person seeks recovery from the account."

Section 1413. Section 37-51-511, MCA, is amended to read:

"37-51-511. Subrogation rights of board. Upon payment of money from the account, the board is subrogated to all of the rights of the judgment creditor to the extent of the amount ~~so~~ paid and the judgment creditor is considered to have assigned to the board all of ~~his~~ the creditor's right, title, and interest in the judgment to the extent of the amount paid from the account. Any amount and interest recovered by the board on the judgment must be deposited in the account."

Section 1414. Section 37-53-102, MCA, is amended to read:

"37-53-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Advertisement" means a written, printed, audio, or visual communication that is published in whole or in part to sell, offer to sell, or solicit an offer for a timeshare.

(2) "Affiliate" means a person who controls, is controlled by, or is under the control of a developer.

(3) "Association" or "owners' association" means the association of owners created by the timeshare instruments for purposes of managing and maintaining the project for the benefit of all timeshare owners.

(4) "Board" means the board of realty regulation provided for in 2-15-1757.

(5) "Developer" means:

(a) a person creating timeshares or engaged in the business of selling ~~his~~ the person's own timeshares;

(b) a person who controls, is controlled by, or is in common control with the person engaged in creating or selling timeshares; or

(c) any successor or assignee of a person referred to in subsection (5)(a) or (5)(b).

(6) "Managing entity" means a person hired by the timeshare association or developer to manage the timeshare plan or the timeshare property.

(7) "Offer" or "offering" means an inducement, solicitation, or attempt to encourage a person to acquire a timeshare. An offer is made in this state if the offer originates in this state or if the principal timeshare property is located in this state.

(8) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity.

(9) "Prize and gift promotional offer" means advertising material stating that a prospective purchaser may receive goods or services other than the timeshare plan itself, either free or at a discount, including but not limited to the use of a prize, gift, award, premium, or lodging or vacation certificate.

(10) "Project" means the real property or real estate, ~~that~~ which must contain more than one unit, in which timeshares are created by a single instrument or set of instruments.

(11) "Promoter" means any person who initiates the inducement, solicitation, or encouragement of another person, by any means, of the review or acquisition of a timeshare interval.

(12) "Purchaser" means a person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare, other than as security for an obligation.

(13) "Real estate" means real estate as defined in 37-51-102.

(14) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a timeshare for value.

(15) "Timeshare broker" means a natural person who supervises a timeshare sales operation and one or more timeshare salespersons.

(16) (a) "Timeshare expenses" means expenditures, fees, charges, or liabilities:

~~(a)~~(i) incurred with respect to the timeshares by or on behalf of all timeshare owners in one timeshare property; and

~~(b)~~(ii) imposed on the timeshare by the entity governing a project of which the timeshare is a part, together with any allocations to reserve.

(b) The term does not include purchase money payable for timeshares.

(17) "Timeshare instrument" means one or more documents, by whatever name denominated, creating or regulating timeshares.

(18) "Timeshare interval" or "timeshare interest" means the right, however evidenced or documented, to use and occupy one or more timeshare units on a periodic basis according to an arrangement allocating ~~such~~ the use and occupancy rights between similar users.

(19) "Timeshare owner" means a person, other than a developer, who is an owner or co-owner of a timeshare. If title to a timeshare is held in trust, timeshare owner means the beneficiary of the trust.

(20) "Timeshare salesperson" means a person who for a salary, commission, or compensation of any kind is associated, either directly or indirectly, regularly or occasionally, with a timeshare broker to sell, purchase,

or negotiate for sale, purchase, lease, or exchange of the timeshare interests in real estate and who, on behalf of a developer, sells or offers to sell a timeshare to a purchaser.

(21) "Timeshare unit" or "unit" means the real property or portion ~~thereof~~ of real property in which the timeshare exists and that is designated for separate use, including campgrounds, campsites, and outdoor recreation sites with spaces designed or promoted for the purpose of locating a trailer, tent, tent trailer, camper, or similar device for land-based portable housing."

Section 1415. Section 37-53-301, MCA, is amended to read:

"37-53-301. Licensure of timeshare brokers and timeshare salespersons. (1) (a) A person offering timeshare units for ~~his~~ the person's own account or for the account of others must be licensed as a timeshare salesperson or timeshare broker unless the offering is exempt under 37-53-205. Licensure may be obtained:

(i) upon completion of an application and personal disclosure statement and passage of an examination prescribed by the board demonstrating knowledge of the timeshare industry and this chapter; and

(ii) upon successful completion of a course of education related to the timeshare industry that has been approved by the board.

(b) ~~The~~ Upon compliance with the requirements of subsection (1)(a), the board shall ~~then~~ issue a certificate of completion to the applicant.

(2) A person licensed as a real estate broker or salesperson under Title 37, chapter 51, may act as a timeshare salesperson or timeshare broker upon successful completion of a course of education related to the timeshare industry that has been approved by the board. ~~The~~ Upon completion, the board shall ~~then~~ issue a certificate of completion to the applicant. ~~No~~ Another license other than that issued pursuant to Title 37, chapter 51, is not required."

Section 1416. Section 37-53-305, MCA, is amended to read:

"37-53-305. Transfer of developer's interest. A developer may not sell, lease, assign, or otherwise transfer ~~his~~ the developer's interest in a project unless the transferee agrees in writing to honor the purchaser's right to use and occupy the timeshare unit, to honor the purchaser's right to cancel, and to comply with this chapter. Each purchaser whose contract may be affected must be given written notice of a transfer immediately after the transfer is made."

Section 1417. Section 37-53-403, MCA, is amended to read:

"37-53-403. Awarding of gifts and prizes. (1) Any prize, gift, or other item offered pursuant to a prize and gift promotional offer must be delivered to the prospective purchaser on the day ~~he~~ the prospective purchaser appears to claim it, whether or not ~~he~~ the prospective purchaser purchases a timeshare interval. If the prize is not available, it must be presented or mailed at the developer's expense, postage prepaid, within 30 days ~~thereafter~~ after the date on which the prospective purchaser appears.

(2) All prizes, gifts, or other items represented by the developer to be awarded in connection with any prize and gift promotional offer must be awarded by the date referenced in the advertising material used in connection with ~~such~~ the offer."

Section 1418. Section 37-54-412, MCA, is amended to read:

"37-54-412. Collection of appraisal fees. A person who performs independent appraisal services as a licensed or certified real estate appraiser in this state may not bring an action in any court in this state to collect compensation for the performance of those services unless ~~he~~ the person alleges and proves that ~~he~~ the person held a valid license or certificate at all times during the performance of those services."

Section 1419. Section 37-54-415, MCA, is amended to read:

"37-54-415. Place of business. (1) A resident licensed or certified real estate appraiser shall maintain a principal place of business in this state. If the appraiser changes ~~his~~ the principal place of business, ~~he~~ the appraiser shall promptly notify the board in writing of the change. Upon receipt of notice of the change, the board shall issue a new license or certificate for the unexpired term, stating the principal place of business.

(2) A nonresident licensee is not required to maintain a place of business in this state if ~~he~~ the licensee maintains a principal place of business in ~~his~~ the licensee's domicile state."

Section 1420. Section 37-54-416, MCA, is amended to read:

"37-54-416. Retention of records. (1) A licensed or certified real estate appraiser shall retain for 5 years from the date of submission of an appraisal report to a client:

(a) an original or true copy of any written contract engaging ~~his~~ the person's services as an appraiser;
(b) an appraisal report prepared or signed by the licensed or certified real estate appraiser; and
(c) all supporting data assembled and formulated by the licensed or certified real estate appraiser in preparing the appraisal report.

(2) If a licensed or certified real estate appraiser is notified within this 5-year period that the appraisal

report is involved in litigation, the appraiser shall retain the appraisal report for 5 years from the final date of disposition of the litigation.

(3) The licensed or certified real estate appraiser shall make available to the board at reasonable times, for inspection and copying, any appraisal report ~~he~~ the appraiser is required to maintain under the provisions of this section."

Section 1421. Section 37-60-104, MCA, is amended to read:

"37-60-104. Restrictions on contract security company and proprietary security organization. ~~No~~ An employee of a contract security company or proprietary security organization may not make any investigation or investigations except those that are incidental to the theft, loss, embezzlement, misappropriation, or concealment of any property or any other thing ~~which he~~ that the employee has been hired or engaged to protect, guard, or watch."

Section 1422. Section 37-60-401, MCA, is amended to read:

"37-60-401. Responsibility of licensee for conduct of employees. A licensee ~~shall~~ is at all times ~~be~~ legally responsible for the good conduct in the business of each employee, including ~~his~~ the manager."

Section 1423. Section 37-60-404, MCA, is amended to read:

"37-60-404. Duty to maintain employee records. Each employer shall maintain a record containing ~~such~~ information relative to ~~his~~ the employer's employees ~~as~~ that may be prescribed by the board."

Section 1424. Section 37-61-201, MCA, is amended to read:

"37-61-201. Who considered to be practicing law. Any person who ~~shall hold himself~~ holds out to the public or ~~advertise~~ advertises as an attorney or counselor at law or who ~~shall appear~~ appears in any court of record or before a judicial body, referee, commissioner, or other officer appointed to determine any question of law or fact by a court or who ~~shall engage~~ engages in the business and duties and ~~perform such~~ performs acts, matters, and things ~~as~~ that are usually done or performed by an attorney at law in the practice of ~~his~~ that profession for the purposes of parts 1 through 3 of this chapter ~~shall be deemed~~ is considered to be practicing law."

Section 1425. Section 37-61-203, MCA, is amended to read:

"37-61-203. Clerk, sheriff, or coroner may not practice law. The clerk, deputy clerk, sheriff, undersheriff, deputy sheriff, or coroner ~~must~~ may not, during ~~his~~ the continuance in office, practice as attorney ~~and counselor~~ in any court."

Section 1426. Section 37-61-207, MCA, is amended to read:

"37-61-207. Oath. Every person on ~~his~~ admission ~~must~~ shall take an oath to support the Constitution of the United States and The Constitution of the State of Montana and to faithfully discharge the duties of an attorney ~~and counselor at law~~ with fidelity to the best of ~~his~~ the person's knowledge and ability. A certificate of ~~such~~ the oath must be endorsed upon the license and a duplicate filed with the clerk."

Section 1427. Section 37-61-210, MCA, is amended to read:

"37-61-210. Penalty for practicing without license. If any person practices law in any court, except a justice's court or a city court, without having received a license as attorney ~~and counselor~~, ~~he~~ the person is guilty of a contempt of court."

Section 1428. Section 37-61-214, MCA, is amended to read:

"37-61-214. Penalty for practicing without certificate indicating payment of tax. ~~No~~ An attorney ~~shall~~ may not practice or be permitted to practice ~~his profession~~ in any of the courts of record in this state until ~~he~~ he ~~shall~~ has ~~have~~ the attorney ~~has~~ paid ~~such a~~ license tax for the current fiscal year and procured a certificate, as ~~hereinabove~~ provided in 37-61-211, and any attorney violating this section ~~shall be~~ is guilty of a misdemeanor and, upon conviction ~~thereof~~, shall be punished by a fine of not less than \$25."

Section 1429. Section 37-61-301, MCA, is amended to read:

"37-61-301. Disbarment. (1) The supreme court of the state ~~shall have~~ has exclusive jurisdiction to remove or suspend attorneys ~~and counselors~~ at law.

(2) An attorney ~~and counselor~~ may be removed or suspended for any of the following causes arising after ~~his~~ admission to practice:

(a) ~~his~~ conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction is conclusive evidence;

(b) willful disobedience or violation of an order of the court requiring ~~him~~ the individual to do or forbear an act connected with or in the course of ~~his~~ the legal profession ~~which he~~ that the individual ought in good faith

to do or forbear and any violation of the oath taken by ~~him~~ the individual or of ~~his~~ the duties as ~~such an~~ attorney ~~and counselor~~;

(c) corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding;

(d) lending ~~his~~ the attorney's name to be used as attorney ~~and counselor~~ by another person who is not an attorney ~~and counselor~~;

(e) being guilty of deceit, malpractice, crime, or misdemeanor involving moral turpitude."

Section 1430. Section 37-61-309, MCA, is amended to read:

"37-61-309. Judgment. Upon conviction, in cases arising under 37-61-301(2)(a), the judgment of the court must be that the name of the party be stricken from the roll of attorneys ~~and counselors~~ of the court and that ~~he~~ the party be precluded from practicing as ~~such an~~ attorney ~~or counselor~~ in all the courts of this state. Upon conviction in cases under the other subsections of that section, the judgment of the court may be, according to the gravity of the offense charged, deprivation of the right to practice as attorney ~~or counselor~~ in the courts of this state permanently or for a limited period."

Section 1431. Section 37-61-401, MCA, is amended to read:

"37-61-401. Authority of attorney. (1) An attorney ~~and counselor~~ has authority to:

(a) bind ~~his~~ the attorney's client in any steps of an action or proceeding by ~~his~~ agreement filed with the clerk or entered upon the minutes of the court and not otherwise;

(b) receive money claimed by ~~his~~ the attorney's client in an action or proceeding during the pendency ~~thereof of an action or proceeding~~ or after judgment unless a revocation of ~~his~~ authority is filed and, upon the payment ~~thereof of the money~~ and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

(2) The death of a party to an action or proceeding does not revoke the authority of ~~his~~ the party's attorney of record in ~~said the~~ action or proceeding, but the authority of the attorney is continued in all respects the same and with like effect as it was prior to the death of ~~such the~~ party until ~~such the~~ attorney ~~shall withdraw~~ he withdraws the attorney's appearance in ~~said the~~ action or proceeding or some other attorney ~~shall be~~ is substituted for ~~him~~ or ~~his~~ the original attorney's authority ~~shall be~~ is otherwise terminated and entry ~~thereof of the~~ substitution or termination is made ~~to appear~~ in the record of ~~such the~~ action or proceeding."

Section 1432. Section 37-61-402, MCA, is amended to read:

"37-61-402. Production of proof of authority to court. The court or judge, on motion of either party, may require the attorney of the adverse party to produce and prove the authority under which ~~he~~ the attorney appears and may stay all proceedings until ~~such~~ the authority is shown and may at any time summarily relieve a party from the consequences of the acts of an unauthorized attorney."

Section 1433. Section 37-61-404, MCA, is amended to read:

"37-61-404. Notice of change. When an attorney is changed as provided in 37-61-403, written notice of the change and the substitution of a new attorney or of the appearance of the party in person must be given to the adverse party. Until then, ~~he~~ the adverse party ~~must~~ shall recognize the former attorney."

Section 1434. Section 37-61-405, MCA, is amended to read:

"37-61-405. Death or removal of attorney. When an attorney dies or is removed or suspended or ceases to act as ~~such~~ an attorney, a party to an action for whom ~~he~~ the attorney was acting as attorney must, before any further proceedings are had against ~~him~~ the party, be required by the adverse party, by written notice, to appoint another attorney or appear in person."

Section 1435. Section 37-61-406, MCA, is amended to read:

"37-61-406. Penalty for deceit. An attorney ~~or counselor~~ who is guilty of any deceit or collusion or consents to any deceit or collusion with intent to deceive the court or a party forfeits to the party injured by ~~his~~ the deceit or collusion treble damages. ~~He~~ The attorney is also guilty of a misdemeanor."

Section 1436. Section 37-61-407, MCA, is amended to read:

"37-61-407. Penalty for delay. An attorney ~~and counselor~~ who willfully delays ~~his~~ a client's cause with a view to ~~his~~ the attorney's own gain or willfully receives money or an allowance for or on account of money ~~which~~ he that the attorney has not laid out or become answerable for forfeits to the party injured treble damages."

Section 1437. Section 37-61-408, MCA, is amended to read:

"37-61-408. Attorney prohibited from buying claim or demand for purpose of bringing action. (1) An attorney ~~and counselor~~ ~~must~~ may not directly or indirectly buy or be in any manner interested in buying a bond, promissory note, bill of exchange, book debt, or other thing in action with the intent and for the purpose of bringing an action ~~thereon~~ on that instrument or thing.

(2) An attorney ~~and counselor must~~ may not, ~~by himself individually~~ or by or in the name of another person, either before or after an action is brought, promise or give or procure to be promised or given a valuable consideration to any person as an inducement to placing or in consideration of having placed in ~~his~~ the person's hands or in the hands of another person a demand of any kind for the purpose of bringing an action ~~thereon~~. This subsection does not apply to an agreement between attorneys ~~and counselors, or either,~~ to divide between themselves the compensation to be received."

Section 1438. Section 37-61-412, MCA, is amended to read:

"37-61-412. Partner of public prosecutor not to defend. An attorney ~~and counselor must~~ may not:

(1) directly or indirectly advise concerning, aid, or take any part in the defense of an action or special proceeding, civil or criminal, brought, carried on, aided, advocated, or prosecuted, as attorney general, county attorney, or other public prosecutor, by a person with whom ~~he~~ the attorney is interested or connected, either directly or indirectly, as a law partner; or

(2) take or receive, directly or indirectly, from a defendant ~~therein~~ in a case described in subsection (1) or other person a fee, gratuity, or reward for or upon any cause, consideration, pretense, understanding, or agreement ~~whatever,~~ express or implied, having relation ~~thereto~~ to a case described in subsection (1) or to the prosecution or defense ~~thereof~~ of a case described in subsection (1)."

Section 1439. Section 37-61-416, MCA, is amended to read:

"37-61-416. Party may appear in person or by attorney. A party to a civil action who is of full legal age may prosecute or defend the ~~same action~~ in person or by attorney at ~~his~~ the party's election unless ~~he~~ the party has been judicially declared to be incompetent to manage ~~his~~ the party's affairs. Each provision of this part relating to the conduct of an action ~~wherein in which~~ the attorney for the party is mentioned includes a party prosecuting or defending in person unless otherwise specially prescribed ~~therein~~ or unless that construction is manifestly repugnant to the context. If a party has an attorney in the action, ~~he~~ the party ~~cannot~~ may not appear or act in person ~~where~~ when an attorney may appear or act either by special provisions of law or by the course and practice of the court."

Section 1440. Section 37-61-417, MCA, is amended to read:

"37-61-417. Attorney may defend in person. This part does not prohibit an attorney ~~or counselor~~ from ~~defending himself in person~~ defending in person if prosecuted either civilly or criminally."

Section 1441. Section 37-61-418, MCA, is amended to read:

"37-61-418. Attorney may see prisoner. All public officers, sheriffs, coroners, jailers, constables, or other officers or persons having in custody any person committed, imprisoned, or restrained of ~~his~~ the person's liberty for any alleged cause ~~whatever must~~ shall admit any practicing attorney ~~and counselor at law~~ in this state whom ~~such~~ the person restrained of ~~his~~ liberty may desire to see or consult, to see and consult ~~such~~ the imprisoned person ~~so imprisoned~~, alone and in private, at the jail or other place of custody. Any officer violating this provision shall forfeit and pay \$100 to the person aggrieved, to be recovered by action of debt in any court of competent jurisdiction."

Section 1442. Section 37-61-420, MCA, is amended to read:

"37-61-420. Judgment lien for compensation. (1) The compensation of an attorney and counselor for ~~his~~ services is governed by agreement, express or implied, which is not restrained by law.

(2) From the commencement of an action or the service of an answer containing a counterclaim, the attorney who appears for a party has a lien upon ~~his~~ the client's cause of action or counterclaim ~~which~~ that attaches to a verdict, report, decision, or judgment in ~~his~~ the client's favor and the proceeds ~~thereof in whose hands they may come~~ of the action or counterclaim. ~~Such~~ The lien cannot be affected by any settlement between the parties before or after judgment."

Section 1443. Section 37-65-103, MCA, is amended to read:

"37-65-103. Exemptions. (1) ~~Nothing contained in this chapter shall prevent draftsmen~~ This chapter does not prevent drafters, students, clerks of work, superintendents, and other employees of those lawfully practicing as architects under the provisions of this chapter from acting under the instruction, control, or supervision of their employers or to prevent the employment of superintendents of the construction, enlargement, or structural alteration of buildings or any appurtenance ~~thereto~~ to buildings.

(2) ~~Nothing contained in this~~ This chapter ~~shall~~ may not be construed to:

(a) apply to alterations to any building ~~which~~ that do not involve changes affecting the structural safety ~~thereof~~ of a building or the public health;

(b) prevent the preparation of details and shop drawings by persons other than architects for use in connection with the execution of their work; or

(c) prevent the preparation of drawings or details for fixtures, cabinetwork, furniture, or other interior appliances or equipment or for any work necessary to provide for ~~their~~ installation unless the ~~same~~ drawings or

installation involves public health or safety.

(3) ~~None of the~~ The acts enumerated in subsections (1) and (2) ~~shall~~ may not be interpreted or construed as the practice of architecture.

(4) ~~Nothing in this~~ This chapter ~~shall~~ may not be construed to affect or prevent the following, provided that ~~no~~ words, letters, figures, or other device ~~shall~~ may not be used in ~~such a manner as to tend~~ that tends to convey the impression that the person rendering ~~such~~ the service is an architect ~~duly~~ registered under this chapter:

(a) consultants, officers, and employees of the United States while engaged solely in the practice of architecture for ~~said government~~ the United States;

(b) professional engineers from performing architectural services ~~which~~ that are purely incidental to their engineering practice;

(c) any person from planning, designing, altering, repairing, supervising, or engaging in residential construction consisting of less than eight living units regardless of size or cost or farm buildings ~~which~~ that are not intended for use or used as a public building;

(d) the planning, design, alteration, construction, repair, or supervision of construction of a building by its owner if the building is not intended for use or used as a public building."

Section 1444. Section 37-65-301, MCA, is amended to read:

"37-65-301. License required. Except as provided in this chapter, ~~no~~ a person may ~~not~~ practice architecture in this state or use the title "architect" or "licensed architect" or any words, letters, figures, or other device indicating or intending to imply that ~~he~~ the person is an architect, without having qualified under this chapter."

Section 1445. Section 37-66-104, MCA, is amended to read:

"37-66-104. Acts declared unlawful. It ~~shall be~~ is unlawful for ~~any~~ a person to:

(1) offer to practice or hold ~~himself~~ out ~~as~~ to the public that the person is entitled to practice landscape architecture unless ~~duly~~ licensed and registered under this chapter;

(2) present as ~~his~~ the person's own the license of another;

(3) give false or forged evidence to the board or any board member ~~thereof~~ in obtaining a license;

(4) falsely impersonate any other practitioner of like or different name;

(5) otherwise violate any of the provisions of this chapter."

Section 1446. Section 37-66-105, MCA, is amended to read:

"37-66-105. Exemptions. (1) ~~None of the~~ The provisions of this chapter do not prevent employees of those lawfully practicing as landscape architects from acting under the instruction, control, or supervision of their employers.

(2) ~~None of the~~ The provisions of this chapter do not apply to any business conducted in this state by ~~any a~~ a horticulturist, ~~nurseryman nursery operator, or~~ nurseryman nursery operator, plantsman, gardener, landscape gardener, landscape designer, landscape artist, landscape contractor, or land use planner, as these terms are generally used. However, ~~no such an unlicensed person shall~~ may not use the title "landscape architect", "landscape architecture", or any description tending to convey the impression that ~~he~~ the person is a licensed landscape architect unless ~~he~~ the person is licensed as provided in this chapter.

(3) This chapter does not apply to architects, professional engineers, and professional land surveyors licensed to practice their respective professions.

(4) ~~None of the provisions of this~~ This chapter ~~shall~~ does not apply to ~~any a~~ a person performing any of the services mentioned in this chapter upon ~~his~~ the person's own property.

(5) ~~None of the provisions of this~~ This chapter ~~shall~~ does not require the hiring of a landscape architect."

Section 1447. Section 37-66-302, MCA, is amended to read:

"37-66-302. Illegal use of title. ~~No~~ A person may not use the designation "landscape architect" or "landscape architecture" or advertise any title or description tending to convey the impression that ~~he~~ the person is a landscape architect or practicing landscape architecture unless ~~such~~ the person is a landscape architect licensed with the board."

Section 1448. Section 37-66-303, MCA, is amended to read:

"37-66-303. Licensing restricted to individuals -- partnerships -- local business licensing. (1) Certificates of licensing may be issued to natural persons only, but ~~nothing contained in this chapter prevents~~ does not prevent a ~~duly~~ licensed landscape architect from performing ~~his~~ services for a corporation, firm, partnership, or association.

(2) Each partner in a partnership of landscape architects ~~shall~~ must be licensed to practice landscape architecture. Subject to this requirement, a partnership of landscape architects may use a partnership name if the name consists of:

(a) the names of two or more landscape architects; or

(b) the names of one or more landscape architects and one or more professional engineers, architects, or planners.

(3) A person applying to the licensing official of any county or city for a business license to practice landscape architecture shall, at the time of application, exhibit to the licensing official satisfactory evidence under the seal of the board and the hand of its secretary that the applicant possesses a current registration with the board. The license may not be granted until ~~such~~ the evidence is presented."

Section 1449. Section 37-66-308, MCA, is amended to read:

"37-66-308. Display of license -- seal of landscape architect. (1) Each holder of a license shall display it in ~~his~~ the licensee's principal office, place of business, or place of employment.

(2) Each landscape architect ~~shall~~ must have a seal approved by the board; ~~which shall~~ that must contain the name of the landscape architect and the words "Licensed Landscape Architect, State of Montana" and ~~such~~ other words or figures ~~as~~ that the board considers necessary. All drawings and title pages of specifications prepared by ~~such a~~ landscape architect or under the supervision of ~~such a~~ landscape architect ~~shall~~ must be stamped with ~~his~~ the landscape architect's seal. ~~Nothing contained herein shall~~ This section may not be construed to permit the seal of a landscape architect to serve as a substitute for the seal of a licensed architect, a licensed professional engineer, or a licensed professional land surveyor."

Section 1450. Section 37-68-103, MCA, is amended to read:

"37-68-103. Exemptions. (1) ~~Nothing in this chapter shall be deemed to~~ This chapter does not apply to the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility or a city. For purposes of this exemption, "communications equipment" includes telephone wire inside a customer's premises. ~~Nothing in this chapter prohibits~~ This chapter does not prohibit a public utility from doing inside wiring to install, alter, repair, or maintain electrical equipment, installations, or facilities in buildings owned by the public utility if the work is accomplished by an employee who is a licensed electrician. If the building owned by the public utility is open to the public and the inside wiring constitutes major renovation or construction, the installation, alteration, repair, or maintenance of electrical equipment, installations, or facilities is subject to permits and inspections required by law.

(2) The licensing or inspection provisions of this chapter do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer, nor do they apply to line work on the business premises of the employer when ordinary and customary in-plant or onsite installations,

modifications, additions, or repairs are performed.

(3) ~~Nothing in this chapter shall~~ This chapter may not be construed to require an individual to hold a license while or for doing electrical work on ~~his~~ the individual's own property or residence ~~provided that said~~ if the property or residence is maintained for ~~his~~ the individual's own use.

(4) An individual, firm, partnership, or corporation may engage in business as an electrical contractor without an electrician's license if all electrical work performed by ~~such~~ the individual, firm, partnership, or corporation is under the direction, control, and supervision of a licensed master electrician or under the direction, control, and supervision of a journeyman electrician for residential construction consisting of less than five living units in a single structure.

(5) ~~Any~~ A person who plugs in an electrical appliance where an approved electrical outlet is already installed ~~shall~~ may not be considered ~~as~~ an installer.

(6) ~~No provisions of this chapter shall~~ This chapter may not in any manner interfere with, hamper, preclude, or prohibit ~~any~~ a vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure ~~where~~ in which the appliance is to be connected."

Section 1451. Section 37-68-303, MCA, is amended to read:

"37-68-303. Apprentice may work under licensed electrician -- record of apprentices. This chapter does not prohibit a person from working as an apprentice in the trade of electrician with an electrician licensed under this chapter and under rules ~~made~~ adopted by the board. The name and residence of each apprentice and the name and residence of ~~his~~ the apprentice's employer ~~shall~~ must be filed with the department, and a record ~~shall~~ must be kept by the department showing the name and residence of each apprentice."

Section 1452. Section 37-68-314, MCA, is amended to read:

"37-68-314. Qualifications for licensing examination -- when no discretion in board. A person applying for a license as a journeyman electrician or a residential electrician must be allowed by the ~~state~~ electrical board to take the required examination and be granted a license upon passing the examination if the person has:

- (1) ~~he has~~ completed an appropriate training program conducted by a bona fide union;
- (2) ~~he has~~ completed the appropriate required apprenticeship; or
- (3) ~~he has~~ worked in the electrical field for 10 years and is considered by ~~his~~ the person's employer, as

shown by a written statement of the employer, to be capable and qualified to take the examination for the license for which ~~he~~ the person is applying."

Section 1453. Section 37-69-103, MCA, is amended to read:

"37-69-103. No penalty for hiring unlicensed plumber. This chapter may not be construed as imposing ~~any a~~ a penalty on any unlicensed person for hiring or contracting with an unlicensed person to do work in the field of plumbing. However, ~~any a~~ a person who ~~himself~~ engages in the field of plumbing at a time when ~~he~~ the person is not ~~duty~~ licensed is subject to the penalties imposed by this chapter."

Section 1454. Section 37-69-303, MCA, is amended to read:

"37-69-303. Application -- contents -- requirements. A person, firm, or corporation desiring to engage in or work in the field of plumbing in this state, either as a master plumber or as a journeyman plumber, shall make application to the department by filing a written application stating ~~his~~ the applicant's place of residence, age, and experience; and the place where ~~he~~ the applicant has acquired ~~his~~ experience and ~~shall~~ must at a time and place designated by the board be examined as to ~~his~~ the qualifications for a license."

Section 1455. Section 37-69-324, MCA, is amended to read:

"37-69-324. Penalty. A person who works at the field of plumbing or maintains or conducts a plumbing business or an individual who connects or disconnects plumbing from a public water or sewer system in violation of any provisions of this chapter or at a time when ~~he~~ the person is not exempt from the provisions of this chapter pursuant to the provisions of ~~a duty~~ an enacted and subsisting ordinance of a city or town is guilty of a misdemeanor ~~and, upon conviction thereof in any court of competent jurisdiction, is guilty of a misdemeanor.~~ However, this chapter may not be construed to apply to or affect plumbing or pipefitting as indicated in the 37-69-102 exceptions."

Section 1456. Section 37-72-203, MCA, is amended to read:

"37-72-203. Revocation, suspension, or refusal to renew license -- grounds -- procedure. (1) The department may reprimand or revoke, suspend, or refuse to renew the license of a person found guilty of:

- (a) fraud or deceit in obtaining a license;
- (b) gross negligence, incompetency, or misconduct in the practice of construction blasting;
- (c) a felony involving the use of explosives; or

(d) violation of the rules of the department.

(2) A person may make charges under subsection (1) against a licensee. The charges must be made by affidavit, subscribed and sworn to by the person making them, and filed with the department. The charges must be investigated by the department. Unless the department, after investigation, dismisses the charges as unfounded or trivial, it shall within 6 months after the date on which the charges were made give notice by mail to the licensee of its intent to reprimand ~~him~~ the licensee or to revoke, suspend, or refuse to renew ~~his~~ the license. The notice must contain those matters required by the Montana Administrative Procedure Act.

(3) The department may require a licensee to take a written or oral examination, or both, in a proceeding to reprimand or to revoke, suspend, or refuse to renew a license."

Section 1457. Section 37-72-301, MCA, is amended to read:

"37-72-301. General qualifications. A person making initial application to the department for a license as a construction blaster shall:

- (1) pay an application fee to the department; and
- (2) furnish proof under oath, on a form provided by the department, that ~~he~~ the person:
 - (a) is at least 18 years ~~old~~ of age;
 - (b) is of good moral character;
 - (c) has not been convicted of a felony or misdemeanor involving the use of explosives;
 - (d) is not addicted to narcotic drugs or intemperate in the use of alcohol; and
 - (e) has satisfied the requirements for training and experience in construction blasting established by 37-72-302 and the rules of the department."

Section 1458. Section 39-1-103, MCA, is amended to read:

"39-1-103. Powers of department. (1) In discharging the duties imposed upon the department, the commissioner or ~~his~~ the commissioner's authorized representatives may administer oaths, examine witnesses under oath, take depositions or cause ~~same~~ depositions to be taken, deputize any citizen 18 years of age or older to serve subpoenas upon witnesses, and issue subpoenas for the attendance of witnesses before ~~him~~ the commissioner in the same manner as for attendance before district courts.

(2) The commissioner may likewise cause to be inspected any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment.

(3) ~~Nothing in this~~ This chapter ~~applies~~ does not apply to labor violations preempted by federal law or

regulation."

Section 1459. Section 39-2-102, MCA, is amended to read:

"39-2-102. What belongs to employer. Everything ~~which~~ that an employee acquires by virtue of his employment, except the compensation, if any, ~~which that~~ is due to him from his the employee's employer, belongs to the ~~latter~~ employer, whether acquired lawfully or unlawfully or during or after the expiration of the term of his the employee's employment."

Section 1460. Section 39-2-303, MCA, is amended to read:

"39-2-303. Deception as to character of employment, conditions of work, or existence of labor dispute prohibited. (1) ~~No one~~ A person or an entity doing business in this state ~~shall~~ may not induce, influence, persuade, or engage ~~workmen~~ workers to change from one place to another in this state through or by means of deception, misrepresentation, or false advertising concerning the kind or character of the work, the sanitary or other conditions of employment, or as to the existence of a strike or other trouble pending between the employer and the employees at the time of or immediately prior to ~~such~~ the engagement. Failure to state in any advertisement, proposal, or contract for the employment of ~~workmen~~ workers that there is a strike, lockout, or other labor trouble at the place of the proposed employment when in fact ~~such a~~ a strike, lockout, or other trouble ~~then~~ actually exists at ~~such that~~ that place ~~shall be deemed~~ is considered a false advertisement and misrepresentation for the purpose of this section.

(2) ~~Any workman~~ A worker influenced, induced, persuaded, or engaged through or by means of any of the things prohibited by subsection (1) ~~of this section~~ has a right of action for recovery of all damages that ~~he had~~ the worker sustained in consequence of the deception, misrepresentation, or false advertising used to induce ~~him~~ the worker to change his the worker's place of employment against anyone directly or indirectly procuring ~~such~~ the change, and in addition ~~thereto~~, ~~he~~ the worker shall recover reasonable ~~attorneys'~~ attorney fees to be fixed by the court and taxed as costs in any judgment recovered."

Section 1461. Section 39-2-401, MCA, is amended to read:

"39-2-401. Duties of gratuitous employee. (1) One who without consideration undertakes to do a service for another is not bound to perform the ~~same~~ service, but if ~~he~~ the person actually enters upon its performance, ~~he~~ the person ~~must~~ shall use at least slight care and diligence ~~therein~~ in performing the service.

(2) One who by his the person's own special request induces another to entrust ~~him~~ the person with the

performance of a service ~~must~~ shall perform the same fully. In other cases, one who undertakes a gratuitous service may relinquish it at any time.

(3) A gratuitous employee who accepts a written power of attorney ~~must~~ shall act under it ~~so~~ as long as it remains in force or until ~~he~~ the gratuitous employee gives notice to ~~his~~ the employer that ~~he~~ the employee will not ~~do so~~ act under the power of attorney."

Section 1462. Section 39-2-402, MCA, is amended to read:

"39-2-402. Duties of employee for reward. One who for a good consideration agrees to serve another ~~must~~ shall perform the service and ~~must~~ shall use ordinary care and diligence ~~therein so~~ in performing the service as long as he the person is ~~thus~~ employed."

Section 1463. Section 39-2-403, MCA, is amended to read:

"39-2-403. Duties of employee for his own benefit. One who is employed at ~~his~~ the individual's own request to do that which is more for ~~his~~ the individual's own advantage than for that of ~~his~~ the employer ~~must~~ shall use great care and diligence ~~therein~~ to protect the interest of the ~~latter~~ employer."

Section 1464. Section 39-2-404, MCA, is amended to read:

"39-2-404. Employee ~~must~~ shall obey employer. An employee ~~must~~ substantially comply with all the directions of ~~his~~ the employer concerning the service on which ~~he~~ the employee is engaged, except ~~where~~ such when obedience is impossible or unlawful or would impose new and unreasonable burdens upon the employee."

Section 1465. Section 39-2-405, MCA, is amended to read:

"39-2-405. Employee ~~must~~ shall conform to usage. An employee ~~must~~ shall perform ~~his~~ service in conformity to the usage of the place of performance unless otherwise directed by ~~his~~ the employer or unless it is impracticable or manifestly injurious to ~~his~~ the employer to do so."

Section 1466. Section 39-2-406, MCA, is amended to read:

"39-2-406. Degree of skill required. (1) An employee is bound to exercise a reasonable degree of skill unless ~~his~~ the employer has notice before employing ~~him~~ the employee of ~~his~~ the employee's want of skill.

(2) An employee is always bound to use ~~such~~ the skill ~~as he~~ that the employee possesses, ~~so far as~~ to the extent that the ~~same~~ skill is required, for the service specified."

Section 1467. Section 39-2-407, MCA, is amended to read:

"39-2-407. Duty to account. An employee ~~must~~ shall, on demand, render to ~~his~~ the employer as often as may be reasonable just accounts of all ~~his~~ the employee's transactions in the course of ~~his~~ service and ~~must~~ shall, without demand, give prompt notice to ~~his~~ the employer of everything ~~which he~~ that the employee receives for ~~his~~ the employer's account."

Section 1468. Section 39-2-408, MCA, is amended to read:

"39-2-408. Duty of employee regarding items received on account of his employer. An employee who receives anything on account of ~~his~~ the employer in any capacity other than that of a mere servant is not bound to deliver it to ~~him~~ the employer until demanded and is not at liberty to send it to ~~him~~ the employer from a distance, without demand, in any mode involving greater risk than its retention by the employee ~~himself~~."

Section 1469. Section 39-2-409, MCA, is amended to read:

"39-2-409. Preference to be given to employer's business. An employee who has any business to transact on ~~his~~ the employee's own account similar to that entrusted to ~~him~~ the employee by ~~his~~ the employee's employer ~~must~~ shall always give the ~~latter~~ employer's business the preference."

Section 1470. Section 39-2-410, MCA, is amended to read:

"39-2-410. Responsibility of employee for substitute. An employee who is expressly authorized to employ a substitute is liable to ~~his~~ the principal only for want of ordinary care in ~~his~~ the substitute's selection. The substitute is directly responsible to the principal."

Section 1471. Section 39-2-411, MCA, is amended to read:

"39-2-411. Surviving employee. ~~Where~~ When service is to be rendered by two or more persons jointly and one of them dies, the survivor ~~must~~ shall act alone if the service to be rendered is ~~such as he~~ of a type that the survivor can rightly perform without the aid of the deceased person, but not otherwise."

Section 1472. Section 39-2-501, MCA, is amended to read:

"39-2-501. Termination of employment generally. ~~Every~~ An employment is terminated by:

- (1) the expiration of its appointed term;
- (2) the extinction of its subject;

- (3) the death of the employee; or
- (4) ~~his~~ the employee's legal incapacity to act as ~~such~~ an employee."

Section 1473. Section 39-2-502, MCA, is amended to read:

"39-2-502. Termination by death or incapacity of employer. (1) ~~Every~~ An employment in which the power of the employee is not coupled with an interest in its subject is terminated by notice to ~~him~~ the employee of:

- (a) the death of the employer; or
 - (b) ~~his~~ the employer's legal incapacity to contract.
- (2) An employee, unless the term of ~~his~~ service has expired or unless ~~he~~ the employee has a right to discontinue it at any time without notice, ~~must~~ shall continue ~~his~~ service after notice of the death or incapacity of ~~his~~ the employer, ~~so far as is to the extent~~ necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to ~~such~~ the successor. The successor ~~must~~ shall compensate the employee for ~~such~~ the service according to the terms of the contract of employment."

Section 1474. Section 39-2-601, MCA, is amended to read:

"39-2-601. Servant defined. A servant is one who is employed to render personal service to ~~his~~ the employer otherwise than in the pursuit of an independent calling and who in ~~such~~ that service remains entirely under the control and direction of the ~~latter~~ employer, who is called ~~his~~ the servant's master."

Section 1475. Section 39-2-605, MCA, is amended to read:

"39-2-605. Servant to pay over without demand. A servant ~~must~~ shall deliver to ~~his~~ the servant's master without demand, as soon as with reasonable diligence ~~he can find him~~ the master can be found, everything that ~~he~~ the servant receives for ~~his~~ the master's account, but ~~he~~ the servant is not bound without orders from ~~his~~ the master to send anything to ~~him~~ the master through another person."

Section 1476. Section 39-2-606, MCA, is amended to read:

"39-2-606. When servant may be discharged. A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:

- (1) if ~~he~~ the servant is guilty of misconduct in the course of ~~his~~ the servant's service or of gross

immorality, though unconnected with the ~~same~~ service; or

(2) if, being employed about the person of ~~his~~ the master or in a confidential position, the master discovers that ~~he~~ the servant has been guilty of misconduct before or after the commencement of ~~his~~ service of ~~such~~ a nature that, if the master had known or contemplated it, ~~he~~ the master would not have ~~so~~ employed ~~him~~ the servant."

Section 1477. Section 39-2-701, MCA, is amended to read:

"39-2-701. Indemnification of employee. (1) An employer ~~must~~ shall indemnify ~~his~~ an employee, except as prescribed in subsection (2) ~~of this section~~, for all that ~~he~~ the employee necessarily expends or loses in direct consequence of the discharge of ~~his~~ duties as ~~such~~ an employee or of ~~his~~ the employee's obedience to the directions of the employer, even though unlawful, unless the employee at the time of obeying ~~such~~ the directions believed them to be unlawful.

(2) An employer is not bound to indemnify ~~his~~ an employee for losses suffered by the ~~latter~~ employee in consequence of the ordinary risks of the business in which ~~he~~ the employee is employed.

(3) An employer ~~must~~ shall in all cases indemnify ~~his~~ an employee for losses caused by the ~~former's~~ employer's want of ordinary care."

Section 1478. Section 39-2-702, MCA, is amended to read:

"39-2-702. Liability of employee for negligence. An employee who is guilty of a culpable degree of negligence is liable to ~~his~~ the employer for the damage ~~thereby~~ caused by the negligence to the ~~latter~~ employer, and the employer is liable to ~~him~~ the employee for the value of ~~such~~ the services only as that are properly rendered if the service is not gratuitous."

Section 1479. Section 39-2-703, MCA, is amended to read:

"39-2-703. Liability of railway corporation for negligence of fellow servants. (1) Every A person or corporation operating a railway or railroad in this state is liable for all damages sustained by any employee of ~~such~~ the person or corporation in consequence of the neglect of any other employee ~~thereof~~ of the person or corporation or by the mismanagement of any other employee ~~thereof~~ of the person or corporation and in consequence of the willful wrongs, whether of commission or omission, of any other employee ~~thereof~~ of the person or corporation when ~~such~~ the neglect, mismanagement, or wrongs are in any manner connected with the use and operation of any a railway or railroad on or about which ~~he~~ the employee is employed. ~~No~~ A contract which that restricts ~~such~~ the liability

is not legal or binding.

(2) ~~In case of~~ If the death of ~~any such an~~ an employee ~~in consequence of~~ described in subsection (1) results from any injury or damage ~~so~~ sustained, the right of action provided by subsection (1) ~~shall survive~~ survives and may be prosecuted and maintained by ~~his~~ the deceased employee's heirs or personal representatives.

(3) ~~Every~~ A railway corporation doing business in this state, including electric railway corporations, is liable for damages sustained by an employee ~~thereof~~ within this state, subject to the provisions of 27-1-702, when ~~such the~~ the damages are caused by the negligence of any train dispatcher, telegraph operator, superintendent, master mechanic, yardmaster, conductor, engineer, ~~motorman~~ motor operator, or any other employee who has superintendence of any stationary or hand signal.

(4) ~~No~~ A contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into, either before or after the injury, between the person injured and any of the employers named in subsection (3) is not a bar or defense to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act."

Section 1480. Section 39-2-704, MCA, is amended to read:

"39-2-704. Liability of mining company for negligence of fellow servants. (1) ~~Every~~ A company, corporation, or individual operating any mine, smelter, or mill for the refining of ores is liable for damages sustained by any employee ~~thereof~~ within this state, subject to the provisions of 27-1-702, when ~~such the~~ the damage is caused by the negligence of any superintendent, ~~foreman~~ supervisor, shift boss, hoisting or other engineer, or ~~craneman~~ crane operator.

(2) ~~No~~ A contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into before the injury between the person injured and any of the employers named in this section is not a bar or defense to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act.

(3) ~~In case of~~ If the death of ~~any such an~~ an employee ~~in consequence of~~ results from any injury or damages ~~so~~ sustained, the right of action survives and may be prosecuted and maintained by ~~his~~ the deceased employee's heirs or personal representatives."

Section 1481. Section 39-2-802, MCA, is amended to read:

"39-2-802. Protection of discharged employees. If ~~any a~~ a person, after having discharged an employee from ~~his~~ service, prevents or attempts to prevent, by word or writing of any kind, ~~such the~~ the discharged employee

from obtaining employment with any other person, ~~such the discharging~~ person is punishable as provided in 39-2-804 and is liable in punitive damages to ~~such the discharged~~ person, to be recovered by civil action. ~~No A~~ person is not prohibited from informing by word or writing any person to whom ~~such the discharged~~ person or employee has applied for employment a truthful statement of the reason for ~~such~~ discharge."

Section 1482. Section 39-2-803, MCA, is amended to read:

"39-2-803. Blacklisting prohibited. If ~~any a~~ company or corporation in this state authorizes or allows any of its agents to blacklist or ~~any if a~~ person does blacklist any discharged employee or attempts by word or writing or any other means ~~whatever~~ to prevent any discharged employee or any employee who may have voluntarily left the company's service from obtaining employment with another person, except as provided for in 39-2-802, ~~such the~~ company, ~~or corporation,~~ or person is liable in punitive damages to ~~such the~~ employee ~~so~~ prevented from obtaining employment, to be recovered ~~by him~~ in a civil action, and is also punishable as provided in 39-2-804."

Section 1483. Section 39-3-102, MCA, is amended to read:

"39-3-102. Compensation of employee dismissed for cause. An employee dismissed by ~~his the~~ employer for good cause is not entitled to any compensation for services rendered since the last day upon which a payment became due to ~~him the employee~~ under the contract."

Section 1484. Section 39-3-103, MCA, is amended to read:

"39-3-103. Compensation of employee leaving for cause. An employee who quits the service of ~~his~~ an employer for good cause is entitled to ~~such the~~ proportion of the compensation ~~which that~~ would become due in case of full performance as the services ~~which he that the employee~~ has already rendered bear to the services ~~which he that the employee~~ was to render as full performance."

Section 1485. Section 39-3-209, MCA, is amended to read:

"39-3-209. Commissioner of labor to investigate violations and institute actions for unpaid wages. ~~It shall be the duty of the~~ The commissioner of labor ~~to shall~~ inquire diligently for any violations of this part and ~~to~~ institute actions for the collection of unpaid wages and for the penalties provided for ~~herein in this part in such~~ cases ~~as he may deem~~ that the commissioner of labor considers proper and ~~to~~ enforce generally the provisions of this part."

Section 1486. Section 39-3-210, MCA, is amended to read:

"39-3-210. Investigative powers of commissioner of labor. (1) The commissioner of labor or ~~his~~ the commissioner of labor's authorized representatives are empowered to enter and inspect ~~such~~ places, question ~~such~~ employees, and investigate ~~such~~ facts, conditions, or matters ~~which~~ that they may consider appropriate to determine whether any person has violated any provision of this part or any rule ~~issued hereunder~~ adopted under this part or ~~which~~ that may aid in the enforcement of the provisions of this part.

(2) ~~The~~ In any proceeding before the commissioner of labor, the commissioner of labor or ~~his~~ the commissioner of labor's authorized representatives may:

- (a) administer oaths and examine witnesses under oath;
- (b) issue subpoenas;
- (c) compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony; and
- (d) take depositions and affidavits ~~in any proceeding before the commissioner.~~"

Section 1487. Section 39-3-211, MCA, is amended to read:

"39-3-211. Commissioner of labor to take wage assignments. Whenever the commissioner of labor determines that one or more employees have claims for unpaid wages, ~~he~~ the commissioner of labor shall, upon the written request of the employee, take an assignment of the claim in trust for ~~such~~ the employee and may maintain any proceeding appropriate to enforce the claim, including liquidated damages pursuant to this part. With the written consent of the assignor, the commissioner of labor may settle or adjust any claim assigned pursuant to this section."

Section 1488. Section 39-3-214, MCA, is amended to read:

"39-3-214. Court costs and ~~attorneys'~~ attorney fees. (1) Whenever it is necessary for the employee to enter or maintain a suit at law for the recovery or collection of wages due as provided for by this part, a resulting judgment must include a reasonable ~~attorney's~~ attorney fee in favor of the successful party, to be taxed as part of the costs in the case.

(2) ~~Any~~ A judgment for the plaintiff in a proceeding pursuant to this part must include all costs reasonably incurred in connection with the proceeding, including ~~attorneys'~~ attorneys fees.

(3) If the proceeding is maintained by the commissioner of labor, ~~no~~ court costs or fees are not required of ~~him~~ the commissioner of labor nor is ~~he~~ the commissioner of labor required to furnish any bond or other

security that might otherwise be required in connection with any phase of the proceeding."

Section 1489. Section 39-3-215, MCA, is amended to read:

"39-3-215. Authority of county attorney. ~~Nothing herein contained shall~~ This part may not be construed to limit the authority of the county attorney of any county of the state to prosecute actions, both civil and criminal, for ~~such~~ violations of this part ~~as may come to his knowledge~~ or to enforce the provisions ~~hereof~~ of this part independently and without specific direction of the commissioner of labor."

Section 1490. Section 39-3-404, MCA, is amended to read:

"39-3-404. Minimum wage. (1) Except as otherwise provided in this part and except for farm workers as provided in subsection (2), ~~every an~~ employer shall pay to each of ~~his employees~~ employee a wage of not less than the applicable minimum wage as determined by the commissioner in accordance with 39-3-409.

(2) In the case of a farm worker employed for a part of a calendar year ~~which that~~ includes periods requiring working hours in excess of 8 hours ~~per a~~ day and other seasonal periods requiring working hours substantially less than 8 hours ~~per a~~ day, the employer may pay the worker at a fixed rate of compensation during the term of employment. The employer may elect to:

(a) keep a record of the total number of hours worked by the worker during the part of the year during which the worker was employed by ~~him (the employer, but~~ the total wages paid by ~~such the~~ employer to ~~such the~~ employee for that part of the year during which ~~said the~~ employee was employed by ~~him shall the employer may~~ not be less than the applicable minimum wage rate multiplied by the total number of hours ~~so~~ worked); or

(b) in lieu of the minimum wage set forth ~~herein in this part~~, pay the farm worker a wage as ~~herein~~ defined in this section on a monthly basis. This monthly compensation ~~shall~~ must constitute a minimum wage and ~~shall may~~ not be less than \$635 a month beginning January 1, 1990."

Section 1491. Section 39-3-503, MCA, is amended to read:

"39-3-503. Report of violations to county attorney by commissioner. Whenever it ~~shall appear~~ appears from reliable information satisfactory to the commissioner of labor and industry that ~~any a~~ person, firm, partnership, or corporation engaged in the business mentioned in 39-3-501 and not exempt from the effect of this part ~~shall have~~ has failed to pay any wages or salaries due ~~his the~~ the entity's employees as required by part 2 of this chapter, ~~he shall have the right to~~ the commissioner may deliver ~~such the~~ information to the county attorney of the county ~~wherein in which~~ the operations of the employer are being carried on and to request ~~such the~~ county

attorney to file a complaint in the district court of ~~said the~~ county in accordance with the provisions of ~~this part and~~ part 2 of this chapter and this part."

Section 1492. Section 39-3-506, MCA, is amended to read:

"39-3-506. County attorney to file complaint in district court on belief of violation. If a county attorney believes after receiving information that the provisions of ~~this part or~~ part 2 of this chapter or this part have been violated and that ~~such the~~ violation was willful or that the financial condition of the employer ~~is such~~ as to endanger ~~endangers~~ employees in receiving prompt payment or collection of wages, ~~he the~~ county attorney shall file a complaint in district court. All proceedings upon ~~such the~~ complaint must be promptly prosecuted."

Section 1493. Section 39-3-507, MCA, is amended to read:

"39-3-507. Prayer for relief. ~~Should such~~ If the complaint be described in 39-3-506 is filed by the county attorney upon ~~his the~~ county attorney's own motion or at ~~said the~~ request of ~~said the~~ commissioner of labor and industry, ~~the same shall pray~~ complaint must request that relief be had against the employer for ~~the~~ greater security for the payment of salaries and wages of the employees."

Section 1494. Section 39-3-508, MCA, is amended to read:

"39-3-508. Summons -- service of process. (1) Upon the filing of ~~such the~~ complaint described in 39-3-506, summons ~~shall must~~ issue ~~thereon~~ and a copy of ~~such the~~ complaint and a copy of the summons ~~shall must~~ be served upon the employer, who ~~shall have~~ has 10 days after ~~such~~ service to appear and defend ~~such the~~ action.

(2) All orders and other process provided for in this part ~~shall must~~ be served by the sheriff upon the employer in the same manner as a summons in a civil suit is served. Service upon ~~any a~~ partner or member of any firm ~~shall be~~ is considered service upon each partner and each member of the firm. ~~In the event that~~ If the employer is a nonresident or a corporation without officers or directors within the county ~~who and~~ cannot conveniently and promptly be found for service, then service upon the manager, superintendent, or ~~foreman~~ supervisor in charge of the work or, ~~there being none such~~ if there are none of these individuals, then posting a copy of the order or other process ~~provided to be served herein~~ in a conspicuous place at or near the entrance to the principal workings ~~shall be deemed~~ is considered sufficient service."

Section 1495. Section 39-3-509, MCA, is amended to read:

"39-3-509. Hearing on complaint -- court order to pay wages due or appear and show cause why bond should not be required. Upon the conclusion of the hearing upon ~~such the~~ the complaint described in 39-3-506, the judge of the district court may make findings and shall issue an order to the employer in default to pay within 5 days all wages and salaries found by the court to be due and unpaid or an order to appear before the court within 10 days and show cause why a judgment and order should not issue requiring ~~said the~~ the employer to give bond for the payment of all wages and salaries then due and ~~thereafter to that~~ accrue to his the employer's employees within ~~said that~~ that county. Service of ~~such the~~ the order ~~shall must~~ be made at least 5 days before the date set for hearing or the date to which ~~such the~~ the hearing may be continued by the court upon good cause shown."

Section 1496. Section 39-3-511, MCA, is amended to read:

"39-3-511. Bond requirements. (1) ~~Said The~~ The bond referred to in 39-3-510 may be that of a surety company licensed and authorized to do business within the state or of two owners of real estate ~~situate~~ located in ~~said the~~ the county and who can and do justify as sureties in the same manner as sureties justify on appeal bonds or bail bonds.

(2) ~~Said The~~ The bond ~~shall must~~ be in the sum of not less than \$500 for each unit of five ~~men~~ individuals or less employed by ~~such the~~ the person, firm, partnership, or corporation.

(3) ~~Said The~~ The bond ~~shall must~~ continue in force for 1 year.

(4) ~~Said The~~ The bond ~~shall must~~ run in the name of the state of Montana and ~~shall must~~ be examined and approved by the judge of the district court, ~~said with~~ approval to be endorsed ~~thereon on the bond.~~"

Section 1497. Section 39-3-512, MCA, is amended to read:

"39-3-512. Enjoining further operations in event if bond not filed. (1) ~~In the event that~~ If the bond ordered by the district court is not executed and filed with the county treasurer within the time fixed by the court, the court may, if it ~~deems~~ considers the persons working for ~~such the~~ the employer to be insecure in the prompt payment or collection of their wages or salaries, enjoin any ~~and all~~ further operations of ~~said the~~ the employer within the state for a period of 1 year at any mine or reduction works or oil well or until the order, judgment, or decree of the court ~~shall have~~ has been fully complied with.

(2) The county attorney of the county ~~wherein such in which the~~ in which the proceedings are had or the attorney general of the state ~~shall, at his or their discretion, may file~~ shall, at his or their discretion, may file ~~such the~~ the action and prosecute the ~~same~~ action."

Section 1498. Section 39-3-513, MCA, is amended to read:

"39-3-513. Costs of proceeding. The ~~said~~ district court shall include in any order, judgment, or decree against the employer all costs of the proceeding, which ~~shall~~ must be taxed against the employer and paid ~~into~~ to the clerk of the court to be ~~by him~~ deposited with the county treasurer to the credit of the general fund of the county."

Section 1499. Section 39-3-516, MCA, is amended to read:

"39-3-516. Review of court order by supreme court. ~~In event any~~ If an employer against whom an order to furnish the bond described in this part feels aggrieved by any order or injunction of the district court, ~~he shall be the employer is~~ he is entitled, upon payment for the transcript of record, to have ~~his~~ the employer's objections and exceptions reviewed and determined by the supreme court as upon a writ of certiorari."

Section 1500. Section 39-3-517, MCA, is amended to read:

"39-3-517. Suit on bond. ~~Any~~ A person whose wages or salary has remained unpaid for 15 days or more after due ~~shall have~~ has a right to sue upon ~~said~~ the bond described in this part for the recovery of ~~his~~ the person's wages or salary."

Section 1501. Section 39-3-519, MCA, is amended to read:

"39-3-519. Clarification as to construction and applicability of part. (1) ~~Nothing contained in this part shall~~ This part may not be considered as requiring any person, firm, partnership, or corporation to file a bond or bonds if ~~he~~ the person or ~~it~~ entity pays for all labor in full each day or ~~where such~~ if the labor has been performed upon a written building or construction contract to furnish material or other consideration as well as labor.

(2) ~~Nothing herein shall~~ This part does not prohibit the making or entering into of any wage or working agreement, such as grubstake agreements ~~and/or~~ or similar agreements, ~~provided such~~ if the employer or contractor keeps in force proper workers' compensation insurance."

Section 1502. Section 39-4-101, MCA, is amended to read:

"39-4-101. Hoisting engineers. (1) It ~~shall be~~ is unlawful for ~~any~~ a person or persons, company, or corporation to operate or handle or to induce, persuade, or prevail upon any person or persons to operate or handle for more than 8 hours in 24 hours of each day any hoisting engine at or in any mine.

(2) This section ~~shall apply~~ applies only to ~~such~~ plants as ~~that~~ are in continuous operation or are operated 16 or more hours in 24 hours of each day or at or in any mine ~~where said~~ in which the hoisting engine

develops 15 or more horsepower or at or in any mine ~~wherein there are~~ in which 15 or more ~~men~~ individuals are employed underground in 24 hours of each day. However, the provisions of this section ~~shall do~~ not apply to ~~any~~ a person or persons operating any hoisting engine more than 8 hours in each 24 hours for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes.

(3) ~~Any A~~ person or persons, company, or corporation ~~who that shall violate~~ violates any of the provisions of this section shall upon conviction be punished by a fine of not less than \$10 or more than \$100. Each ~~and every~~ day that ~~such the~~ person or persons, company, or corporation ~~may continue~~ continues to violate any of the provisions of this section ~~shall be~~ is considered a separate and distinct offense and ~~shall be~~ is punishable as ~~such~~ a separate and distinct offense."

Section 1503. Section 39-4-102, MCA, is amended to read:

"39-4-102. Drivers and attendants of motor buses. (1) Drivers or attendants of motor buses employed in the state may not be employed for more than 8 hours in any 24-hour period. Drivers or attendants of motor buses must be allowed a rest of at least 12 hours between the completion of their services in any 24-hour period and the beginning of their services in the succeeding 24-hour period. In computing the number of hours of employment made by the provisions of this section, evidence may be introduced showing that part of ~~such the~~ time is consumed prior to entry within the state.

(2) The provisions of this section do not apply to drivers or attendants employed by a city, town, county, or political subdivision ~~thereof~~ of a city, town, or county.

(3) The provisions of this section do not apply:

(a) when life is in danger or property is in imminent danger of destruction; ~~or~~

(b) in case of delay ~~due to~~ because of accident or impassable roads, abnormal road conditions, or snow blockades; or

(c) when ~~mails~~ mail for the drivers or attendants ~~are~~ is delayed.

(4) "Attendant", for the purpose of this section, is defined as any employee engaged for a portion of a day driving or repairing a motor bus and who is required to remain on the vehicle as a relief driver or mechanic for time in excess of the 8-hour period for which ~~he~~ the individual is rightly employed.

(5) ~~Any An~~ employer or supervisor in charge of employees who requires a driver or attendant ~~as above defined~~ to labor contrary to the provisions of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 or more than \$600 or by imprisonment of not less than 30 days or more than 7 months, ~~or both such fine and imprisonment.~~

(6) All motor bus companies operating lines in this state are liable in damage for all injuries to the person resulting from the violation of the provisions of this section."

Section 1504. Section 39-4-103, MCA, is amended to read:

"39-4-103. Underground miners and smeltersmen smelter workers. (1) The period of employment of workers in all underground mines or workings, including railroad or other tunnels, is 8 hours ~~per a~~ a day, except in cases of emergency when life and property are in imminent danger.

(2) The period of employment of workers in smelters, stamp mills, sampling works, concentrators, and all other institutions for the reduction of ores and refining of ores or metals is 8 hours ~~per a~~ a day, except in cases of emergency ~~where~~ when life or property is in imminent danger.

(3) ~~Any~~ A person, corporation, agent, manager, or employer who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction ~~thereof~~ for each offense is subject to a fine of not less than \$100 or more than \$600 or by imprisonment in the county jail for a period of not less than 1 month or more than 7 months, ~~or by both such fine and imprisonment.~~"

Section 1505. Section 39-4-107, MCA, is amended to read:

"39-4-107. State and municipal governments, school districts, mines, mills, and smelters. (1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, the state government, or a first-class school district, ~~and~~ on all contracts let by them, and for all janitors (except in courthouses of sixth- and seventh-class counties), engineers, firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by ~~such a~~ a municipal, county, or state government or first-class school district. A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal. This subsection does not apply in the event of an emergency when life or property is in imminent danger or to the situations specified in subsections (3) and (4).

(2) The provisions of subsection (1) do not apply to firefighters who are working a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their ~~duty~~ duty constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. ~~No~~ An employee may not be required to work in excess of 8 hours in

any one workday if ~~he~~ the employee prefers not to.

(4) In municipal and county governments, the employer and employee may agree to a workday of more than 8 hours and to a 7-day, 40-hour work period:

(a) through a collective bargaining agreement when a collective bargaining unit represents the employee;

or

(b) by the mutual agreement of the employer and employee when ~~no~~ a bargaining unit is not recognized."

Section 1506. Section 39-4-110, MCA, is amended to read:

"39-4-110. Sugar refineries. (1) A period of not to exceed 8 hours constitutes a day's work for all persons employed in or about sugar refineries, except in a case of emergency when life or property is in danger.

(2) The provisions of this section do not apply to beet receiving station employees or superintendents, master mechanics, or beet-end, sugar-end, and Steffan house ~~foremen~~ supervisors.

(3) ~~Any~~ A person, corporation, agent, manager, or employer who violates the provisions of this section is guilty of a misdemeanor and upon conviction ~~thereof~~ is punishable by a fine of not less than \$50 or more than \$600 or by imprisonment in the county jail for not less than 30 days or more than 7 months, or by both such fine and imprisonment."

Section 1507. Section 39-4-112, MCA, is amended to read:

"39-4-112. Persons employed about public amusements. (1) A period of not to exceed 8 hours ~~shall~~ constitute constitutes a day's work and a period of not to exceed 48 hours shall ~~constitute~~ constitutes a week's work for persons employed or working in or participating in and about any carnival, circus, derby show, walkathon, marathon dance, marathon race, marathon walk, or other endurance contest by whatever name it may be called within the state. The hours of work must be so arranged that persons employed in or participating or contesting in ~~such~~ an exhibition, show, or contest ~~shall~~ may not be on duty more than 8 hours in the aggregate of any 12 consecutive hours. ~~Such~~ The persons ~~shall~~ must have at least 12 consecutive hours off duty.

(2) The provisions of this section ~~shall~~ do not apply to ~~any~~ a traveling circus or carnival ~~which~~ that does not remain in any one county of the state for a period of more than 3 days and ~~shall~~ does not apply to ~~any~~ a person ~~or persons~~ working more than 8 hours in each 12 hours for the purpose of relieving another employee in case of sickness or ~~where~~ when a breakdown in machinery occurs or ~~where~~ when life or property is in imminent danger.

(3) ~~Any~~ A person, corporation, agent, manager, ~~any~~ employer, employee, contestant, or participant who ~~shall~~

~~violate~~ violates the provisions of this section shall be guilty of a misdemeanor and upon conviction ~~thereof~~ shall be punished for the first offense by a fine of not less than \$50. For a second offense, ~~he~~ the person or entity shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment in the county jail for not less than 90 days or more than 6 months, ~~or by both such fine and imprisonment.~~ For a third or subsequent offense, ~~he~~ the person or entity shall be punished by a fine of \$500 and by imprisonment in the county jail for a term of 6 months. Each day's violation of this section ~~shall constitute~~ constitutes a separate offense within the meaning of this section."

Section 1508. Section 39-29-111, MCA, is amended to read:

"39-29-111. Retention during reduction in force. (1) Subject to the restrictions in subsections (2) and (3), during a reduction in force, a public employer shall retain in a position:

(a) a veteran, disabled veteran, or eligible relative whose performance has not been rated unacceptable under a performance appraisal system over other employees with similar job duties and qualifications and same length of service; and

(b) a disabled veteran with a service-connected disability of 30% or more whose performance has not been rated unacceptable under a performance appraisal system over other veterans, disabled veterans, and eligible relatives with similar job duties and qualifications and same length of service.

(2) An employee is not entitled to preference in retention under subsection (1) unless ~~he~~ the employee is a United States citizen.

(3) The preference in retention under subsection (1) does not apply to a position covered by a collective bargaining agreement."

Section 1509. Section 39-30-206, MCA, is amended to read:

"39-30-206. Notice and claim of preference. (1) A public employer shall, by posting or on the application form, give notice of the preferences that this chapter provides in public employment.

(2) A job applicant who believes ~~he~~ that the applicant has an employment preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely employment preference claim for a position is a complete defense to an action in regard to that position under 39-30-207.

(3) If an applicant for a position makes a timely written employment preference claim, the public employer shall give written notice of its hiring decision to each applicant claiming preference."

Section 1510. Section 39-30-207, MCA, is amended to read:

"39-30-207. Enforcement of preference. (1) An applicant who believes ~~he~~ that the applicant has not been accorded ~~his~~ the applicant's rights under this chapter may, within 30 days of receipt of the notice of the hiring decision provided for in 39-30-206, submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) The applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which ~~his~~ the applicant's application was received by the public employer. The petition must state facts that on their face entitle the applicant to an employment preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 10 or more than 30 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the employer made a reasonable determination pursuant to 39-30-103(7), and the applicant has the burden of proving by a preponderance of the evidence that ~~he~~ the applicant is a preference-eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court finds that the applicant is a preference-eligible applicant, the court shall order the public employer to reopen the selection process for the position involved and shall grant the applicant reasonable attorney fees and court costs. The remedy provided by this section is the only remedy for a violation of this chapter, and a court may not grant any other relief in an action for violation of this chapter.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to reopen the selection process.

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section."

Section 1511. Section 39-31-204, MCA, is amended to read:

"39-31-204. Right of nonassociation with labor organization on religious grounds -- requirements

and procedure for assertion of right. (1) ~~No~~ A public employee who is a member of a bona fide religious sect or division ~~thereof~~ of a sect, the established and traditional tenets or teachings of which oppose a requirement that a member of ~~such the~~ such the sect or division join or financially support a particular or any labor organization, may not be required to join or financially support that particular labor organization or any labor organization if the tenets or teachings oppose a requirement that any labor organization be joined or supported as a condition of employment. ~~if such~~ However, the public employee ~~pays~~ shall pay in lieu of periodic union dues, initiation fees, and assessments, at the same time or times ~~such the~~ such the periodic union dues, initiation fees, and assessments would otherwise be payable, a sum of money equivalent to ~~such the~~ such the periodic union dues, initiation fees, and assessments to a nonreligious, nonunion charity designated by the labor organization. ~~Such The~~ The public employee shall furnish to ~~such the~~ such the labor organization written receipts evidencing ~~such the~~ such the payments, and failure to make ~~such the~~ such the payments or furnish ~~such the~~ such the receipts ~~shall subject~~ subjects the employee to the same sanctions as would nonpayment of dues, initiation fees, or assessments under the applicable collective bargaining agreement.

(2) A public employee desiring to ~~avail himself or herself to~~ exercise the right of nonassociation with a labor organization as provided in this section shall make written application to the ~~chairman~~ presiding officer of the board of personnel appeals. Within 10 days of the date of receipt of ~~such an~~ such an application, the ~~chairman~~ presiding officer shall appoint a committee of three; consisting of a ~~clergyman~~ member of the clergy not connected with the sect in question, a labor union official not directly connected with the labor organization in question, and a member of the public at large who ~~shall be~~ is the ~~chairman~~ presiding officer. The committee shall within 10 days of the date of its appointment meet at the locale of either the employee's residence or place of employment and, after receiving written or oral presentations from all interested parties, determine by a majority vote whether or not ~~such the~~ such the public employee qualifies for the right of nonassociation with ~~such the~~ such the labor organization. The committee's decision ~~shall~~ must be made in writing within 3 days of the meeting date, and a copy ~~thereof shall~~ of the decision must be ~~forthwith~~ with mailed to ~~such the~~ such the public employee, labor organization, and ~~the chairman~~ presiding officer of the board of personnel appeals."

Section 1512. Section 39-31-305, MCA, is amended to read:

"39-31-305. Duty to bargain collectively -- good faith. (1) The public employer and the exclusive representative, through appropriate officials or their representatives, ~~shall~~ have the authority and the duty to bargain collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (2) ~~of this section~~.

(2) For the purpose of this chapter, to bargain collectively is the performance of the mutual obligation

of the public employer or ~~his~~ the public employer's designated representatives and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the negotiation of an agreement or any question arising ~~thereunder~~ under an agreement and the execution of a written contract incorporating any agreement reached. ~~Such~~ The obligation does not compel either party to agree to a proposal or require the making of a concession.

(3) For purposes of state government only, the requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint resolution. The failure to reach a negotiated settlement for submission is not, by itself, prima facie evidence of a failure to negotiate in good faith."

Section 1513. Section 39-31-311, MCA, is amended to read:

"39-31-311. Training of fact finders and arbitrators. The board of personnel appeals shall establish a course of education for the training of fact finders and arbitrators. ~~No~~ A person may not serve as a fact finder or as an arbitrator under this chapter until ~~he~~ the person has successfully completed the course or equivalent education."

Section 1514. Section 39-31-401, MCA, is amended to read:

"39-31-401. Unfair labor practices of public employer. It is an unfair labor practice for a public employer to:

(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201;

(2) dominate, interfere, or assist in the formation or administration of any labor organization; ~~however~~ However, subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting employees to confer with ~~him~~ the employer during working hours without loss of time or pay;

(3) discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor organization; ~~however~~ However, nothing in this chapter or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require, as a condition of employment, that an employee who is not or does not become a union member; must have an amount equal to the union initiation fee and monthly dues deducted from ~~his~~ the employee's wages in the same manner as checkoff of union dues;

(4) discharge or otherwise discriminate against an employee because ~~he~~ the employee has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or

(5) refuse to bargain collectively in good faith with an exclusive representative."

Section 1515. Section 39-31-402, MCA, is amended to read:

"39-31-402. Unfair labor practices of labor organization. It is an unfair labor practice for a labor organization or its agents to:

(1) restrain or coerce;

(a) employees in the exercise of the right guaranteed in 39-31-201; or

(b) a public employer in the selection of ~~his~~ a representative for the purpose of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with a public employer if it has been designated as the exclusive representative of employees;

(3) use agency shop fees for contributions to political candidates or parties at state or local levels."

Section 1516. Section 39-31-404, MCA, is amended to read:

"39-31-404. Six-month limitation on unfair labor practice complaint -- exception. ~~No~~ A notice of hearing ~~shall~~ may not be issued based upon any unfair labor practice more than 6 months before the filing of the charge with the board unless the person aggrieved ~~thereby~~ was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period ~~shall~~ must be computed from the day of ~~his~~ discharge."

Section 1517. Section 39-31-406, MCA, is amended to read:

"39-31-406. Hearing on complaint -- findings -- order. (1) The complainant and the person charged ~~shall~~ must be parties and shall appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the board or its agent conducting the hearing, any other person may be allowed to intervene in the proceeding and present testimony.

(2) In ~~any~~ a hearing, the board is not bound by the rules of evidence prevailing in the courts.

(3) The testimony taken by the board or its agent ~~shall~~ must be reduced to writing and filed with the board. Thereafter, in its discretion, the board upon notice may take further testimony or hear argument.

(4) If, upon the preponderance of the testimony taken, the board is of the opinion that any person named in the complaint has engaged in or is engaging in an unfair labor practice, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring ~~him~~ the person to cease and desist from the unfair

labor practice and to take ~~such~~ affirmative action, including reinstatement of employees with or without backpay, ~~as that~~ will effectuate the policies of this chapter. The order may further require the person to make reports from time to time showing the extent to which ~~he~~ the person has complied with the order. ~~No~~ An order of the board ~~shall~~ may not require the reinstatement of ~~any~~ an individual as an employee who has been suspended or discharged or the payment to ~~him~~ the employee of any backpay if it is found that the individual was suspended or discharged for cause.

(5) If, upon the preponderance of the testimony taken, the board is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint.

(6) If the evidence is presented before a member of the board or before an examiner, the member or the examiner, ~~as the case may be~~, shall issue and cause to be served on the parties to the proceeding a proposed decision, together with a recommended order, which ~~shall~~ must be filed with the board, and if ~~no~~ exceptions are not filed within 20 days after service ~~thereof~~ of the proposed decision and recommended order upon the parties or within ~~such a~~ further period ~~as that~~ the board may authorize, the recommended order ~~shall become~~ becomes the order of the board. The board shall issue a final order within 5 months after final briefs are submitted to the hearings officer. If briefs are to be submitted; but either or both of the parties fail to submit their brief on the date set by the ~~hearing~~ hearings examiner at the close of the hearing on the matter, then the board shall issue a final order within 5 months after the date the last brief was ordered to be submitted. If no briefs are to be submitted, the board shall issue a final order within 5 months after the hearing."

Section 1518. Section 39-32-102, MCA, is amended to read:

"39-32-102. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Appropriate unit" means a homogenous group of employees (~~as herein defined~~) of a health care facility having similar duties and qualifications determined pursuant to 39-32-106.

(2) "Board" means the board of personnel appeals provided for in 2-15-1705.

(3) "Employee" means a registered professional or licensed practical nurse performing services for compensation for a health care facility, but does not include a member of a religious order assigned to a health care facility by the order as a part of ~~her~~ the member's obligation to the order.

(4) "Health care facility" means a hospital or nursing home or other agency or establishment employing employees ~~as defined in this chapter~~, whether operated publicly or privately, having as one of its principal

purposes the preservation of health, or the care of sick or infirm individuals, or both.

(5) "Strike" ~~shall mean~~ means any work stoppage caused by the employees of a health care facility, ~~as defined in subsection (4) of this section,~~ that interferes with the operation of the health care facility or affects the care of patients in the health care facility."

Section 1519. Section 39-32-109, MCA, is amended to read:

"39-32-109. Unfair labor practices. (1) It is an unfair labor practice for a health care facility to do one or more of the following:

(a) interfere with or restrain or coerce employees in any manner in the exercise of their right of self-organization;

(b) initiate, create, dominate, contribute to, or interfere with the formation or administration of any employee organization that has collective bargaining as one of its principal functions;

(c) discriminate in regard to hire terms or conditions of employment when a purpose ~~of such~~ is to discourage membership in an employee organization that has collective bargaining as one of its principal functions;

(d) refuse to meet and bargain in good faith with the ~~duty~~ designated representatives of an appropriate bargaining unit of its employees. For the purpose of this subsection (1)(d), it is a requirement of bargaining in good faith that the parties be willing to reduce ~~in~~ to writing and have their representative sign any agreement arrived at through negotiations and discussion.

(e) unilaterally exclude from work or prevent from working or discharge any one or more employees when the purpose of ~~such~~ the action is in whole or in part to interfere with or coerce or intimidate an employee in the exercise of rights ~~assured~~ ensured in this law.

(2) It is an unfair labor practice for a labor organization or its agents to:

(a) restrain or coerce employees in the exercise of the right to:

(i) form, join, or assist any labor organization;

(ii) bargain collectively through representatives of their own choosing; or

(iii) engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

(b) restrain or coerce an employer in the selection of ~~his~~ a representative for the purpose of collective bargaining or the adjustment of grievances;

(c) refuse to bargain collectively in good faith with an employer if it has been designated as the exclusive

representative of employees;

(d) use agency shop fees for contributions to political candidates or parties."

Section 1520. Section 39-33-101, MCA, is amended to read:

"39-33-101. Intent of part. It is the intent of this part that a sole proprietor or a member of a partnership consisting of not more than two partners who own a retail or amusement establishment and the members of ~~his~~ the proprietor's or partner's immediate family ~~shall have the right to~~ may do any work in ~~his~~ the place of business without interference by any union or any member ~~thereof~~ of the union."

Section 1521. Section 39-33-102, MCA, is amended to read:

"39-33-102. Immediate family defined. "Immediate family" ~~shall include~~ includes the owner, ~~his~~ the owner's spouse, and any children under the age of 18 years."

Section 1522. Section 39-33-103, MCA, is amended to read:

"39-33-103. Unfair labor practice. Any union or member ~~thereof~~ of a union who ~~shall infringe or interfere~~ infringes or interferes with the right of an owner and the members of ~~his~~ the owner's immediate family to do any work in ~~his~~ the owner's place of business ~~shall be~~ is guilty of an unfair labor practice."

Section 1523. Section 39-33-202, MCA, is amended to read:

"39-33-202. Professional strikebreakers prohibited. (1) An employer involved in a labor dispute may not employ in the place of an employee involved in ~~such~~ the dispute a professional strikebreaker who customarily and repeatedly offers ~~himself for employment~~ to be employed in the place of employees involved in labor disputes.

(2) A professional strikebreaker who customarily and repeatedly offers ~~himself for employment~~ to be employed in place of employees involved in labor disputes may not take or offer to take the place in employment of an employee involved in a labor dispute within the state."

Section 1524. Section 39-34-103, MCA, is amended to read:

"39-34-103. Powers and duties of arbitrator for firefighters and public employers. (1) The arbitrator shall establish dates and a place for hearings and may subpoena witnesses and require the submission of evidence necessary to resolve the impasse.

(2) Prior to making a determination on any issue relating to the impasse, the arbitrator may refer the issues back to the parties for further negotiation.

(3) At the conclusion of the hearings, the arbitrator shall require the parties to submit their respective final position on matters in dispute.

(4) The arbitrator shall make a just and reasonable determination of which final position on matters in dispute will be adopted within 30 days of the commencement of the arbitration proceedings. The arbitrator shall notify the board of personnel appeals and the parties, in writing, of ~~his~~ the determination.

(5) In arriving at a determination, the arbitrator shall consider any relevant circumstances, including:

(a) comparison of hours, wages, and conditions of employment of the employees involved with employees performing similar services and with other services generally;

(b) the interests and welfare of the public and the financial ability of the public employer to pay;

(c) appropriate cost-of-living indices;

(d) any other factors traditionally considered in the determination of hours, wages, and conditions of employment.

(6) The determination of the arbitrator is final and binding and is not subject to the approval of any governing body."

Section 1525. Section 39-51-102, MCA, is amended to read:

"39-51-102. Declaration of state public policy. As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows:

(1) Economic insecurity ~~due to~~ because of unemployment is a serious menace to the health, morals, and welfare of the people of this state.

(2) Involuntary unemployment is, therefore, a subject of general interest and concern ~~which~~ that requires appropriate action by the legislature to prevent its spread and to lighten its burden ~~which~~ that now so often falls with crushing force upon the unemployed worker and ~~his~~ the worker's family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance.

(3) The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this ~~measure~~ chapter under the police powers of the

state for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own."

Section 1526. Section 39-51-206, MCA, is amended to read:

"39-51-206. Agricultural labor -- who treated as employer of member of a crew furnished by a crew leader. (1) For the purposes of 39-51-203, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person ~~shall~~ must be treated as an employee of ~~such the~~ crew leader if:

(a) ~~such the~~ crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act, as amended, (29 U.S.C. 1801, et seq.); or

(b) (i) substantially all the members of ~~such the~~ crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment ~~which that~~ is provided by ~~such the~~ crew leader; and

(ii) ~~such the~~ individual is not an employee of ~~such the~~ other person for whom services in agricultural labor are performed.

(2) In the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of ~~such the~~ crew leader under subsection (1):

(a) ~~such the~~ other person and not the crew leader ~~shall~~ must be treated as the employer of ~~such the~~ individual; and

(b) ~~such the~~ other person ~~shall~~ must be treated as having paid cash remuneration to ~~such the~~ individual in an amount equal to the amount of cash remuneration paid to ~~such the~~ individual by the crew leader, either on ~~his the crew leader's~~ own behalf or on behalf of ~~such the~~ other person, for the service in agricultural labor performed for ~~such the~~ other person.

(3) The term "crew leader" means an individual who:

(a) furnishes individuals to perform service in agricultural labor for any other person;

(b) pays, either on ~~his the crew leader's~~ own behalf or on behalf of ~~such the~~ other person, the individuals ~~so~~ furnished by ~~him the crew leader~~ for the service in agricultural labor performed by them; and

(c) has not entered into a written agreement with ~~such the~~ other person under which ~~such the~~ individual is designated as an employee of ~~such the~~ other person."

Section 1527. Section 39-51-305, MCA, is amended to read:

"39-51-305. Department to appoint appeals referees. To hear and decide disputed claims, the department shall appoint ~~such~~ impartial salaried appeals referees ~~as~~ who are necessary for the proper administration of this chapter in accordance with 39-51-304. ~~No~~ A person ~~shall~~ may not participate on behalf of the department in any case in which ~~he~~ the person is an interested party. The department may designate alternates to serve in the absence or disqualification of an appeals referee."

Section 1528. Section 39-51-309, MCA, is amended to read:

"39-51-309. Representation of department and state in court. (1) In any civil action to enforce the provisions of this chapter, the department and the state may be represented by any qualified attorney who is employed by the department and is designated by it for this purpose or, at the department's or board's request, by the attorney general.

(2) All criminal actions for violation of any provision of this chapter or of any rules issued pursuant ~~thereto~~ shall to this chapter must be prosecuted by the attorney general of the state or, at ~~his~~ the attorney general's request and under ~~his~~ the attorney general's direction, by the county attorney of the county ~~wherein~~ in which the crime was committed."

Section 1529. Section 39-51-601, MCA, is amended to read:

"39-51-601. Department to maintain wage record. The department shall maintain a record of the wages paid to an individual in accordance with wages earned by ~~him~~ the individual for employment by employers during each quarter."

Section 1530. Section 39-51-1215, MCA, is amended to read:

"39-51-1215. Maintenance of experience rating records. An experience rating record ~~shall~~ must be maintained for each covered employer. The record is credited with all contributions ~~which~~ that the covered employer has paid since October 1, 1981. The record ~~is~~ must also be charged with the amount of benefits paid ~~which~~ that are chargeable to the covered employer's account since October 1, 1981. ~~Nothing in this~~ This section ~~grants~~ does not grant any covered employer or individual in ~~his~~ the covered employer's service a priority with respect to any claim or right because of amounts paid by the covered employer into the employment security fund."

Section 1531. Section 39-51-1216, MCA, is amended to read:

"39-51-1216. Experience rating record voided when account inactive. Whenever an employer whose coverage has been terminated because ~~he~~ the employer has ceased to do business or because ~~he~~ the employer has not covered employment for a period of 3 years becomes a covered employer, ~~he~~ the employer is considered a new employer and ~~he is~~ may not be credited with ~~his~~ previous experience for the purpose of computing any future "experience factor"."

Section 1532. Section 39-51-1302, MCA, is amended to read:

"39-51-1302. Summary or jeopardy assessment of unpaid taxes. (1) If ~~any~~ an employer fails to file a report or return as required under this chapter or the regulations of the department adopted ~~thereunder~~ to implement this chapter within the time specified or if the employer's records are inaccurate or are incomplete when an employer has already filed a quarterly wage report for the period in question, the department may make a summary or jeopardy assessment of the amount due by making up ~~such~~ the report and determining the amount of taxes due and owing to the fund upon the basis of ~~such~~ information ~~as~~ that the department may be able to obtain, and ~~thereupon the same shall~~ the taxes must be collected the same as other reports and taxes due, with penalty and interest as provided in this chapter.

(2) Upon making ~~such~~ a summary or jeopardy assessment, the department shall immediately notify the employer in writing by personal service or by certified mail in the usual course at the ~~last-known~~ last-known principal place of business operated by the employer. ~~Such~~ The assessment ~~shall be~~ is final unless the employer ~~shall protest such~~ protests the assessment in writing within 15 days after service of the notice or, within the same period of time, the employer ~~shall file~~ files a correct, signed, and sworn report and statement as provided by the chapter and the regulations of the department.

(3) Upon written protest being filed as ~~above set forth~~ provided in subsection (2), a day certain for the hearing ~~thereof shall~~ of the protest must be fixed by the department and notice ~~thereof~~ of the hearing date mailed to the employer. At ~~such~~ the hearing, the facts ascertained by the department ~~shall be~~ are conclusive and the department may upon the basis of ~~such~~ the facts ascertained assess the amount due, modify, set aside, or revise the prior assessment, and require the employer to pay the amount due with penalty and interest as provided for in this chapter. A copy of the decision of the department and the assessment of the amount due ~~shall~~ must be mailed to the employer at ~~his~~ the employer's ~~last-known~~ last-known principal place of business and ~~thereupon~~ become upon mailing becomes final."

Section 1533. Section 39-51-1306, MCA, is amended to read:

"39-51-1306. Reciprocity with other states for collection of unpaid taxes. (1) The courts of this state shall recognize and enforce liabilities for unemployment taxes and any other special assessments imposed by other states ~~which~~ that extend a like comity to this state.

(2) The department ~~is hereby empowered to~~ may sue in the courts of any other jurisdiction ~~which~~ that extends ~~such~~ comity to collect unemployment taxes, penalties, and interest due this state. The officials of other states ~~which~~ that by statute or otherwise extend a like comity to this state may sue in the courts of this state to collect ~~for such~~ the taxes and any other special assessments and interest and penalties, if any, due ~~such~~ that state. In any ~~such~~ case brought for another state, the administrator may through ~~his~~ the administrator's attorney ~~or attorneys~~ institute and conduct ~~such~~ the suit for ~~such~~ the other state.

(3) Venue of ~~such~~ proceedings ~~shall~~ under this section must be the same as for actions to collect delinquent taxes, penalties, and interest due under this chapter.

(4) A certificate by the secretary of any ~~such~~ state under the great seal of ~~such~~ that state attesting the authority of ~~such~~ the official ~~or officials~~ to collect unemployment insurance taxes and any other special assessments, penalties, and interest ~~shall be~~ is conclusive evidence of ~~such~~ that authority."

Section 1534. Section 39-51-2107, MCA, is amended to read:

"39-51-2107. Services for remuneration to be performed during benefit year as condition for receiving benefits in second benefit year -- amount required. An individual who received benefits during a benefit year ~~must~~ shall perform services for remuneration following the initial separation from employment in the previous benefit year as a condition for receiving benefits in a second benefit year. The service must constitute employment as defined in 39-51-203 and 39-51-204. However, the individual must have earned the lesser of three-thirteenths of ~~his~~ the individual's high quarter of ~~his~~ the individual's second benefit year or ~~6~~ six times ~~his~~ the individual's weekly benefit amount of that same year."

Section 1535. Section 39-51-2305, MCA, is amended to read:

"39-51-2305. Disqualification when unemployment due to because of strike. (1) An individual ~~shall~~ must be disqualified for benefits for any week with respect to which the department finds that ~~his~~ the individual's total unemployment is due to a strike ~~which~~ that exists because of a labor dispute at the factory, establishment, or other premises at which ~~he~~ the individual is or was last employed; ~~provided that~~ However, this subsection ~~shall~~ does not apply if it is shown to the satisfaction of the department that the individual:

(a) ~~he~~ is not participating in or financing or directly interested in the labor dispute ~~which~~ that caused the

strike; and

(b) ~~he~~ does not belong to a grade or class of workers of which, immediately before the commencement of the strike, there were members employed at the premises at which the strike occurs, any of whom are participating in or financing or directly interested in the dispute.

(2) If in any case separate branches of work ~~which that~~ are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each ~~such~~ department ~~shall~~ must, for the purpose of this section, be ~~deemed~~ considered to be a separate factory, establishment, or other premises.

(3) If the department, upon investigation, ~~shall find~~ finds that ~~such the~~ labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state ~~wherein in which~~ the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages, or other conditions of work, ~~such the~~ labor dispute ~~shall~~ may not render the workers ineligible for benefits."

Section 1536. Section 39-51-2401, MCA, is amended to read:

"39-51-2401. Claims to be made in accordance with ~~regulations~~ rules -- employers to post and make available copies of ~~such regulations~~ rules. Claims for benefits ~~shall~~ must be made in accordance with ~~such regulations as~~ rules that the department may prescribe. Each employer shall post and maintain printed statements of ~~such regulations~~ the rules in places readily accessible to individuals in ~~his~~ the employer's service and shall make available to each ~~such~~ individual at the time ~~he~~ the individual becomes unemployed a printed statement of ~~such regulations~~ the rules. ~~Such~~ The printed statements ~~shall~~ must be supplied by the department to each employer without cost to ~~him~~ the employer."

Section 1537. Section 39-51-2509, MCA, is amended to read:

"39-51-2509. Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in ~~his~~ the individual's eligibility period ~~shall~~ must be an amount equal to the weekly benefit amount payable to ~~him~~ the individual during ~~his~~ the individual's applicable benefit year."

Section 1538. Section 39-51-3101, MCA, is amended to read:

"39-51-3101. Protection against self-incrimination. ~~No~~ A person ~~shall~~ may not be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the department or board, the ~~chairman~~ presiding officer of an appeal tribunal, or any ~~duly~~ authorized

representative of either of them or in obedience to the subpoena of the department or board or any member ~~thereof of the board~~ or any ~~duly~~ authorized representative of the department in any cause or proceeding before the department or board on the ground that the testimony or evidence, documentary or otherwise, required of ~~him~~ the person may tend to incriminate ~~him~~ the person or subject ~~him~~ the person to a penalty or forfeiture; ~~but no~~ However, an individual shall may not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which ~~he~~ the individual is compelled, after having claimed ~~his~~ the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that ~~such~~ the individual ~~so~~ testifying ~~shall is~~ not be exempt from prosecution and punishment for perjury committed in ~~so~~ testifying."

Section 1539. Section 39-51-3102, MCA, is amended to read:

"39-51-3102. Certain agreements in violation of chapter void. (1) Any agreement by an individual to waive, release, or commute ~~his~~ the individual's rights to benefits or any other rights under this chapter ~~shall be is~~ void.

(2) Any agreement by ~~any an~~ individual in the employ of any person or concern to pay all or any portion of an employer's contributions required under this chapter from ~~such the~~ employer ~~shall be is~~ void."

Section 1540. Section 39-51-3103, MCA, is amended to read:

"39-51-3103. Employer prohibited from making, requiring, or accepting deduction from wages or requiring or accepting waiver of rights under chapter -- penalty for violation. (1) ~~No An~~ employer ~~shall may not~~, directly or indirectly, ~~make, or require,~~ or accept any deduction from wages to finance the employer's contributions required from ~~him~~ the employer or require or accept ~~any a~~ waiver of any right ~~hereunder under this chapter~~ by an individual in ~~his~~ the employer's employ.

(2) ~~Any An~~ employer or officer or agent of an employer who violates any provision of ~~this section or~~ 39-51-3102 or this section shall, for each offense, be fined not more than \$1,000 or be imprisoned for not more than 6 months, or both."

Section 1541. Section 39-51-3104, MCA, is amended to read:

"39-51-3104. Limitation of fees in claim for benefits -- penalty for violation. (1) ~~No An~~ individual claiming benefits ~~shall may not~~ be charged fees of any kind in ~~any a~~ proceeding under this chapter by the department or its representatives or by any court or any officer ~~thereof of the court~~.

(2) ~~Any~~ An individual claiming benefits in ~~any a~~ proceeding before the ~~chairman~~ presiding officer of an appeal tribunal or the department or its representatives, the board, or a court may be represented by counsel or other duly authorized agent, but ~~no such the~~ counsel or agents ~~shall~~ may not either charge or receive for ~~such the~~ services more than an amount approved by the department or board.

(3) ~~Any~~ A person who violates any provision of this section shall, for each ~~such~~ offense, be fined not more than \$500 or be imprisoned for not more than 6 months, or both."

Section 1542. Section 39-51-3203, MCA, is amended to read:

"39-51-3203. Obtaining benefits through deception or other fraudulent means -- criminal penalty.

A person who, through deception or other fraudulent means, obtains benefits ~~which he~~ that the person is not entitled to under this chapter or under an employment security law of any other state or territory or the federal government or a person legally accountable for ~~such that~~ conduct under 45-2-302 is guilty of a crime under 45-6-301, and a county attorney may initiate criminal proceedings against ~~him~~ the person."

Section 1543. Section 39-71-411, MCA, is amended to read:

"39-71-411. Provisions of chapter exclusive remedy -- nonliability of insured employer. For all employments covered under the Workers' Compensation Act or for which an election has been made for coverage under this chapter, the provisions of this chapter are exclusive. Except as provided in part 5 of this chapter for uninsured employers and except as otherwise provided in the Workers' Compensation Act, an employer is not subject to any liability whatever for the death of or personal injury to an employee covered by the Workers' Compensation Act or for any claims for contribution or indemnity asserted by a third person from whom damages are sought on account of ~~such the~~ injuries or death. The Workers' Compensation Act binds the employee ~~himself~~; and, in case of death, binds ~~his~~ the employee's personal representative and all persons having any right or claim to compensation for ~~his~~ the employee's injury or death, as well as the employer and the servants and employees of ~~such the~~ employer and those conducting ~~his~~ the employer's business during liquidation, bankruptcy, or insolvency."

Section 1544. Section 39-71-412, MCA, is amended to read:

"39-71-412. Liability of third party other than employer or fellow employee -- additional cause of action. The right to compensation and medical benefits as provided by this chapter is not affected by the fact that the injury, occupational disease, or death is caused by the negligence of a third party other than the employer

or the servants or employees of the employer. Whenever ~~such event~~ injury, occupational disease, or death occurs to an employee while performing the duties of ~~his~~ the employment and ~~such~~ the event is caused by the act or omission of some persons or corporations other than ~~his~~ the employee's employer or the servants or employees of ~~his~~ the employee's employer, the employee or in case of ~~his~~ the employee's death ~~his~~ the employee's heirs or personal representative ~~shall~~, in addition to the right to receive compensation under this chapter, ~~have~~ has a right to prosecute any cause of action ~~he~~ that the employee or heirs may have for damages against ~~such~~ the persons or corporations."

Section 1545. Section 39-71-509, MCA, is amended to read:

"39-71-509. Action against uninsured employer -- limitation of employer's defenses. If an injured employee or the employee's beneficiaries bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries ~~so~~ sustained, it is not a defense for the employer that the:

- (1) employee was negligent unless ~~such~~ the negligence was willful;
- (2) injury was caused by the negligence of a fellow employee; or
- (3) employee had assumed the risks inherent in, incident to, or arising out of ~~his~~ the employee's employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances."

Section 1546. Section 39-71-515, MCA, is amended to read:

"39-71-515. Independent cause of action. (1) An injured employee or the employee's beneficiaries have an independent cause of action against an uninsured employer for failure to be enrolled in a compensation plan as required by this chapter.

(2) In ~~such~~ an action described in subsection (1), prima facie liability of the uninsured employer exists if the claimant proves, by a preponderance of the evidence, that:

(a) the employer was required by law to be enrolled under compensation plan No. 1, 2, or 3 with respect to the claimant; and

(b) the employer was not ~~so~~ enrolled on the date of the injury or death.

(3) It is not a defense to ~~such~~ an action that the employee had knowledge of or consented to the employer's failure to carry insurance or that the employee was negligent in permitting ~~such~~ the failure to exist.

(4) The amount of recoverable damages in ~~such~~ an action is the amount of compensation that the employee would have received had the employer been properly enrolled under compensation plan No. 1, 2, or

3.

(5) A plaintiff who prevails in an action brought under this section is entitled to recover reasonable costs and attorney fees incurred in the action, in addition to ~~his~~ damages."

Section 1547. Section 39-71-518, MCA, is amended to read:

"39-71-518. Setoffs against remaining liability. Any actual monetary compensation received by judgment or settlement by the injured employee or the employee's beneficiaries under 39-71-509 or 39-71-515 may be offset by the uninsured employer against ~~his~~ the employer's remaining liability under those sections."

Section 1548. Section 39-71-726, MCA, is amended to read:

"39-71-726. No compensation after death ~~where~~ when death not result of injury. If the employee ~~shall die~~ dies from some cause other than the injury, there ~~shall be~~ is no liability for compensation after ~~his~~ the death."

Section 1549. Section 39-71-2102, MCA, is amended to read:

"39-71-2102. Proof of solvency to be filed. ~~Every~~ Each employer who has elected to be bound by compensation plan No. 1 shall file proof of ~~his~~ solvency within the time and in the form ~~as may be~~ prescribed by the rules or orders of the department."

Section 1550. Section 39-71-2401, MCA, is amended to read:

"39-71-2401. Disputes -- jurisdiction -- settlement requirements -- mediation. (1) A dispute concerning benefits arising under this chapter, other than the disputes described in subsection (2), must be brought before a department mediator as provided in this part. If a dispute still exists after the parties satisfy the mediation requirements in this part, either party may petition the workers' compensation court for a resolution.

(2) A dispute arising under this chapter that does not concern benefits or a dispute for which a specific provision of this chapter gives the department jurisdiction must be brought before the department.

(3) An appeal from a department order may be made to the workers' compensation court.

(4) Except as otherwise provided in this chapter, before a party may bring a dispute concerning benefits before a mediator, the parties shall attempt to settle as follows:

(a) The party making a demand shall present the other party with a specific written demand that contains sufficient explanation and documentary evidence to enable the other party to thoroughly evaluate the demand.

(b) The party receiving the demand shall respond in writing within 15 working days of receipt. If the demand is denied in whole or in part, the response ~~shall~~ must state the basis of the denial.

(c) Upon motion of a party or upon the mediator's own motion, the mediator has the authority to dismiss a petition if ~~he~~ the mediator finds that either party did not comply with this subsection (4). A decision dismissing a petition under this subsection (4)(c) must be in writing and must state in detail the grounds for dismissal. The mediator's decision may be reviewed by the workers' compensation court upon motion of a party.

(d) ~~Nothing in this~~ This subsection relieves (4) does not relieve a party of an obligation otherwise contained in this chapter."

Section 1551. Section 39-71-2910, MCA, is amended to read:

"39-71-2910. Stay pending posttrial motions and appeal. (1) Upon the filing of a judgment or order of the workers' compensation judge, a party may apply to the workers' compensation judge, upon notice or ex parte, for a stay of execution of the judgment or order. The stay may be for a period of time and be under conditions ~~as~~ that the judge considers proper. A stay of execution under this subsection may not extend for more than 30 days following the judge's disposition of posttrial motions.

(2) The appellant may request of the workers' compensation judge or the supreme court, upon service of a notice of appeal, a stay of execution of the judgment or order pending resolution of the appeal. The appellant may request a stay by presenting a supersedeas bond to the workers' compensation judge and obtaining ~~his~~ the approval of the bond. The bond must have two sufficient sureties or a corporate surety as authorized by law. A court granting a stay may waive the bond requirement. The procedure for requesting a stay and posting a supersedeas bond must be the same as the procedure in Rule 22, Montana Rules of Appellate Procedure."

Section 1552. Section 39-71-2914, MCA, is amended to read:

"39-71-2914. Signing of petitions, pleadings, motions, and other papers -- requirements -- sanctions. (1) Every petition, pleading, motion, or other paper of a party appearing before the workers' compensation court and represented by an attorney must be signed by at least one attorney of record in ~~his~~ the attorney's individual name. The signer's address also must be stated.

(2) A party who is not represented by an attorney shall sign ~~his~~ the party's petition, pleading, motion, or other paper and state ~~his~~ the party's address.

(3) The signature of an attorney or party constitutes a certificate by ~~him~~ the attorney or party that:

(a) ~~he~~ the attorney or party has read the petition, pleading, motion, or other paper;

(b) to the best of ~~his~~ the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact;

(c) it is warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law; and

(d) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(4) If a petition, pleading, motion, or other paper is signed in violation of this section, the court, upon motion or upon its own initiative, shall impose an appropriate sanction upon the person who signed it, a represented party, or both. The sanction may include an order to pay to the other party or parties the amount of the reasonable expense incurred because of the filing of the petition, pleading, motion, or other paper, including reasonable attorney fees."

Section 1553. Section 39-73-102, MCA, is amended to read:

"39-73-102. Administration -- duties of department. The department of labor and industry shall administer this chapter. The department shall:

(1) formulate a plan and adopt rules for the operation of this chapter;

(2) cooperate with the federal government in all matters of immediate concern pertaining to silicosis;

(3) designate the procedure to be followed in securing a competent medical examination for the purposes of determining silicosis in each individual applicant;

(4) designate suitable physicians or physician, well qualified to examine applicants for aid under this chapter;

(5) pay the actual transportation expenses of any applicant from the applicant's place of ~~his~~ residence in the state to the place of examination and return, from funds appropriated to the department for that purpose;

(6) develop and cooperate with other agencies in developing measures for the prevention of silicosis."

Section 1554. Section 39-73-105, MCA, is amended to read:

"39-73-105. Application for payment. Application for payment under this chapter ~~shall~~ must be made by the person seeking ~~such~~ the payment to the department of labor and industry. The application ~~shall~~ must be in writing or reduced to writing in the manner and upon the form prescribed by the department. The application form may be filled in and written by a person authorized by the department. If the applicant is unable to sign ~~his~~ or her the applicant's name on the application, a ~~duly~~ witnessed mark may be used."

Section 1555. Section 39-73-108, MCA, is amended to read:

"39-73-108. Payment of benefits where when person entitled is in institution. If ~~any~~ a person who is entitled to benefits under this chapter ~~shall be~~ is an inmate in any Montana state institution, benefits ~~shall~~ may not be paid to ~~him~~ the person but ~~shall~~ must be paid ~~his~~ to the person's beneficiary, if any, as defined in 39-71-116."

Section 1556. Section 39-73-111, MCA, is amended to read:

"39-73-111. Representative payee -- appointment -- duties. (1) The department of labor and industry may appoint a representative payee to apply for and receive payment of silicosis benefits on behalf of a person eligible for ~~such~~ the payments or ~~his~~ the person's beneficiary if the department determines that ~~such~~ the appointment is in the best interests of the person or ~~his~~ the person's beneficiary. The representative payee may be a person, a corporation, a government agency, or an institution, including a nursing home or extended care facility providing care for the person or ~~his~~ the person's beneficiary.

(2) To determine the best interests of the eligible person or ~~his~~ the person's beneficiary for appointment of a representative payee, the department may consider:

- (a) a court determination of incompetence;
- (b) medical evidence;
- (c) relevant information from any person, corporation, government agency, or institution; and
- (d) other relevant information.

(3) The department shall:

- (a) determine the circumstances in which a representative payee may be appointed;
- (b) establish procedures for ~~his~~ the appointment; and
- (c) establish the representative payee's responsibilities.

(4) The representative payee shall:

(a) act as a trustee to the person eligible for silicosis payments or ~~his~~ the person's beneficiary in handling payments received; and

(b) maintain and expend ~~such~~ the funds for the benefit and best interests of the eligible person or ~~his~~ the person's beneficiary.

(5) The department's obligation under this chapter is fully discharged upon payment of benefits to the representative payee."

Section 1557. Section 40-1-201, MCA, is amended to read:

"40-1-201. License application. (1) ~~No~~ A Montana resident may not be joined in marriage within this state until a license has been obtained for that purpose from a clerk of the district court.

(2) A license ~~so issued shall authorize~~ authorizes a marriage ceremony to be performed in ~~the county where the license is issued or in any other~~ county of this state.

(3) If both parties are nonresidents of the state, the license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of the persons is a nonresident of the county where the license is to issue, ~~his~~ the nonresident's part of the application may be completed and sworn to or affirmed before the person authorized to accept ~~such~~ license applications in the county and state in which ~~he~~ that person resides."

Section 1558. Section 40-1-207, MCA, is amended to read:

"40-1-207. Examination by health officer. ~~Any~~ An applicant for a marriage license may, ~~if he so chooses,~~ be examined free of charge by the county physician or county health officer."

Section 1559. Section 40-1-312, MCA, is amended to read:

"40-1-312. Persons who may draft declaration of marriage. ~~It shall be~~ is unlawful for any person other than the parties to ~~such~~ the written declaration to draw any ~~such~~ declaration of marriage unless ~~he shall have been~~ the person is ~~duly~~ licensed to practice law in the state of Montana."

Section 1560. Section 40-1-404, MCA, is amended to read:

"40-1-404. Putative spouse. ~~Any~~ A person who has cohabited with another to whom ~~he~~ the person is not legally married in the good faith belief that ~~he~~ the person was married to that person is a putative spouse until knowledge of the fact that ~~he~~ the person is not legally married terminates ~~his~~ that status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of ~~his~~ that status, whether or not the marriage is prohibited, ~~(as provided in 40-1-401),~~ or declared invalid, ~~(as provided in 40-1-402).~~ If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice."

Section 1561. Section 40-2-103, MCA, is amended to read:

"40-2-103. Support of spouse. If a married person who is able neglects to make adequate provision for the financial support of his the person's spouse, except in the cases mentioned in 40-2-104, any other person may in good faith supply the spouse with articles necessary for support and recover the reasonable value ~~thereof~~ of the articles from the married person who has failed to provide ~~such~~ support."

Section 1562. Section 40-2-104, MCA, is amended to read:

"40-2-104. Liability of married person when abandoned by spouse. A married person abandoned by his a spouse is not liable for the spouse's support until the spouse offers to return, unless the spouse was justified by the person's misconduct in abandoning ~~him~~ that person, nor is a married person liable for support of a spouse who is living separate from ~~him~~ the person by agreement, unless ~~such~~ support is stipulated in the agreement."

Section 1563. Section 40-2-107, MCA, is amended to read:

"40-2-107. May sue and be sued. A married person may sue and be sued in the same manner as if ~~he~~ the person were ~~sole~~ single."

Section 1564. Section 40-2-108, MCA, is amended to read:

"40-2-108. Married person as personal representative, guardian, conservator, or trustee. A married person may be a personal representative, guardian, conservator, or trustee and may personally bound and may bind ~~himself and~~ the estate ~~he~~ the person represents without any act or assent on the part of the person's spouse."

Section 1565. Section 40-2-109, MCA, is amended to read:

"40-2-109. Right of person to sue spouse for intentional tort. A person has a cause of action against his the person's spouse for damages caused by the spouse's intentional tort against ~~such~~ the person, and the ~~common-law~~ common-law doctrine of interspousal tort immunity is, to that extent, abolished."

Section 1566. Section 40-2-202, MCA, is amended to read:

"40-2-202. Individual property of married person. All the property of a married person owned before marriage and that acquired afterwards is his that person's individual property. The married person may, without

consent, agreement, and signature of ~~his~~ the person's spouse, convey and transfer ~~his~~ the person's individual property, real or personal, including the fee simple title to real property, or execute a power of attorney for the conveyance and transfer ~~thereof~~ of property."

Section 1567. Section 40-2-203, MCA, is amended to read:

"40-2-203. Inventory of individual personal property of married person. A married person's title to and ownership of ~~his~~ the person's individual property may be proved or demonstrated in the same manner that a single person's ownership of or title to ~~his~~ a single person's individual property may be proved. ~~Provided, however~~ However, that if a married person chooses, ~~he~~ the person may make out and sign an inventory of ~~his~~ the person's individual personal property, which ~~inventory shall~~ must be acknowledged or proved in the same manner required by law for the acknowledgment or proof of a grant of real property and recorded in the office of the county clerk of the county in which the person lives."

Section 1568. Section 40-2-205, MCA, is amended to read:

"40-2-205. Earnings and accumulations of married person. The earnings and accumulations of a married person are not liable for the debts of that person's spouse except for debts incurred for necessary articles procured for the use and benefit of the married person, ~~his~~ the person's spouse, or minor children."

Section 1569. Section 40-2-206, MCA, is amended to read:

"40-2-206. ~~Same~~ Earnings and accumulations -- when separated. The earnings and accumulations of a married person and of ~~his~~ the person's minor children living with ~~him~~ the person or in ~~his~~ the person's custody, while ~~he~~ the person is living separate from ~~his~~ the person's spouse, are the individual property of ~~such~~ that person except that, to the extent that a mutual duty of support between the husband and wife as established by 40-2-102 still exists, ~~such~~ the earnings and accumulations are liable for debts incurred for necessary articles procured for the use and benefit of the married person, ~~his~~ the person's spouse, or minor children."

Section 1570. Section 40-2-207, MCA, is amended to read:

"40-2-207. Work and labor of married person. All work and labor performed by a married person for a person other than ~~his~~ the married person's spouse and children ~~shall~~ must, unless there is a written agreement on ~~his~~ the person's part to the contrary, be presumed to be performed on ~~his~~ the person's separate account. This section does not affect the liability of earnings for debts incurred for necessary articles procured for the use and

benefit of the married person, ~~his~~ the person's spouse, or minor children, as established by 40-2-205, 40-2-206, 40-2-209, and 40-2-210."

Section 1571. Section 40-2-210, MCA, is amended to read:

"40-2-210. Necessity determined by standard of living. For purposes of determining whether a married person's earnings or individual property ~~are~~ is exempt from the debts incurred by the person's spouse, the phrase "necessary articles" includes all ~~such~~ goods and services ~~as~~ that are reasonably required to provide for the health, welfare, comfort, and education of the married person, ~~his~~ the person's spouse, and minor children, taking into consideration the earnings, resources, and general standard of living of ~~such~~ the persons."

Section 1572. Section 40-2-302, MCA, is amended to read:

"40-2-302. Liability of spouse. The contracts made by a married person ~~in~~ with respect to ~~his~~ the ~~person's~~ individual property, labor, or services ~~shall not be~~ are not binding upon the person's spouse ~~nor~~ and do not render ~~him~~ the spouse or ~~his~~ the spouse's property liable ~~therefor,~~ but for the contracts. However, the contracting person and that person's individual property ~~shall be~~ are liable on ~~such~~ the contracts in the same manner as if ~~such~~ the person were ~~sole~~ single."

Section 1573. Section 40-3-113, MCA, is amended to read:

"40-3-113. Transfer of cases. Another district judge may be called in by the judge of the conciliation court to act as judge of the conciliation court during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform ~~his~~ the judge's duties. ~~Any~~ An appointed judge ~~so appointed~~ shall have has all of the powers and authority of a judge of the conciliation court in cases under this chapter."

Section 1574. Section 40-3-116, MCA, is amended to read:

"40-3-116. Privacy of hearings. (1) All district court hearings or conferences in proceedings under this chapter ~~shall~~ must be held in private, and the court shall exclude all persons except the officers of the court, the parties, their counsel, and witnesses. Conferences may be held with each party and ~~his~~ that party's counsel separately. In the discretion of the judge or counselor conducting the conference or hearing, all counsel may be excluded. All communications, verbal or written, from parties to the judge or counselor in a proceeding under this chapter ~~shall be deemed~~ are considered made to ~~such~~ the officer in official confidence.

(2) The files of the conciliation court ~~shall~~ must be closed. The petition, supporting affidavit, reconciliation

agreement, and any court order made in the matter may be opened to inspection by any party or ~~his~~ the party's counsel upon the written authority of the judge of the conciliation court."

Section 1575. Section 40-3-124, MCA, is amended to read:

"40-3-124. Manner of conciliation. (1) The judge of the conciliation court may hear all matters invoked under this chapter; or ~~he~~ may refer ~~such the~~ matters to a pastor or director of any religious denomination to which the parties may belong, psychiatrist, physician, attorney, social worker, or other person who is competent and qualified by training and experience in personal counseling. ~~Such~~ The person ~~shall be~~ is referred to ~~herein~~ in this section as the conciliation counselor.

(2) The conciliation counselor shall:

(a) hold conciliation conferences with parties to, and hearings in, proceedings under this chapter and make recommendations concerning ~~such the~~ proceedings to the judge of the conciliation court;

(b) cause ~~such~~ reports to be made, ~~such~~ statistics to be compiled, and ~~such~~ records to be kept ~~as that~~ the judge of the conciliation court may direct."

Section 1576. Section 40-3-125, MCA, is amended to read:

"40-3-125. Hearings. (1) The court shall fix a reasonable time and place for hearing on the petition and shall cause ~~such the~~ notice of the filing of the petition and the time and place of the hearing as it considers necessary to be given to the respondents. The court may, when it considers it necessary, issue a citation to any respondent requiring ~~him~~ the respondent to appear at the time and place stated in the citation and may require the attendance of witnesses as in other civil cases.

(2) For the purpose of conducting hearings pursuant to this chapter, the conciliation court may be convened at any time and place within the district and the hearing may be had in chambers or otherwise, except that the time and place for hearing may not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

(3) The hearing ~~shall~~ must be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of this chapter, the court may, with the consent of both of the parties to the proceeding, recommend or invoke the aid of physicians, psychiatrists, other specialists or scientific experts, or the pastor or director of any religious denomination to which the parties may belong. ~~Such aid, however, shall~~ However, the aid may not be at the expense of the court or of the county, unless the county commissioners of

the county specifically provide and authorize ~~such~~ the aid."

Section 1577. Section 40-4-131, MCA, is amended to read:

"40-4-131. Joint petition -- filing -- form -- contents. (1) A proceeding for summary dissolution of marriage is commenced by filing in the district court a joint petition in the form prescribed by the court.

(2) The petition must:

- (a) be signed under oath by both parties;
- (b) state that, as of the date of the filing of the joint petition, each condition set forth in 40-4-130 has been met;
- (c) state the mailing address of both parties; and
- (d) state whether or not the wife elects to have ~~her~~ the wife's maiden or former name restored and, if so, state the name to be restored."

Section 1578. Section 40-4-203, MCA, is amended to read:

"40-4-203. Maintenance. (1) In a proceeding for dissolution of marriage or legal separation or a proceeding for maintenance following dissolution of the marriage by a court ~~which that~~ lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

- (a) lacks sufficient property to provide for ~~his~~ the spouse's reasonable needs; and
- (b) is unable to ~~support himself~~ be self-supporting through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(2) The maintenance order ~~shall~~ must be in ~~such~~ amounts and for ~~such~~ periods of time ~~as that~~ the court ~~deems~~ considers just, without regard to marital misconduct, and after considering all relevant facts, including:

- (a) the financial resources of the party seeking maintenance, including marital property apportioned to ~~him that party~~, and ~~his~~ the party's ability to meet ~~his~~ the party's needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;
- (b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;
- (c) the standard of living established during the marriage;
- (d) the duration of the marriage;

(e) the age and the physical and emotional condition of the spouse seeking maintenance; and
(f) the ability of the spouse from whom maintenance is sought to meet ~~his~~ the spouse's own needs while meeting those of the spouse seeking maintenance."

Section 1579. Section 40-4-207, MCA, is amended to read:

"40-4-207. Assignments. The court may order the person obligated to pay support or maintenance to make an assignment of a part of ~~his~~ the person's periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee, or other payor of the funds 2 weeks after service upon ~~him~~ the payor of notice that ~~it~~ the assignment has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payor may deduct from each payment a sum not exceeding \$1 as reimbursement for costs. An employer ~~shall~~ may not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section."

Section 1580. Section 40-5-214, MCA, is amended to read:

"40-5-214. Scale of suggested minimum contributions. (1) The department shall establish a scale of suggested minimum contributions to assist counties and courts in determining the amount that a parent should be expected to contribute toward the support of ~~his~~ a child under this part. The scale must be based on the uniform child support guidelines adopted by the department under 40-5-209.

(2) Copies of the scale must be made available to courts, county offices, and county attorneys; and, upon request, to any other state or county officer or agency engaged in the administration or enforcement of this part. Attorneys admitted to practice in Montana may have access to the scale."

Section 1581. Section 40-6-104, MCA, is amended to read:

"40-6-104. How parent and child relationship established. The parent and child relationship between a child and:

(1) the natural mother may be established by proof of ~~her~~ the mother having given birth to the child or under this part;

(2) the natural father may be established under this part;

(3) an adoptive parent may be established by proof of adoption."

Section 1582. Section 40-6-114, MCA, is amended to read:

"40-6-114. Pretrial recommendations. (1) On the basis of the information produced at the pretrial hearing, the judge or referee conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement ~~shall~~ must be made to the parties, which may include any of the following:

(a) that the action be dismissed with or without prejudice;

(b) that the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge or referee conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge or referee conducting the hearing shall consider the best interest of the child in the light of the factors enumerated in 40-6-116(5), discounted by the improbability, as it appears to ~~him~~ the judge or referee, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on ~~him~~ the alleged father.

(c) that the alleged father voluntarily acknowledge ~~his~~ paternity of the child.

(2) If the parties accept a recommendation made in accordance with subsection (1), judgment ~~shall~~ must be entered accordingly.

(3) If a party refuses to accept a recommendation made under subsection (1) and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable. Thereafter, the judge or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action ~~shall~~ must be set for trial.

(4) If the scientific evidence resulting from the blood tests conclusively shows that the defendant could not have been the father, then the ~~instant~~ action ~~shall~~ must be dismissed.

(5) The guardian ad litem may accept or refuse to accept a recommendation under this section.

(6) The informal hearing may be terminated and the action set for trial if the judge or referee conducting the hearing finds unlikely that all parties would accept a recommendation ~~he might make~~ made under subsection (1) or (3)."

Section 1583. Section 40-6-202, MCA, is amended to read:

"40-6-202. Legitimacy of children born after dissolution of marriage. All children of a woman who has been married, born within 10 months after the dissolution of ~~her~~ the woman's marriage, are presumed to be legitimate children of that marriage."

Section 1584. Section 40-6-214, MCA, is amended to read:

"40-6-214. Reciprocal duties of parents and children in maintaining each other. It is the duty of the father, the mother, and the children of any poor person who is unable to ~~maintain himself~~ provide self-maintenance by work to maintain ~~such that~~ that person to the extent of their ability. The promise of an adult child to pay for necessities previously furnished to ~~such that~~ that parent is binding."

Section 1585. Section 40-6-217, MCA, is amended to read:

"40-6-217. Married person not bound for support of spouse's children by former marriage. A married person is not bound to support ~~his a~~ a spouse's children by a former marriage; ~~but~~ However, if ~~he~~ the person receives ~~them~~ the spouse's children into ~~his~~ the family and supports them, it is presumed that ~~he~~ the person does so as a parent, and, ~~where such is the~~ in that case, ~~they~~ the children are not liable to ~~him~~ the person for their support ~~nor he to them~~ and the person is not liable to the children for their services."

Section 1586. Section 40-6-235, MCA, is amended to read:

"40-6-235. Parent may relinquish services and custody of child. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling ~~him~~ the child and receiving ~~his~~ the child's earnings. Abandonment by the parent is presumptive evidence of ~~such~~ relinquishment."

Section 1587. Section 40-6-236, MCA, is amended to read:

"40-6-236. Wages of minors. The wages of a minor employed in service may be paid ~~him~~ to the minor until the parent or guardian entitled ~~thereto~~ to the wages gives the employer notice that ~~he~~ the parent or guardian claims ~~such~~ the wages."

Section 1588. Section 41-1-201, MCA, is amended to read:

"41-1-201. Liability of minors for wrongs -- exemplary damages. A minor is civilly liable for a wrong done by ~~him~~ the minor, but is not liable ~~in~~ for exemplary damages unless at the time of the act, ~~he~~ the minor was

capable of knowing that it was wrongful."

Section 1589. Section 41-1-202, MCA, is amended to read:

"41-1-202. Enforcement of minor's rights. A minor may enforce ~~his~~ the minor's rights by civil action or other legal proceedings in the same manner as a person of full age, except that a guardian ~~must~~ shall conduct the ~~same~~ the action or proceedings."

Section 1590. Section 41-1-302, MCA, is amended to read:

"41-1-302. Contracts of minors -- disaffirmance. A minor may make a conveyance or other contract in the same manner as any other person, subject only to ~~his~~ the minor's power of disaffirmance under the provisions of this chapter and to the provisions of Title 40, chapter 1."

Section 1591. Section 41-1-303, MCA, is amended to read:

"41-1-303. Capacity of minors to borrow money for education. ~~Any person who, being a~~ A minor ~~who;~~ contracts to borrow money to defray the expenses of attending any college or university or other institution of higher education beyond high school ~~shall have~~ has full legal capacity to act ~~in his~~ on the minor's own behalf and ~~shall have~~ has all the rights, powers, and privileges and ~~be~~ is subject to the obligations of persons of full age with respect to ~~any such~~ those contracts."

Section 1592. Section 41-1-305, MCA, is amended to read:

"41-1-305. Minor cannot may not disaffirm contract for necessities. A minor ~~cannot~~ may not disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for ~~his~~ the minor's support or that of ~~his~~ the minor's family, entered into by ~~him~~ the minor when not under the care of a parent or guardian able to provide for ~~him~~ the minor or ~~them~~ the minor's family."

Section 1593. Section 41-1-306, MCA, is amended to read:

"41-1-306. Minor cannot may not disaffirm certain obligations. A minor ~~cannot~~ may not disaffirm an obligation, otherwise valid, entered into by ~~him~~ the minor under the express authority or direction of a statute or when ~~he~~ the minor has been granted limited emancipation, including a specific right to enter into contracts, under 41-1-501 and 41-3-438."

Section 1594. Section 41-1-406, MCA, is amended to read:

"41-1-406. Psychiatric or psychological counseling under urgent circumstances. When executed by a minor, the consent to the providing of psychiatric or psychological counseling by a physician or psychologist licensed to practice in this state, under circumstances when the need for ~~such~~ the counseling is urgent in the opinion of the physician or psychologist involved because of danger to the life, safety, or property of a minor or of ~~other~~ another person or persons and the consent of the spouse, parent, custodian, or guardian of the minor cannot be obtained within a reasonable time to offset the danger to life or safety, ~~shall be~~ is as valid and binding as if the minor had achieved majority. ~~That is, such~~ The minor has the same legal capacity to act and the same legal obligations with regard to the giving of ~~such~~ consent as a person of full legal age and capacity, and ~~such~~ the consent ~~may~~ is not be subject to later disaffirmance by reason of ~~such~~ minority. The consent of ~~no other~~ another person, ~~or persons~~ (including but not limited to a spouse, parent, custodian, or guardian), is not necessary in order to authorize the psychiatric or psychological counseling of ~~such~~ the minor. However, ~~no~~ a parent may not be obligated for the cost of ~~such~~ the counseling without ~~his~~ the parent's consent."

Section 1595. Section 41-1-407, MCA, is amended to read:

"41-1-407. Immunity and responsibility of psychologist, physician, or health care facility. (1) ~~No~~ A physician, surgeon, dentist, or health or mental health care facility may not be compelled against ~~their~~ the entity's best judgment to treat a minor on ~~his~~ the minor's own consent.

(2) ~~Nothing contained in this~~ This section ~~shall~~ may not be construed to relieve any physician, surgeon, dentist, or health or mental health care facility from liability for negligence in the diagnosis and treatment rendered ~~such a~~ a minor.

(3) In any case arising under the provisions of 41-1-406, the physician or licensed psychologist who provides the psychiatric or psychological counseling services ~~shall~~ may not incur ~~no~~ civil or criminal liability by reason of having provided the counseling services, but ~~such~~ the immunity ~~shall~~ does not apply to any negligent acts or omissions."

Section 1596. Section 41-4-101, MCA, is amended to read:

"41-4-101. Enactment -- provisions. The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining ~~therein~~ in the compact in the form substantially as follows:

Article I. Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(1) each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care;

(2) the appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child;

(3) the proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made;

(4) appropriate jurisdictional arrangements for the care of children will be promoted.

Article II. Definitions

As used in this compact:

(1) "child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control;

(2) "sending agency" means a party state, officer or employee thereof; a subdivision of a party state or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state;

(3) "receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies and whether for placement with state or local public authorities or for placement with private agencies or persons;

(4) "placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective, or epileptic or any institution primarily educational in character and any hospital or other medical facility.

Article III. Conditions for Placement

(1) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(2) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the

appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

- (a) the name, date, and place of birth of the child;
- (b) the identity and address or addresses of the parents or legal guardian;
- (c) the name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child;
- (d) a full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(3) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to (2) of this article may request of the sending agency or any other appropriate officer or agency of or in the sending agency's state and shall be entitled to receive therefrom such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(4) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article IV. Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

Article V. Retention of Jurisdiction

(1) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or ~~his~~ the child's transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of

jurisdiction by receiving state sufficient to deal with an act of delinquency or crime committed therein.

(2) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(3) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state, nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in (1) hereof.

Article VI. Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact, but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard prior to ~~his~~ the parent's or guardian's child being sent to such other party jurisdiction for institutional care and the court finds that:

- (1) equivalent facilities for the child are not available in the sending agency's jurisdiction; and
- (2) institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Article VII. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in ~~his~~ the officer's jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules to carry out more effectively the terms and provisions of this compact.

Article VIII. Limitations

This compact shall not apply to:

- (1) the sending or bringing of a child into a receiving state by ~~his~~ the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state;
- (2) any placement, sending, or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party or to any other agreement between said states which has the force of law.

Article IX. Enactment and Withdrawal

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and with the consent of congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until 2 years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Section 1597. Section 41-5-105, MCA, is amended to read:

"41-5-105. Youth court committee. In every county of the state, the judge having jurisdiction may appoint a committee, willing to act without compensation, composed of not less than three or more than seven reputable citizens, including youth representatives. The committee must be designated as a youth court committee. This committee shall meet subject to the call of the judge to confer with ~~him~~ the judge on all matters pertaining to the youth department of the court, including the appointment of probation officers, and shall act as a supervisory committee of youth detention facilities."

Section 1598. Section 41-5-1404, MCA, is amended to read:

"41-5-1404. Service of summons. (1) ~~Any~~ A youth who is the subject of a proceeding under this chapter must be personally served with summons at least 5 days before the time stated for appearance.

(2) Service of summons on all other persons designated in 41-5-1403(1) ~~shall~~ must be made in accordance with Rule 4D of the Montana Rules of Civil Procedure, except that in all cases, ~~service shall~~ must

be completed at least 5 days before the time stated for appearance.

(3) If a party referred to in subsection (2) ~~herein~~ is not personally served before a hearing and has not ~~been~~ secluded ~~himself with~~ in an attempt to delay or disrupt any proceeding, ~~such~~ the party may appear within a reasonable time subsequent to the hearing and, on motion to the court, request a rehearing. The motion may be granted at the discretion of the judge if a rehearing would be in the best interest of the youth.

(4) The court may authorize payment from county funds of costs of service and necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(5) An actual abandonment of a youth by ~~his~~ the youth's parent or parents ~~shall constitute~~ constitutes a waiver of summons and notice requirements by the parent or parents. A return endorsed upon the summons showing inability to serve summons constitutes prima facie evidence of actual abandonment.

(6) The youth court may, in the interests of justice, shorten the notice requirements contained ~~herein~~ in this section, and ~~such~~ notice of shortened time ~~shall~~ must be endorsed on the summons.

(7) A party, other than the youth, may waive service of summons on ~~himself~~ that party by written stipulation or by voluntary appearance at the hearing. If the youth is present at the hearing, ~~his~~ the youth's counsel may waive service of summons ~~in his~~ on behalf of the youth."

Section 1599. Section 41-5-1411, MCA, is amended to read:

"41-5-1411. Appointment of guardian ad litem. The court at any stage of a proceeding on a petition under this chapter may appoint a guardian ad litem for a youth if the youth ~~has no~~ does not have a parent or guardian appearing ~~in his~~ on the youth's behalf or if ~~their~~ the parent's or guardian's interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party may not be appointed as guardian ad litem."

Section 1600. Section 41-5-1901, MCA, is amended to read:

"41-5-1901. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Attendant care" means the direct supervision of youth by a trained attendant in a physically unrestricting setting.

(2) "Board" means the board of crime control provided for in 2-15-2006.

(3) "County" means a county, city-county consolidated government, or a youth detention region created pursuant to 41-5-1805.

(4) "Home detention" means the use of a youth's home for the purpose of ensuring the continued custody of the youth pending adjudication or final disposition of ~~his~~ the youth's case.

(5) "Plan" means a county plan for providing youth detention services as required in 41-5-1903.

(6) "Secure detention" means the detention of youth in a physically restricting facility designed to prevent a youth from departing at will.

(7) "Youth detention service" means service for the detention of youth in facilities separate from adult jails. The term includes the services described in 41-5-1902."

Section 1601. Section 41-6-106, MCA, is amended to read:

"41-6-106. Additional procedures not precluded. In addition to any procedure provided in Articles IV and VI of the compact for the return of ~~any~~ a runaway juvenile, the particular states, the juvenile or ~~his~~ the juvenile's parents, the courts, or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this state and the other respective party states for the return of ~~any such~~ a runaway juvenile."

Section 1602. Section 42-2-216, MCA, is amended to read:

"42-2-216. Storage of data. The department shall store the registry's data in a manner so that the data is accessible through:

- (1) the putative father's name;
- (2) the mother's name, including ~~her~~ the mother's maiden name, if known;
- (3) the date of birth of the putative father, the mother, and the child, if known;
- (4) the child's name, if known; and
- (5) the social security number for the putative father, the mother, and the child, if known."

Section 1603. Section 44-1-104, MCA, is amended to read:

"44-1-104. Duty to furnish governor with transportation. The department of justice shall furnish the governor with automobile transportation upon ~~his~~ the governor's request, provided that ~~such~~ the transportation ~~shall~~ must be limited to travel and transportation of the governor while on official business of the state."

Section 1604. Section 44-1-201, MCA, is amended to read:

"44-1-201. Appointment and tenure. The attorney general shall select a highway patrol chief who ~~shall~~

must have the rank of colonel and shall hold ~~his~~ office until ~~his~~ the appointment has terminated for cause, as ~~hereinafter~~ set forth in parts 7 through 9 of this chapter."

Section 1605. Section 44-1-303, MCA, is amended to read:

"44-1-303. Duties. The chief, with the approval of the attorney general and within the limits of any appropriation made available for ~~such~~ the following purposes, ~~shall~~:

- (1) shall designate the authority and responsibility in each rank, grade, and position;
- (2) shall formulate standards, policies, and qualifications in the selection of recruit patrol officers;
- (3) shall prescribe the official uniform of the Montana highway patrol;
- (4) shall station employees in ~~such~~ localities ~~as he shall deem~~ that the chief considers advisable for the enforcement of the traffic laws of this state;
- (5) shall charge against each employee the value of property of the state lost or destroyed through the carelessness or neglect of ~~such~~ the employee;
- (6) shall discharge, demote, or temporarily suspend after hearing, as provided in parts 7 and 8 of this chapter, any patrol officer of the department;
- (7) must have purchased or otherwise acquired by the purchasing department of the state motor vehicle equipment and all other equipment and commodities ~~deemed by him~~ that the chief considers essential to the efficient operation of the Montana highway patrol."

Section 1606. Section 44-1-503, MCA, is amended to read:

"44-1-503. Salary upon permanent appointment. ~~In the event that~~ If a probationary patrol officer is appointed permanently, ~~he~~ the officer shall must, at the time of ~~such~~ appointment, receive the base salary of a patrol officer."

Section 1607. Section 44-1-512, MCA, is amended to read:

"44-1-512. Determination of eligibility for salary benefit. (1) The highway patrol chief shall determine whether an injury incurred by an officer was incurred in the performance of ~~his~~ the officer's duties and whether an injury ~~so~~ incurred resulted in a disability.

(2) In determining the nature and extent of an officer's injuries and the extent of any recovery, the chief shall seek and consider the medical opinion of a qualified physician who has examined the injured officer. The chief may seek a second medical opinion ~~in his discretion.~~"

Section 1608. Section 44-1-513, MCA, is amended to read:

"44-1-513. Periodic medical examinations -- waiver of right to salary benefit. (1) The chief may appoint a physician to examine ~~the~~ an injured officer from time to time. If, in the physician's opinion, the injured officer has sufficiently recovered to perform light duties or ~~his~~ regular duties, the physician shall certify that fact.

(2) An injured officer who unreasonably refuses to accept medical treatment or hospital care or to permit a medical examination under ~~subsection (1) or 44-1-512(2) or subsection (1) of this section~~ waives any salary benefit to which ~~he~~ the officer might otherwise be entitled under 44-1-511."

Section 1609. Section 44-1-516, MCA, is amended to read:

"44-1-516. Effect on probationary status. If the injured officer is on probationary status at the time ~~he~~ the officer becomes injured, the balance of ~~his~~ the officer's probationary time ~~shall~~ must be suspended until ~~he~~ the officer returns to regular duty or is discharged for cause."

Section 1610. Section 44-1-611, MCA, is amended to read:

"44-1-611. Tenure. ~~Every~~ Each person employed or appointed and designated as a chief, captain, lieutenant, sergeant, patrol officer, or any other rank under and pursuant to the provisions of this chapter, except as provided in 44-1-601 and 44-1-602, shall continue in service and hold ~~his~~ the position without demotion until suspended, demoted, or discharged in the manner ~~hereinafter~~ provided in parts 7 through 9 of this chapter for one or more of the causes specified in 44-1-612."

Section 1611. Section 44-1-801, MCA, is amended to read:

"44-1-801. Notice of hearing. (1) The department of justice shall, at least 10 days before the time appointed for a hearing, serve written notice on the accused patrol officer, specifying the charge or charges filed and stating the name of the person or persons making the charge or charges.

(2) If the accused patrol officer is located within the state and ~~his~~ the officer's whereabouts is known, the service required by subsection (1) ~~shall~~ must be made personally. If the accused patrol officer is located outside the state and ~~his~~ the officer's whereabouts is known, service may be made by mailing the written notice to ~~his~~ the officer's place of residence. If, at the time, the whereabouts of the accused patrol officer is unknown, service may be made upon ~~him~~ the officer by mailing the written notice to ~~him~~ the officer at ~~his~~ the officer's last-known place of residence in Montana."

Section 1612. Section 44-1-803, MCA, is amended to read:

"44-1-803. Rights of accused. The accused patrol officer ~~shall be~~ is entitled to be confronted with the witnesses against ~~him~~ the officer and to have an opportunity to cross-examine the ~~same~~ witnesses and to introduce at ~~such~~ the disciplinary hearing testimony in ~~his~~ the officer's own behalf. ~~He shall be~~ The officer is entitled to be represented by counsel, at ~~his~~ the officer's own expense, at ~~such~~ the hearing."

Section 1613. Section 44-1-805, MCA, is amended to read:

"44-1-805. Reinstatement and backpay upon exoneration. If after the hearing the department of justice finds that the charge or charges made against the patrol officer are not true, the department shall reinstate the accused patrol officer to ~~his~~ the officer's position and rank and shall order the payment of any salary withheld pending the determination of the charge or charges."

Section 1614. Section 44-1-808, MCA, is amended to read:

"44-1-808. Demotion pay status. In cases of disciplinary action resulting in demotion, the member ~~shall~~ must receive the pay of the rank to which ~~he~~ the member is demoted."

Section 1615. Section 44-1-903, MCA, is amended to read:

"44-1-903. Reinstatement and backpay upon reversal or modification. If the decision or determination of the department of justice is finally reversed or modified, the accused patrol officer must be reinstated in ~~his~~ the officer's position. Upon reinstatement, the department shall pay to the patrol officer any salary or wages withheld from ~~him~~ the officer pending the determination of the charge or charges or take ~~such~~ action ~~as that~~ may be directed by resolution of the grievance procedure or the court."

Section 1616. Section 44-1-910, MCA, is amended to read:

"44-1-910. Waiver. A patrol officer may waive, in writing, ~~his~~ the officer's rights under ~~Title 44, chapter 4, parts 7 and 8 of this chapter,~~ and accept discipline considered appropriate by the department of justice."

Section 1617. Section 44-1-1103, MCA, is amended to read:

"44-1-1103. Check in lieu of cash. (1) In the case of traffic violations, bond may be made by personal check in lieu of cash. Highway patrol officers or other authorized agents receiving bonds on behalf of the court may accept a personal check in lieu of cash ~~provided that if:~~

(a) the check is drawn on a bank domiciled in the state of Montana; and

(b) the person who writes the check in lieu of cash bond has two documents ~~identifying him of~~ identification.

(2) If a check is offered in lieu of cash, the highway patrol officer or other authorized agent who accepts the check is not liable in the case of nonpayment.

(3) A person who writes a check in lieu of cash bond ~~which that~~ is returned for insufficient funds is subject to prosecution under 45-6-316, and obtaining bond constitutes securing services for the purposes of that section."

Section 1618. Section 44-2-301, MCA, is amended to read:

"44-2-301. Establishment -- inclusion of other state agencies. The attorney general is ~~hereby~~ authorized to establish a permanent law enforcement ~~teletypewriter~~ communications system for the purpose of connecting federal, state, county, and city law enforcement agencies ~~by teletype.~~ ~~He is further authorized to~~ The attorney general may bring into the network, ~~should he and they so~~ if the parties desire, any department of Montana state government or its subdivisions outside of law enforcement activities when, in the opinion of the attorney general and the state department or subdivision, ~~such the~~ inclusion will materially aid the law enforcement agencies of the state of Montana or its subdivisions in the fight against crime."

Section 1619. Section 44-2-313, MCA, is amended to read:

"44-2-313. Payment of charge. ~~Such~~ The charge ~~shall~~ authorized in 44-2-312 ~~must~~ be billed monthly to the agencies. Payments made as a result of the billing ~~shall~~ must be remitted to the attorney general and deposited ~~by him~~ in a special revenue account in the state treasury."

Section 1620. Section 44-2-402, MCA, is amended to read:

"44-2-402. Dental examination -- records -- report. (1) If the coroner cannot identify a body, ~~he~~ the coroner or the state medical examiner ~~shall~~ must have a dentist examine the body, and if the body cannot be identified from the dental examination, the coroner or state medical examiner ~~must~~ shall send the dental examination results to the department of justice on a form supplied by the department.

(2) The department is a repository for dental examination records filed with it under this section. The department shall compare ~~such the~~ records with dental records filed with it pursuant to 44-2-401 in an attempt to identify the body and ~~must~~ shall submit any findings to the coroner or state medical examiner."

Section 1621. Section 44-3-213, MCA, is amended to read:

"44-3-213. Report to county attorney. When the cause of death has been established within reasonable medical certainty by the state medical examiner or ~~his~~ an associate, whether by review of a coroner's report or by personal examination, the state medical examiner shall make available in writing to the county attorney ~~his~~ the state medical examiner's determination as to the cause of death."

Section 1622. Section 44-3-404, MCA, is amended to read:

"44-3-404. Criminal penalty. A person is guilty of a misdemeanor and may be fined not more than \$500 or be imprisoned in the county jail for not more than 1 year, or both, if ~~he~~ the person:

- (1) purposely fails to report or conceals a death, including a fetal death;
- (2) refuses to make available prior medical or other information in a death investigation;
- (3) without an order from the coroner or state medical examiner, purposely touches, removes, or disturbs a corpse, its clothing, or anything near the corpse; or
- (4) knowingly or purposely disobeys a cessation order of a coroner."

Section 1623. Section 44-4-111, MCA, is amended to read:

"44-4-111. Request for special counsel services. (1) Except as provided in subsection (2), the training coordinator may act as special counsel upon request of the county attorney with the approval of the governing body of a county.

(2) If a case involves the prosecution of a member of the governing body of a county or a person related to ~~him~~ a member by consanguinity within the fourth degree or affinity within the second degree, the coordinator may, with the consent of the attorney general, act as special counsel upon request of the county attorney without approval of the governing body of the county."

Section 1624. Section 44-4-206, MCA, is amended to read:

"44-4-206. Revocation. ~~Such registrations~~ Registrations under this part may be revoked at any time by the attorney general ~~at his discretion~~. On delivery of notice of revocation, the registrant shall, within 24 hours, deliver ~~such~~ the license plates and certificate of registration to the attorney general or ~~his~~ an ~~duly~~ appointed agent."

Section 1625. Section 44-4-903, MCA, is amended to read:

"44-4-903. Limitations on special peace officer. A person appointed and sworn as a special peace officer ~~shall~~ must when on duty have the power and authority of a peace officer but may exercise ~~such the~~ power and authority only in the protection of the property of the class I railroad corporation employing ~~him~~ the person."

Section 1626. Section 44-4-904, MCA, is amended to read:

"44-4-904. Responsibility of corporation. The class I railroad corporation employing a special peace officer is solely responsible for the compensation of the special peace officer and is civilly liable for any action of the officer arising out of ~~his~~ the officer's actions as a special peace officer. The class I railroad corporation employing a special peace officer shall hold the state, its subdivisions, and the officers and employees ~~thereof~~ of the state and its subdivisions harmless and indemnify them from any claim or liability, including costs and attorney fees, arising out of any action of a special peace officer or the certification of the special peace officer by the state."

Section 1627. Section 44-5-215, MCA, is amended to read:

"44-5-215. Challenge and correction. (1) After inspection of criminal history record information, an individual may contest the accuracy or completeness, or both, of the information about ~~himself~~ that individual.

(2) If the agency maintaining the criminal history record information does not correct it to the individual's satisfaction, the individual may request review and correction by the executive head of the agency.

(3) If the requested correction is denied by the head of the agency, the individual may present a challenge to the department of justice.

(4) If the agency in charge of the record in question can verify the accuracy of its record by communication with the originating criminal justice agency, it shall do so. If accuracy or completeness cannot be verified and the agency primarily originating the information containing the alleged error or omission is in the state, the individual shall address ~~his~~ the challenge to that agency. If information necessary to verify the accuracy or completeness of the record cannot be obtained by the originating agency, it may rely on verified written documents or include the individual's allegation in its records in dissemination until there is a final disposition of the challenge.

(5) If the challenge is successful, the agency shall:

(a) supply to the individual, if requested, a list of those noncriminal justice agencies ~~which~~ that have received copies of the criminal history record information about the individual; and

(b) immediately correct its records and notify all criminal justice agencies to which it has given erroneous

or incomplete information of these changes."

Section 1628. Section 44-11-102, MCA, is amended to read:

"44-11-102. Liability of assisted entity for obligation resulting from assistance. A law enforcement entity requesting assistance under 44-11-101 shall indemnify the assisting peace officer, ~~his~~ the officer's legal representative in case of death, or the furnishing law enforcement entity for any liability or obligation to indemnify created by 2-9-305 that may result from the assistance furnished."

Section 1629. Section 44-11-201, MCA, is amended to read:

"44-11-201. Retention of rights of employment. A peace officer rendering assistance under 44-11-101 is entitled to the same wage, salary, pension, workers' compensation, and all other service rights for ~~such~~ service rendered under that section as for service rendered within the law enforcement entity in which ~~he~~ the officer is normally employed."

Section 1630. Section 44-11-304, MCA, is amended to read:

"44-11-304. Authorization to enter agreement -- general content -- authority of peace officer. (1) Any one or more law enforcement agencies of this state may enter into a mutual aid agreement with any one or more law enforcement agencies of any other state or the United States to provide the law enforcement or emergency services that all of the parties are authorized by law to perform. If required by applicable law, the agreement must be authorized and approved by the governing body of each party to the agreement.

(2) The agreement must fully set forth the powers, rights, and obligations of the parties to the agreement.

(3) Subject to 44-11-308, a mutual aid agreement may grant a peace officer of any party law enforcement agency acting within the territorial jurisdiction of any other party law enforcement agency authority to act as if ~~he~~ the officer were ~~a duty an~~ appointed and qualified peace officer of the law enforcement agency ~~he~~ the officer is assisting."

Section 1631. Section 44-12-102, MCA, is amended to read:

"44-12-102. Things subject to forfeiture. (1) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in

manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Title 45, chapter 9, except items used or intended for use in connection with quantities of marijuana in amounts less than 60 grams;

(c) except as provided in subsection (2)(d), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels, that are used or intended for use in any manner to facilitate the commission of a violation of Title 45, chapter 9;

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9;

(f) all drug paraphernalia as defined in 45-10-101;

(g) everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of Title 45, chapter 9; all proceeds traceable to such an exchange; and all money, negotiable instruments, and securities used or intended to be used to facilitate a violation of Title 45, chapter 9;

(h) any personal property constituting or derived from proceeds obtained directly or indirectly from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison; and

(i) real property, including any right, title, and interest in any lot or tract of land and any appurtenances or improvements, that is directly used or intended to be used in any manner or part to commit or facilitate the commission of or that is derived from or maintained by the proceeds resulting from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison. An owner's interest in real property is not subject to forfeiture by reason of any act or omission unless it is proved that the act or omission was the owner's or was with ~~his~~ the owner's actual knowledge or express consent.

(2) (a) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.

(b) A conveyance is not subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without ~~his~~ the owner's knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if ~~he~~ the secured party neither had knowledge of nor consented to any violation of Title 45, chapter 9.

(d) ~~No~~ A conveyance or container is not subject to forfeiture under this section if it was used or intended

for use in transporting less than 60 grams of marijuana."

Section 1632. Section 44-12-103, MCA, is amended to read:

"44-12-103. When property may be seized. (1) A peace officer who has probable cause to make an arrest for a violation of Title 45, chapter 9, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a controlled substance, or probable cause to believe that a conveyance has been used to keep, deposit, or conceal a controlled substance shall seize the conveyance ~~so~~ used or intended to be used or any conveyance in which a controlled substance is unlawfully possessed by an occupant. ~~He~~ A peace officer shall immediately deliver a conveyance that ~~he~~ the officer seizes to the offices of ~~his~~ the officer's law enforcement agency, to be held as evidence until forfeiture is declared or release ordered.

(2) All property subject to forfeiture under 44-12-102 may be seized by a peace officer under a search warrant issued by a district court having jurisdiction over the property. Seizure without a warrant may be made if:

(a) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal proceeding or a forfeiture proceeding based on this chapter;

(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property was used or is intended to be used in violation of Title 45, chapter 9, or in violation of Title 45, chapter 10, part 1."

Section 1633. Section 44-12-204, MCA, is amended to read:

"44-12-204. Proof required or permitted at hearing. In order to rebut the presumption of forfeiture:

(1) an owner of property who has a verified answer on file ~~must~~ shall prove that the property was not used for the purpose charged;

(2) an owner of property listed in 44-12-102(1)(g) who has a verified answer on file may prove in the alternative that the use of the property occurred without ~~his~~ the owner's knowledge or consent;

(3) a claimant of a security interest in the property who has a verified answer on file ~~must~~ shall prove that ~~his~~ the claimant's security interest is bona fide and that it was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the property was being or

was to be used for the purpose charged. However, ~~no~~ a person who has a lien dependent upon possession for compensation to which ~~he~~ the person is legally entitled for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and ~~no~~ a person doing business under any law of this state or the United States relating to financial institutions, as defined in 32-6-103, loan companies, or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may not be required to prove that ~~his~~ the person's security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner, purchaser, or person in possession of the property when it was brought to ~~such~~ the person."

Section 1634. Section 44-12-205, MCA, is amended to read:

"44-12-205. Disposition of property following hearing. (1) If the court finds that the property was not used for the purpose charged or that the property listed in 44-12-102(1)(g) was used without the knowledge or consent of the owner, it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for the purpose charged and that the property listed in 44-12-102(1)(g) was used with the knowledge or consent of the owner, the property ~~shall~~ must be disposed of as follows:

(a) If proper proof of ~~his~~ a claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due ~~him~~ to the holder is equal to or in excess of the value of the property as of the date of seizure; ~~it being because~~ the purpose of this chapter is to forfeit only the right, title, or interest of the owner. If the amount due the holder of the security interest is less than the value of the property, the property, if it is sold, must be sold at public auction by the law enforcement agency that seized the property in the same manner provided by law for the sale of property under execution or the law enforcement agency may return the property to the holder of the security interest without proceeding with an auction. The property may not be sold to an officer or employee of the law enforcement agency that seized the property or to a person related to an officer or employee by blood or marriage.

(b) If ~~no~~ a claimant ~~exists~~ does not exist and the confiscating agency wishes to retain the property for its official use, it may do so. If ~~such~~ the property is not to be retained, it must be sold as provided in subsection (2)(a).

(c) If a claimant who has presented proper proof of ~~his~~ a claim exists and the confiscating agency wishes to retain the property for its official use, it may do so ~~provided~~ if it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

(3) In making a disposition of property under this chapter, the court may take any action to protect the rights of innocent persons."

Section 1635. Section 45-2-202, MCA, is amended to read:

"45-2-202. Voluntary act. A material element of every offense is a voluntary act, which includes an omission to perform a duty ~~which that~~ the law imposes on the offender and ~~which he that the offender~~ is physically capable of performing, except for deliberate homicide under 45-5-102(1)(b) for which there must be a voluntary act only as to the underlying felony. Possession is a voluntary act if the offender knowingly procured or received the thing possessed or was aware of ~~his~~ the offender's control ~~thereof of the thing~~ for a sufficient time to have been able to terminate ~~his~~ control."

Section 1636. Section 45-2-203, MCA, is amended to read:

"45-2-203. Responsibility -- intoxicated condition. A person who is in an intoxicated condition is criminally responsible for ~~his~~ the person's conduct, and an intoxicated condition is not a defense to any offense and may not be taken into consideration in determining the existence of a mental state ~~which that~~ is an element of the offense unless the defendant proves that ~~he~~ the defendant did not know that it was an intoxicating substance when ~~he~~ the defendant consumed, smoked, sniffed, injected, or otherwise ingested the substance causing the condition."

Section 1637. Section 45-2-212, MCA, is amended to read:

"45-2-212. Compulsion. A person is not guilty of an offense, other than an offense punishable with death, by reason of conduct ~~which he that the person~~ performs under the compulsion of threat or menace of the imminent infliction of death or serious bodily harm if ~~he~~ the person reasonably believes that death or serious bodily harm will be inflicted upon ~~him~~ the person if ~~he~~ the person does not perform ~~such the~~ conduct."

Section 1638. Section 45-2-213, MCA, is amended to read:

"45-2-213. Entrapment. A person is not guilty of an offense if ~~his~~ the person's conduct is incited or induced by a public servant or ~~his~~ a public servant's agent for the purpose of obtaining evidence for the prosecution of ~~such the~~ person. However, this section is inapplicable if a public servant or ~~his~~ a public servant's agent merely affords to ~~such the~~ person the opportunity or facility for committing an offense in furtherance of criminal purpose ~~which such that the person~~ has originated."

Section 1639. Section 45-2-301, MCA, is amended to read:

"45-2-301. Accountability for conduct of another. A person is responsible for conduct ~~which~~ that is an element of an offense if the conduct is either that of the person ~~himself~~ or that of another and ~~he~~ the person is legally accountable for ~~such~~ the conduct as provided in 45-2-302, or both."

Section 1640. Section 45-2-302, MCA, is amended to read:

"45-2-302. When accountability exists. A person is legally accountable for the conduct of another when:

(1) having a mental state described by the statute defining the offense, ~~he~~ the person causes another to perform the conduct, regardless of the legal capacity or mental state of the other person;

(2) the statute defining the offense makes ~~him~~ the person accountable; or

(3) either before or during the commission of an offense with the purpose to promote or facilitate ~~such~~ the commission, ~~he~~ the person solicits, aids, abets, agrees, or attempts to aid ~~such~~ the other person in the planning or commission of the offense. However, a person is not ~~so~~ accountable if:

(a) ~~he~~ the person is a victim of the offense committed, unless the statute defining the offense provides otherwise; or

(b) before the commission of the offense, ~~he~~ the person terminates ~~his~~ the person's effort to promote or facilitate ~~such~~ the commission and does one of the following:

(i) wholly deprives ~~his~~ the person's prior efforts of effectiveness in ~~such~~ the commission;

(ii) gives timely warning to the proper law enforcement authorities; or

(iii) otherwise makes proper effort to prevent the commission of the offense."

Section 1641. Section 45-2-303, MCA, is amended to read:

"45-2-303. Separate conviction of person accountable. A person who is legally accountable for the conduct of another ~~which~~ that is an element of an offense may be convicted upon proof that the offense was committed and that ~~he~~ the person was ~~so~~ accountable although the other person claimed to have committed the offense has not been prosecuted or convicted, has been convicted of a different offense, is not amenable to justice, or has been acquitted."

Section 1642. Section 45-2-312, MCA, is amended to read:

"45-2-312. Accountability for conduct of corporation. (1) A person is legally accountable for conduct

which that is an element of an offense and which that, in the name or in behalf of a corporation, ~~he~~ the person performs or causes to be performed to the same extent as if the conduct were performed in ~~his~~ the person's own name or behalf.

(2) An individual who has been convicted of an offense by reason of ~~his~~ legal accountability for the conduct of a corporation is subject to the punishment authorized by law for an individual upon conviction of ~~such~~ the offense although only a lesser or different punishment is authorized for the corporation."

Section 1643. Section 45-3-102, MCA, is amended to read:

"45-3-102. Use of force in defense of person. A person is justified in the use of force or threat to use force against another when and to the extent that ~~he~~ the person reasonably believes that ~~such~~ the conduct is necessary to defend himself for self-defense or the defense of another against ~~such other's~~ the other person's imminent use of unlawful force. However, ~~he~~ the person is justified in the use of force likely to cause death or serious bodily harm only if ~~he~~ the person reasonably believes that ~~such~~ the force is necessary to prevent imminent death or serious bodily harm to ~~himself~~ the person or another or to prevent the commission of a forcible felony."

Section 1644. Section 45-3-103, MCA, is amended to read:

"45-3-103. Use of force in defense of occupied structure. A person is justified in the use of force or threat to use force against another when and to the extent that ~~he~~ the person reasonably believes that ~~such~~ the conduct is necessary to prevent or terminate ~~such other's~~ the other person's unlawful entry into or attack upon an occupied structure. However, ~~he~~ the person is justified in the use of force likely to cause death or serious bodily harm only if:

(1) the entry is made or attempted in violent, riotous, or tumultuous manner and ~~he~~ the person reasonably believes that ~~such~~ the force is necessary to prevent an assault upon or offer of personal violence to ~~him~~ the person or another then in the occupied structure; or

(2) ~~he~~ the person reasonably believes that ~~such~~ the force is necessary to prevent the commission of a forcible felony in the occupied structure."

Section 1645. Section 45-3-104, MCA, is amended to read:

"45-3-104. Use of force in defense of other property. A person is justified in the use of force or threat to use force against another when and to the extent that ~~he~~ the person reasonably believes that ~~such~~ the conduct

is necessary to prevent or terminate ~~such other's~~ the other person's trespass on or other tortious or criminal interference with either real property₁ (other than an occupied structure)₁ or personal property lawfully in ~~his~~ the person's possession or in the possession of another who is a member of ~~his~~ the person's immediate family or household or of a person whose property ~~he~~ the person has a legal duty to protect. However, ~~he~~ the person is justified in the use of force likely to cause death or serious bodily harm only if ~~he~~ the person reasonably believes that ~~such~~ the force is necessary to prevent the commission of a forcible felony."

Section 1646. Section 45-3-105, MCA, is amended to read:

"45-3-105. Use of force by aggressor. The justification described in 45-3-102 through 45-3-104 is not available to a person who:

(1) is attempting to commit, committing, or escaping after the commission of a forcible felony; or

(2) purposely or knowingly provokes the use of force against ~~himself~~ the person, unless:

(a) ~~such~~ the force is so great that ~~he~~ the person reasonably believes that ~~he~~ the person is in imminent danger of death or serious bodily harm and that ~~he~~ the person has exhausted every reasonable means to escape ~~such~~ the danger other than the use of force ~~which~~ that is likely to cause death or serious bodily harm to the assailant; or

(b) in good faith, ~~he~~ the person withdraws from physical contact with the assailant and indicates clearly to the assailant that ~~he~~ the person desires to withdraw and terminate the use of force₁, but the assailant continues or resumes the use of force."

Section 1647. Section 45-3-106, MCA, is amended to read:

"45-3-106. Use of force to prevent escape. (1) A peace officer or other person who has an arrested person in ~~his~~ custody is justified in the use of ~~such~~ force to prevent the escape of the arrested person from custody ~~as~~ ~~he~~ that the officer or other person would be justified in using if ~~he~~ the officer or other person were arresting ~~such~~ the person.

(2) A guard or other peace officer is justified in the use of force, including force likely to cause death or serious bodily harm, ~~which~~ ~~he~~ that the guard or officer reasonably believes to be necessary to prevent the escape from a correctional institution of a person whom the guard or officer reasonably believes to be lawfully detained in ~~such~~ the institution under sentence for an offense or awaiting trial or commitment for an offense."

Section 1648. Section 45-3-107, MCA, is amended to read:

"45-3-107. Use of force by parent, guardian, or teacher. A parent or an authorized agent of ~~any a~~ parent or a guardian, master, or teacher is justified in the use of ~~such~~ force ~~as~~ that is reasonable and necessary to restrain or correct ~~his~~ the person's child, ward, apprentice, or pupil."

Section 1649. Section 45-3-108, MCA, is amended to read:

"45-3-108. Use of force in resisting arrest. A person is not authorized to use force to resist an arrest ~~which he~~ that the person knows is being made either by a peace officer or by a private person summoned and directed by a peace officer to make the arrest, even if ~~he~~ the person believes that the arrest is unlawful and the arrest in fact is unlawful."

Section 1650. Section 45-3-109, MCA, is amended to read:

"45-3-109. Execution of death sentence. A person who puts a person to death pursuant to a sentence of a court of competent jurisdiction is justified if ~~he~~ the person acts in accordance with the sentence pronounced and the law prescribing the procedure for execution of a death sentence."

Section 1651. Section 45-4-101, MCA, is amended to read:

"45-4-101. Solicitation. (1) A person commits the offense of solicitation when, with the purpose that an offense be committed, ~~he~~ the person commands, encourages, or facilitates the commission of that offense.

(2) A person convicted of solicitation shall be punished not to exceed the maximum provided for the offense solicited."

Section 1652. Section 45-4-102, MCA, is amended to read:

"45-4-102. Conspiracy. (1) A person commits the offense of conspiracy when, with the purpose that an offense be committed, ~~he~~ the person agrees with another to the commission of that offense. ~~No~~ A person may ~~not~~ be convicted of conspiracy to commit an offense unless an act in furtherance of ~~such~~ the agreement has been committed by ~~him~~ the person or by a coconspirator.

(2) It ~~shall~~ is not be a defense to conspiracy that the person or persons with whom the accused has conspired:

- (a) has not been prosecuted or convicted;
- (b) has been convicted of a different offense;
- (c) is not amenable to justice;

(d) has been acquitted; or

(e) lacked the capacity to commit the offense.

(3) A person convicted of the offense of conspiracy shall be punished not to exceed the maximum sentence provided for the offense ~~which~~ that is the object of the conspiracy."

Section 1653. Section 45-4-103, MCA, is amended to read:

"45-4-103. Attempt. (1) A person commits the offense of attempt when, with the purpose to commit a specific offense, ~~he~~ the person does any act toward the commission of ~~such~~ the offense.

(2) It ~~shall~~ is not ~~be~~ a defense to a charge of attempt that because of a misapprehension of the circumstances, it would have been impossible for the accused to commit the offense attempted.

(3) A person convicted of the offense of attempt shall be punished not to exceed the maximum provided for the offense attempted.

(4) A person ~~shall~~ is not ~~be~~ liable under this section if, under circumstances manifesting a voluntary and complete renunciation of ~~his~~ criminal purpose, ~~he~~ the person avoided the commission of the offense attempted by abandoning ~~his~~ the person's criminal effort.

(5) Proof of the completed offense does not bar conviction for the attempt."

Section 1654. Section 45-5-203, MCA, is amended to read:

"45-5-203. Intimidation. (1) A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, ~~he~~ the person communicates to another, under circumstances ~~which~~ that reasonably tend to produce a fear that it will be carried out, a threat to perform without lawful authority any of the following acts:

(a) inflict physical harm on the person threatened or any other person;

(b) subject any person to physical confinement or restraint; or

(c) commit any felony.

(2) A person commits the offense of intimidation if ~~he~~ the person knowingly communicates a threat or false report of a pending fire, explosion, or disaster ~~which~~ that would endanger life or property.

(3) A person convicted of the offense of intimidation shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both."

Section 1655. Section 45-5-204, MCA, is amended to read:

"45-5-204. Mistreating prisoners. (1) A person commits the offense of mistreating prisoners if, being responsible for the care or custody of a prisoner, ~~he~~ the person purposely or knowingly:

- (a) assaults or otherwise injures a prisoner;
- (b) intimidates, threatens, endangers, or withholds reasonable necessities from the prisoner with the purpose to obtain a confession from ~~him~~ the prisoner or for any other purpose; or
- (c) violates any civil right of a prisoner.

(2) A person convicted of the offense of mistreating prisoners shall be removed from office or employment and shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both."

Section 1656. Section 45-5-221, MCA, is amended to read:

"45-5-221. Malicious intimidation or harassment relating to civil or human rights -- penalty. (1) A person commits the offense of malicious intimidation or harassment when, because of another person's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities, ~~he~~ the person purposely or knowingly, with the intent to terrify, intimidate, threaten, harass, annoy, or offend:

- (a) causes bodily injury to another;
- (b) causes reasonable apprehension of bodily injury in another; or
- (c) damages, destroys, or defaces any property of another or any public property.

(2) For purposes of this section, "deface" includes but is not limited to cross burning or the placing of any word or symbol commonly associated with racial, religious, or ethnic identity or activities on the property of another person without ~~his or her~~ the other person's permission.

(3) A person convicted of the offense of malicious intimidation or harassment shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$5,000, or both."

Section 1657. Section 45-5-301, MCA, is amended to read:

"45-5-301. Unlawful restraint. (1) A person commits the offense of unlawful restraint if ~~he~~ the person knowingly or purposely and without lawful authority restrains another so as to interfere substantially with ~~his~~ the other person's liberty.

(2) A person convicted of the offense of unlawful restraint shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 1658. Section 45-5-511, MCA, is amended to read:

"45-5-511. Provisions generally applicable to sexual crimes. (1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that ~~he~~ the offender reasonably believed the child to be above that age. ~~Such~~ The belief ~~shall~~ may not be ~~deemed~~ considered reasonable if the child is less than 14 years old.

(2) ~~No evidence~~ Evidence concerning the sexual conduct of the victim is ~~admissible~~ inadmissible in prosecutions under this part except evidence of the victim's past sexual conduct with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease ~~which~~ that is at issue in the prosecution.

(3) If the defendant proposes for any purpose to offer evidence described in subsection (2), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (2).

(4) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.

(5) Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent."

Section 1659. Section 45-5-604, MCA, is amended to read:

"45-5-604. Evidence in cases of promotion. (1) On the issue of whether a place is a house of prostitution, the following, in addition to all other admissible evidence, ~~shall~~ must be admissible:

- (a) its general repute;
- (b) the repute of the persons who reside in or frequent the place; or
- (c) the frequency, timing, and duration of visits by nonresidents.

(2) Testimony of a person against ~~his~~ the person's spouse ~~shall~~ must be admissible under 45-5-602, 45-5-603, and this section."

Section 1660. Section 45-5-611, MCA, is amended to read:

"45-5-611. Bigamy. (1) A person commits the offense of bigamy if, while married, ~~he~~ the person knowingly contracts or purports to contract another marriage unless at the time of the subsequent marriage:

- (a) the offender believes on reasonable grounds that the prior spouse is dead;
- (b) the offender and the prior spouse have been living apart for 5 consecutive years throughout which

the prior spouse was not known by the offender to be alive;

(c) a court has entered a judgment purporting to terminate or annul any prior disqualifying marriage and the offender does not know that judgment to be invalid; or

(d) the offender reasonably believes that ~~he~~ the offender is legally eligible to remarry.

(2) A person convicted of bigamy shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 1661. Section 45-5-612, MCA, is amended to read:

"45-5-612. Marrying a bigamist. (1) A person commits the offense of marrying a bigamist if ~~he~~ the person contracts or purports to contract a marriage with another knowing that the other is ~~thereby~~ committing bigamy.

(2) A person convicted of the offense of marrying a bigamist shall be fined not to exceed \$500 or be imprisoned in the county jail for any period not to exceed 6 months, or both."

Section 1662. Section 45-6-102, MCA, is amended to read:

"45-6-102. Negligent arson. (1) A person commits the offense of negligent arson if ~~he~~ the person purposely or knowingly starts a fire or causes an explosion, whether on ~~his~~ the person's own property or property of another, and thereby negligently:

(a) places another person in danger of death or bodily injury, including a firefighter responding to or at the scene of a fire or explosion; or

(b) places property of another in danger of damage or destruction.

(2) A person convicted of the offense of negligent arson shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender places another person in danger of death or bodily injury, ~~he~~ the offender shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both."

Section 1663. Section 45-6-201, MCA, is amended to read:

"45-6-201. Definition of enter or remain unlawfully. (1) A person enters or remains unlawfully in or upon any vehicle, occupied structure, or premises when ~~he~~ the person is not licensed, invited, or otherwise privileged to do so. Privilege to enter or remain upon land is extended either by the explicit permission of the landowner or other authorized person or by the failure of the landowner or other authorized person to post notice

denying entry onto private land. The privilege may be revoked at any time by personal communication of notice by the landowner or other authorized person to the entering person.

(2) To provide for effective posting of private land through which the public has no right-of-way, the notice provided for in subsection (1) must satisfy the following requirements:

(a) notice must be placed on a post, structure, or natural object by marking it with written notice or with not less than 50 square inches of fluorescent orange paint, except that when metal fenceposts are used, the entire post must be painted; and

(b) the notice described in subsection (2)(a) must be placed at each outer gate and normal point of access to the property, including both sides of a water body crossing the property wherever the water body intersects an outer boundary line.

(3) To provide for effective posting of private land through which or along which the public has an unfenced right-of-way by means of a public road, a landowner shall:

(a) place a conspicuous sign no closer than 30 feet of the centerline of the roadway where it enters the private land, stating words substantially similar to "PRIVATE PROPERTY, NO TRESPASSING OFF ROAD NEXT ___ MILES"; or

(b) place notice, as described in subsection (2)(a), no closer than 30 feet of the centerline of the roadway at regular intervals of not less than one-fourth mile along the roadway where it borders unfenced private land, except that orange markings may not be placed on posts where the public roadway enters the private land.

(4) If property has been posted in substantial compliance with subsection (2) or (3), it is considered closed to public access unless explicit permission to enter is given by the landowner or ~~his~~ the landowner's authorized agent.

(5) The department of fish, wildlife, and parks shall attempt to educate and inform all persons holding hunting, fishing, or trapping licenses or permits by including on any publication concerning the licenses or permits, in condensed form, the provisions of this section concerning entry on private land. The department shall use public media, as well as its own publications, in attempting to educate and inform other recreational users of the provisions of this section. In the interests of providing the public with clear information regarding the public nature of certain unfenced rural rights-of-way, the department may develop and distribute posting signs that satisfy the requirements of subsection (3).

(6) For purposes of this section, "land" means land as defined in 70-15-102.

(7) ~~In no event may civil~~ Civil liability may not be imposed upon the owner or occupier of premises by reason of any privilege created by this section."

Section 1664. Section 45-6-202, MCA, is amended to read:

"45-6-202. Criminal trespass to vehicles. (1) A person commits the offense of criminal trespass to vehicles when ~~he~~ the person purposely or knowingly and without authority enters any vehicle or any part ~~thereof~~ of a vehicle.

(2) A person convicted of the offense of criminal trespass to vehicles shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 1665. Section 45-6-204, MCA, is amended to read:

"45-6-204. Burglary. (1) A person commits the offense of burglary if ~~he~~ the person knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense ~~therein~~ in the occupied structure.

(2) A person commits the offense of aggravated burglary if ~~he~~ the person knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense ~~therein~~ in the occupied structure and:

(a) in effecting entry or in the course of committing the offense or in immediate flight ~~thereafter~~ after effecting entry or committing the offense, ~~he~~ the person or another participant in the offense is armed with explosives or a weapon; or

(b) in effecting entry or in the course of committing the offense or in immediate flight ~~thereafter~~ after effecting entry or committing the offense, ~~he~~ the person purposely, knowingly, or negligently inflicts or attempts to inflict bodily injury upon anyone.

(3) A person convicted of the offense of burglary shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed \$50,000, or both. A person convicted of the offense of aggravated burglary shall be imprisoned in the state prison for any term not to exceed 40 years or be fined an amount not to exceed \$50,000, or both."

Section 1666. Section 45-6-205, MCA, is amended to read:

"45-6-205. Possession of burglary tools. (1) A person commits the offense of possession of burglary tools when ~~he~~ the person knowingly possesses any key, tool, instrument, device, or explosive suitable for breaking into an occupied structure, or a vehicle, or any depository designed for the safekeeping of property or any part ~~thereof~~ of the occupied structure, vehicle, or depository with the purpose to commit an offense ~~therewith~~.

(2) A person convicted of possession of burglary tools shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 1667. Section 45-6-302, MCA, is amended to read:

"45-6-302. Theft of lost or mislaid property. (1) A person who obtains control over lost or mislaid property commits the offense of theft when ~~he~~ the person:

(a) knows or learns the identity of the owner or knows, is aware of, or learns of a reasonable method of identifying the owner;

(b) fails to take reasonable measures to restore the property to the owner; and

(c) has the purpose of depriving the owner permanently of the use or benefit of the property.

(2) A person convicted of theft of lost or mislaid property shall be fined not to exceed \$500 or be imprisoned in the county jail for a period not to exceed 6 months."

Section 1668. Section 45-6-305, MCA, is amended to read:

"45-6-305. Theft of labor or services or use of property. (1) A person commits the offense of theft when ~~he~~ the person obtains the temporary use of property, labor, or services of another ~~which~~ that are available only for hire, by means of threat or deception or knowing that ~~such~~ the use is without the consent of the person providing the property, labor, or services.

(2) A person convicted of theft of labor or services or use of property shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 1669. Section 45-6-308, MCA, is amended to read:

"45-6-308. Unauthorized use of motor vehicles. (1) A person commits the offense of unauthorized use of motor vehicles if ~~he~~ the person knowingly operates the automobile, airplane, motorcycle, quadricycle, motorboat, or other motor-propelled vehicle of another without ~~his~~ the other's consent.

(2) A person convicted of unauthorized use of motor vehicles shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. It is an affirmative defense that the offender reasonably believed that the owner would have consented to the operation had ~~he~~ the owner known of it."

Section 1670. Section 45-6-314, MCA, is amended to read:

"45-6-314. Theft by disposal of stolen property. A pawnbroker or dealer who buys and sells secondhand merchandise and allows stolen property to be sold, bartered, or otherwise disposed of after a peace officer has requested ~~him~~ the pawnbroker or dealer to hold the property for 30 days, as provided in 46-5-212,

commits the offense of theft as defined in 45-6-301."

Section 1671. Section 45-6-315, MCA, is amended to read:

"45-6-315. Defrauding creditors. (1) A person commits the offense of defrauding secured creditors if ~~he~~ the person destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose to hinder enforcement of that interest.

(2) "Security interest" means an interest in personal property or fixtures as defined in the Uniform Commercial Code, ~~{30-1-201(2)(jj)}~~.

(3) A person convicted of the offense of defrauding secured creditors shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(4) A person who destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose of depriving the owner of the property or of the proceeds and value ~~therefrom~~ from the property may be prosecuted under 45-6-301."

Section 1672. Section 45-6-318, MCA, is amended to read:

"45-6-318. Deceptive business practices. (1) A person commits the offense of deceptive business practices if in the course of engaging in a business, occupation, or profession, ~~he~~ the person purposely or knowingly:

(a) uses or possesses for use a false weight or measure or any other device for falsely determining or recording any quality or quantity;

(b) sells, offers, exposes for sale, or delivers less than the represented quantity of any commodity or service;

(c) takes or attempts to take more than the represented quantity of any commodity or service when as buyer ~~he~~ the person furnished the weight or measure;

(d) sells, offers, or exposes for sale adulterated commodities;

(e) sells, offers, or exposes for sale mislabeled commodities; or

(f) makes a deceptive statement regarding the quantity or price of goods in any advertisement addressed to the public.

(2) "Adulterated" means varying from the standard of composition or quality prescribed by statute or lawfully promulgated administrative regulation or, if none, as set by established commercial usage.

(3) "Mislabeled" means:

(a) varying from the standard of truth or disclosure in labeling prescribed by statute or lawfully promulgated administrative regulation or, if none, as set by established commercial usage; or

(b) represented as being another person's produce though otherwise labeled accurately as to quality and quantity.

(4) A person convicted of the offense of deceptive business practices shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 1673. Section 45-6-319, MCA, is amended to read:

"45-6-319. Chain distributor schemes. (1) As used in this section, the following definitions apply:

(a) "Chain distributor scheme" means a sales device whereby a person, under a condition that ~~he~~ the person make an investment, is granted a license or right to recruit for consideration one or more additional persons who are also granted ~~such a~~ such a license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted ~~such a~~ such a license or right upon ~~such the~~ such the condition.

(b) "Person" means a natural person, corporation, partnership, trust, or other entity; and, in the case of an entity, ~~it shall include~~ includes any other entity ~~which that~~ which that has a majority interest in ~~such the~~ such the entity or effectively controls ~~such the~~ such the other entity as well as the individual officers, directors, and other persons in act of control of the activities of each entity.

(2) It is unlawful for ~~any a~~ any a person to promote, sell, or encourage participation in any chain distributor scheme.

(3) ~~Any A~~ Any A person violating the provisions of this section shall, upon conviction, be imprisoned in the state prison for a period not to exceed 1 year or ~~be~~ be fined not to exceed \$1,000, or both.

(4) ~~Any A~~ Any A person convicted of a second offense under this section shall be imprisoned in the state prison for a period not to exceed 5 years or ~~be~~ be fined not to exceed \$5,000, or both."

Section 1674. Section 45-6-326, MCA, is amended to read:

"45-6-326. Obscuring the identity of a machine. (1) A person commits the offense of obscuring the identity of a machine if ~~he~~ the person:

(a) removes, defaces, covers, alters, destroys, or otherwise obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any machine, vehicle, electrical device, or firearm with the purpose to conceal, misrepresent, or transfer any ~~such~~ such machine, vehicle, electrical device, or firearm; or

(b) possesses with the purpose to conceal, misrepresent, or transfer any machine, vehicle, device, or firearm knowing that the serial number or other identification number or mark has been removed or otherwise obscured.

(2) A person convicted of obscuring the identity of a machine shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The fact of possession or transfer of any ~~such~~ machine, vehicle, electrical device, or firearm described in subsection (1) creates a presumption that the person knew the serial number or other identification number or mark had been removed or otherwise obscured."

Section 1675. Section 45-6-327, MCA, is amended to read:

"45-6-327. Illegal branding or altering or obscuring a brand. (1) A person commits the offense of illegal branding or altering or obscuring a brand if ~~he~~ the person marks or brands any commonly domesticated hoofed animal or removes, covers, alters, or defaces ~~any~~ an existing mark or brand on any commonly domesticated hoofed animal with the purpose to obtain or exert unauthorized control over ~~said~~ the animal or with the purpose to conceal, misrepresent, transfer, or prevent identification of ~~said~~ the animal.

(2) A person convicted of the offense of illegal branding or altering or obscuring a brand shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both."

Section 1676. Section 45-7-101, MCA, is amended to read:

"45-7-101. Bribery in official and political matters. (1) A person commits the offense of bribery if ~~he~~ the person purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(b) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(c) any benefit as consideration for a violation of a known duty as a public servant or party official.

(2) It is no defense to prosecution under this section that a person whom the offender sought to influence was not qualified to act in the desired way whether because ~~he~~ the person had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted of the offense of bribery shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both, and shall forever be disqualified from holding any public office in this state."

Section 1677. Section 45-7-103, MCA, is amended to read:

"45-7-103. Compensation for past official behavior. (1) A person commits an offense under this section if ~~he~~ the person knowingly solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having, as a public servant, given a decision, opinion, recommendation, or vote favorable to another, for having otherwise exercised a discretion in another's favor, or for having violated ~~his~~ the person's duty. A person commits an offense under this section if ~~he~~ the person knowingly offers, confers, or agrees to confer compensation ~~which~~ that is prohibited by this section.

(2) A person convicted under this section shall be fined not to exceed \$500 or imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 1678. Section 45-7-104, MCA, is amended to read:

"45-7-104. Gifts to public servants by persons subject to their jurisdiction. (1) ~~No~~ A public servant in any department or agency exercising regulatory function, conducting inspections or investigations, carrying on a civil or criminal litigation on behalf of the government, or having custody of prisoners ~~shall~~ may not solicit, accept, or agree to accept any pecuniary benefit from a person known to be subject to ~~such~~ the regulation, inspection, investigation, or custody or against whom ~~such~~ litigation is known to be pending or contemplated.

(2) ~~No~~ A public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the government ~~shall~~ may not solicit, accept, or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any ~~such~~ contract, purchase, payment, claim, or transaction.

(3) ~~No~~ A public servant having judicial or administrative authority and ~~no~~ a public servant employed by or in a court or other tribunal having ~~such~~ judicial or administrative authority or participating in the enforcement of its decision ~~shall~~ may not solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before ~~such~~ the public servant or tribunal with which ~~he~~ the public servant or tribunal is associated.

(4) ~~No~~ A legislator or public servant employed by the legislature or by any committee or agency ~~thereof~~ shall of the legislature may not solicit, accept, or agree to accept any pecuniary benefit from a person known to

be interested in or likely to become interested in any matter before the legislature or any committee or agency thereof of the legislature.

(5) This section ~~shall~~ does not apply to:

(a) fees prescribed by law to be received by a public servant or any other benefit for which the recipient gives legitimate consideration or to which ~~he~~ the public servant is otherwise entitled; or

(b) trivial benefits incidental to personal, professional, or business contacts and involving no substantial risk of undermining official impartiality.

(6) ~~No~~ A person ~~shall~~ may not knowingly confer or offer or agree to confer any benefit prohibited by subsections (1) through (5).

(7) A person convicted of an offense under this section shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 1679. Section 45-7-201, MCA, is amended to read:

"45-7-201. Perjury. (1) A person commits the offense of perjury if in any official proceeding ~~he~~ the person knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of a statement previously made; when the statement is material.

(2) A person convicted of perjury shall be punished by imprisonment in the state prison for any term not to exceed 10 years or ~~shall~~ be punished by a fine of not more than \$50,000, or ~~by both such fine and imprisonment.~~

(3) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.

(4) It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the offender presents it as being so verified ~~shall~~ must be deemed considered to have been ~~duly~~ sworn or affirmed.

(5) ~~No~~ A person ~~shall~~ may not be guilty of an offense under this section if ~~he~~ the person retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(6) ~~Where~~ When the defendant made inconsistent statements under oath or equivalent affirmation, both

having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In ~~such that~~ case, it ~~shall is not be~~ necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(7) ~~No~~ A person ~~shall~~ may not be convicted of an offense under this section ~~where~~ when proof of falsity rests solely upon the testimony of a single person other than the defendant."

Section 1680. Section 45-7-203, MCA, is amended to read:

"45-7-203. Unsworn falsification to authorities. (1) A person commits an offense under this section if, with the purpose to mislead a public servant in performing ~~his~~ an official function, ~~he~~ the person:

- (a) makes any written false statement ~~which he~~ that the person does not believe to be true;
- (b) purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements ~~therein~~ from being misleading;
- (c) submits or invites reliance on any writing ~~which he~~ that the person knows to be forged, altered, or otherwise lacking in authenticity; or
- (d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object ~~which he~~ that the person knows to be false.

(2) A person convicted of an offense under this section shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 1681. Section 45-7-204, MCA, is amended to read:

"45-7-204. False alarms to agencies of public safety. (1) A person commits an offense under this section if ~~he~~ the person knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, ~~which~~ that deals with emergencies involving danger to life or property.

(2) A person convicted of an offense under this section shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 1682. Section 45-7-205, MCA, is amended to read:

"45-7-205. False reports to law enforcement authorities. (1) A person commits an offense under this section if ~~he~~ the person knowingly:

- (a) gives false information to any law enforcement officer with the purpose to implicate another;

(b) reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(c) pretends to furnish ~~such law enforcement~~ authorities with information relating to an offense or incident when ~~he~~ the person knows ~~he~~ that the person has no information relating to ~~such~~ the offense or incident.

(2) A person convicted under this section shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 1683. Section 45-7-206, MCA, is amended to read:

"45-7-206. Tampering with witnesses and informants. (1) A person commits the offense of tampering with witnesses and informants if, believing that an official proceeding or investigation is pending or about to be instituted, ~~he~~ the person purposely or knowingly attempts to induce or otherwise cause a witness or informant to:

- (a) testify or inform falsely;
- (b) withhold any testimony, information, document, or thing;
- (c) elude legal process summoning ~~him~~ the witness or informant to testify or supply evidence; or
- (d) ~~absent himself from~~ not appear at any proceeding or investigation to which ~~he~~ the witness or informant has been summoned.

(2) A person convicted of tampering with witnesses or informants shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both."

Section 1684. Section 45-7-207, MCA, is amended to read:

"45-7-207. Tampering with or fabricating physical evidence. (1) A person commits the offense of tampering with or fabricating physical evidence if, believing that an official proceeding or investigation is pending or about to be instituted, ~~he~~ the person:

- (a) alters, destroys, conceals, or removes any record, document, or thing with purpose to impair its verity or availability in ~~such~~ the proceeding or investigation; or
- (b) makes, presents, or uses any record, document, or thing knowing it to be false and with purpose to mislead any person who is or may be engaged in ~~such~~ the proceeding or investigation.

(2) A person convicted of tampering with or fabricating physical evidence shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both."

Section 1685. Section 45-7-301, MCA, is amended to read:

"45-7-301. Resisting arrest. (1) A person commits the offense of resisting arrest if ~~he~~ the person knowingly prevents or attempts to prevent a peace officer from effecting an arrest by:

(a) using or threatening to use physical force or violence against the peace officer or another; or

(b) using any other means ~~which~~ that creates a risk of causing physical injury to the peace officer or another.

(2) It is no defense to a prosecution under this section that the arrest was unlawful, ~~provided~~ if the peace officer was acting under color of ~~his~~ the officer's official authority.

(3) A person convicted of the offense of resisting arrest shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 1686. Section 45-7-303, MCA, is amended to read:

"45-7-303. Obstructing justice. (1) For the purpose of this section "an offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(2) A person commits the offense of obstructing justice if, knowing ~~a~~ another person is an offender, ~~he~~ the person purposely:

(a) harbors or conceals an offender;

(b) warns an offender of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring an offender into compliance with the law;

(c) provides an offender with money, transportation, weapon, disguise, or other means of avoiding discovery or apprehension;

(d) prevents or obstructs by means of force, deception, or intimidation anyone from performing an act that might aid in the discovery or apprehension of an offender;

(e) suppresses by act of concealment, alteration, or destruction any physical evidence that might aid in the discovery or apprehension of an offender; or

(f) aids an offender who is subject to official detention to escape from ~~such~~ official detention.

(3) A person convicted of obstructing justice shall be:

(a) imprisoned in the state prison for a term not to exceed 10 years if the offender has been or is liable to be charged with a felony; or

(b) fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, if the offender has been or is liable to be charged with a misdemeanor."

Section 1687. Section 45-7-304, MCA, is amended to read:

"45-7-304. Failure to aid a peace officer. (1) A peace officer may order a person to cooperate ~~where~~ when it is reasonable for the peace officer to enlist the cooperation of ~~such that~~ such ~~that~~ person in:

- (a) effectuating or securing an arrest of another pursuant to 46-6-402; or
- (b) preventing the commission by another of an offense.

(2) A person commits the offense of failure to aid a peace officer if ~~he~~ the person knowingly refuses to obey ~~such~~ an order described in subsection (1).

(3) A person convicted of the offense of failure to aid a peace officer shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 1688. Section 45-7-305, MCA, is amended to read:

"45-7-305. Compounding a of felony. (1) A person commits the offense of compounding a felony if ~~he~~ the person knowingly accepts or agrees to accept any pecuniary benefit in consideration for:

- (a) refraining from seeking prosecution of a felony; or
- (b) refraining from reporting to law enforcement authorities the commission or suspected commission of any felony or information relating to a felony.

(2) A person convicted of compounding a felony shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 1689. Section 45-7-308, MCA, is amended to read:

"45-7-308. Bail-jumping. (1) A person commits the offense of bail-jumping if, having been set at liberty by court order, with or without security, upon condition that ~~he~~ the person will subsequently appear at a specified time and place, ~~he~~ the person purposely fails without lawful excuse to appear at that time and place.

(2) This section ~~shall~~ may not interfere with the exercise by any court of its power to punish for contempt.

(3) This section ~~shall~~ does not apply to a person set at liberty by court order upon condition that ~~he~~ the person will appear in connection with a charge of having committed a misdemeanor, except that it shall apply where applies when the judge has released the defendant on ~~his~~ the defendant's own recognizance.

(4) A person convicted of bail-jumping in connection with a felony shall be imprisoned in the state prison for a term not to exceed 10 years. In all other cases, ~~he~~ the person shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 1690. Section 45-7-309, MCA, is amended to read:

"45-7-309. Criminal contempt. (1) A person commits the offense of criminal contempt when ~~he~~ the person knowingly engages in any of the following conduct:

- (a) disorderly, contemptuous, or insolent behavior committed during the sitting of a court in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority;
- (b) breach of the peace, noise, or other disturbance directly tending to interrupt a court's proceeding;
- (c) purposely disobeying or refusing any lawful process or other mandate of a court;
- (d) unlawfully refusing to be sworn as a witness in any court proceeding or, after being sworn, refusing to answer any legal and proper interrogatory;
- (e) purposely publishing a false or grossly inaccurate report of a court's proceeding; or
- (f) purposely failing to obey any mandate, process, or notice relative to juries issued pursuant to Title 3, chapter 15.

(2) A person convicted of the offense of criminal contempt shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 1691. Section 45-7-401, MCA, is amended to read:

"45-7-401. Official misconduct. (1) A public servant commits the offense of official misconduct when in ~~his~~ an official capacity ~~he~~ the public servant commits any of the following acts:

- (a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;
- (b) knowingly performs an act in ~~his~~ an official capacity ~~which he~~ that the public servant knows is forbidden by law;
- (c) with the purpose to obtain a personal advantage or an advantage for ~~himself~~ or another, performs an act in excess of ~~his~~ the public servant's lawful authority;
- (d) solicits or knowingly accepts for the performance of any act a fee or reward ~~which he~~ that the public servant knows is not authorized by law; or
- (e) knowingly conducts a meeting of a public agency in violation of 2-3-203.

(2) A public servant convicted of the offense of official misconduct shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The district court ~~shall have~~ has exclusive jurisdiction in prosecutions under this section. Any action for official misconduct must be commenced by an information filed after leave to file has been granted by the

district court or after a grand jury indictment has been found.

(4) A public servant who has been charged as provided in subsection (3) may be suspended from ~~his~~ office without pay pending final judgment. Upon final judgment of conviction, ~~he~~ the public servant shall permanently forfeit ~~his~~ the public servant's office. Upon acquittal, ~~he shall~~ the public servant must be reinstated in ~~his~~ office and ~~shall~~ must receive all backpay.

(5) This section does not affect any power conferred by law to impeach or remove any public servant or any proceeding authorized by law to carry into effect ~~such an~~ an impeachment or removal."

Section 1692. Section 45-7-501, MCA, is amended to read:

"45-7-501. Employer misconduct. (1) A person who is an employer, as defined in 39-71-117, commits the offense of employer misconduct if ~~he~~ the person knowingly or purposely:

(a) avoids ~~his~~ the person's responsibility to provide coverage for ~~his~~ the person's employees as required by 39-71-401;

(b) misrepresents or falsifies employment records or information, including but not limited to understating the amount of payroll or the number of ~~his~~ the person's employees; or

(c) refuses to pay premiums that ~~he~~ the person is obligated to pay under compensation plan No. 2, as provided in Title 39, chapter 71, part 22, or compensation plan No. 3, as provided in Title 39, chapter 71, part 23.

(2) A person convicted of the offense of employer misconduct shall be fined an amount not to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both."

Section 1693. Section 45-8-101, MCA, is amended to read:

"45-8-101. Disorderly conduct. (1) A person commits the offense of disorderly conduct if ~~he~~ the person knowingly disturbs the peace by:

(a) quarreling, challenging to fight, or fighting;

(b) making loud or unusual noises;

(c) using threatening, profane, or abusive language;

(d) discharging firearms, except at a shooting range during established hours of operation;

(e) rendering vehicular or pedestrian traffic impassable;

(f) rendering the free ingress or egress to public or private places impassable;

(g) disturbing or disrupting any lawful assembly or public meeting;

(h) transmitting a false report or warning of a fire or other catastrophe in ~~such a place that~~ where its

occurrence would endanger human life;

(i) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose;

or

(j) transmitting a false report or warning of an impending explosion in ~~such~~ a place ~~that~~ where its occurrence would endanger human life.

(2) Except as provided in subsection (3), a person convicted of the offense of disorderly conduct shall be fined not to exceed \$100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

(3) A person convicted of a violation of subsection (1)(j) shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both."

Section 1694. Section 45-8-103, MCA, is amended to read:

"45-8-103. Riot. (1) A person commits the offense of riot if ~~he~~ the person purposely and knowingly disturbs the peace by engaging in an act of violence or threat to commit an act of violence as part of an assemblage of five or more persons, ~~which~~ and the act or threat presents a clear and present danger of or results in damage to property or injury to persons.

(2) Except as provided in subsection (3), a person convicted of the offense of riot shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) A person who commits the offense of riot by engaging in an act of violence while incarcerated at any state adult correctional facility or city or county jail shall be imprisoned for not less than 1 year or more than 5 years."

Section 1695. Section 45-8-104, MCA, is amended to read:

"45-8-104. Incitement to riot. (1) A person commits the offense of incitement to riot if ~~he~~ the person purposely and knowingly commits an act or engages in conduct that urges other persons to riot. ~~Such~~ The act or conduct ~~shall~~ may not include the mere oral or written advocacy of ideas or expression of belief ~~which advocacy or expression~~ that does not urge the commission of an act of immediate violence.

(2) Except as provided in subsection (3), a person convicted of the offense of incitement to riot shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) A person who commits the offense of incitement to riot while incarcerated at any state adult correctional facility shall be imprisoned for not less than 1 year or more than 5 years."

Section 1696. Section 45-8-106, MCA, is amended to read:

"45-8-106. Bringing armed ~~men~~ individuals into the state. (1) A person commits the offense of bringing armed ~~men~~ individuals into the state when ~~he~~ the person knowingly brings or aids in bringing into this state an armed ~~person~~ individual or armed body of ~~men~~ individuals for the purpose of engaging in criminal or socially disruptive activities or to usurp the powers of law enforcement authorities.

(2) A person convicted of the offense of bringing armed ~~men~~ individuals into the state shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both."

Section 1697. Section 45-8-111, MCA, is amended to read:

"45-8-111. Public nuisance. (1) "Public nuisance" means:

(a) a condition ~~which~~ that endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons;

(b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

(c) a condition ~~which~~ that renders dangerous for passage any public highway or right-of-way or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if ~~he~~ the person knowingly creates, conducts, or maintains a public nuisance.

(3) Any act ~~which~~ that affects an entire community or neighborhood or any considerable number of persons, ~~(as specified in subsection (1)(a))~~, is no less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

(4) ~~No~~ An agricultural or farming operation, a place, an establishment, or a facility or any of its appurtenances or the operation ~~thereof~~ of those things is not or ~~becomes~~ does not become a public nuisance because of ~~the~~ its normal operation ~~thereof~~ as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

(5) Noises resulting from the shooting activities at a shooting range during established hours of operation are not considered a public nuisance.

(6) A person convicted of maintaining a public nuisance shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. Each day of ~~such~~ the conduct constitutes a separate offense."

Section 1698. Section 45-8-112, MCA, is amended to read:

"45-8-112. Action to abate a public nuisance. (1) ~~Every~~ A public nuisance may be abated and the persons maintaining ~~such the~~ the nuisance and the possessor of the premises who permits the ~~same~~ nuisance to be maintained may be enjoined from ~~such the~~ the conduct by an action in equity in the name of the state of Montana by the county attorney or any resident of the state.

(2) Upon the filing of the complaint in ~~such the~~ the action, the judge may issue a temporary injunction.

(3) In ~~such an~~ an action, evidence of the general reputation of the premises is admissible for the purpose of proving the existence of the nuisance.

(4) If the existence of the nuisance is established, an order of abatement ~~shall~~ must be entered as part of the judgment in the case. The judge issuing the order may, ~~in his discretion:~~

(a) confiscate all fixtures used on the premises to maintain the nuisance and either sell them and transmit the proceeds to the county general fund, destroy them, or return them to their rightful ownership;

(b) close the premises for any period not to exceed 1 year, during which period the premises ~~shall~~ must remain in the custody of the court;

(c) allow the premises to be opened upon posting bond sufficient in amount to ~~assure~~ ensure compliance with the order of abatement. The bond ~~shall~~ must be forfeited if the nuisance is continued or resumed. The procedure for forfeiture or discharge of the bond ~~shall be~~ is as provided in 46-9-502 and 46-9-503; ~~or,~~

(d) impose any combination of ~~the above~~ subsections (4)(a) through (4)(c)."

Section 1699. Section 45-8-113, MCA, is amended to read:

"45-8-113. Creating a hazard. (1) A person commits the offense of creating a hazard if ~~he~~ the person knowingly:

(a) discards in any place where it might attract children a container having a compartment of more than 1 1/2 cubic feet capacity and a door or lid that locks or fastens automatically when closed and cannot easily be opened from the inside and fails to remove the door, lid, or locking or fastening device;

(b) being the owner or otherwise having possession of property upon which there is a well, cistern, cesspool, mine shaft, or other hole of a depth of 4 feet or more and a top width of 12 inches or more, fails to cover or fence it with a suitable protective construction;

(c) tampers with an aircraft without the consent of the owner;

(d) being the owner or otherwise having possession of property upon which there is a steam engine or steam boiler, continues to use a steam engine or steam boiler ~~which~~ that is in an unsafe condition;

(e) being a person in the act of game hunting, acts in a negligent manner or knowingly fails to give all reasonable assistance to any person whom ~~he~~ the person has injured; or

(f) deposits any hard substance upon or between any railroad tracks ~~which~~ that will tend to derail railroad cars or other vehicles.

(2) A person convicted of the offense of creating a hazard shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 1700. Section 45-8-114, MCA, is amended to read:

"45-8-114. Failure to yield party line. (1) Any person who fails to relinquish a telephone party line or public pay telephone after ~~he~~ the person has been requested to do so to permit another to place an emergency call to a fire department or police department or for medical aid or ambulance service shall be imprisoned for a term not to exceed 10 days or be fined not to exceed \$25, or both.

(2) It is a defense to prosecution under subsection (1) that the accused did not know or did not have reason to know of the emergency in question or that the accused was ~~himself~~ using the telephone party line or public pay telephone for ~~such~~ an emergency call.

(3) Any person who requests another to relinquish a telephone party line or public pay telephone on the pretext that ~~he~~ the person ~~must~~ needs to place an emergency call, knowing ~~such~~ the pretext to be false, shall be imprisoned for a term not to exceed 10 days or be fined not to exceed \$25, or both.

(4) ~~Every~~ Each telephone company doing business in this state shall print a copy of subsections (1), (2), and (3) of ~~this section~~ in each telephone directory published by it ~~after January 1, 1974.~~"

Section 1701. Section 45-8-115, MCA, is amended to read:

"45-8-115. Illegal posting of state and federal land. (1) A person commits the offense of illegal posting of state or federal land if, without authorization, ~~he~~ the person knowingly posts land that is under the ownership or control of the state or federal government to restrict access or use of state or federal land.

(2) A person convicted of illegal posting of state or federal land shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 1702. Section 45-8-201, MCA, is amended to read:

"45-8-201. Obscenity. (1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof ~~thereof~~ of the material, ~~he~~ the person purposely or knowingly:

- (a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under ~~the age of 18~~ years of age;
 - (b) presents or directs an obscene play, dance, or other performance, or participates in that portion ~~thereof which~~ of the performance that makes it obscene, to anyone under ~~the age of 18~~ years of age;
 - (c) publishes, exhibits, or otherwise makes available anything obscene to anyone under ~~the age of 18~~ years of age;
 - (d) performs an obscene act or otherwise presents an obscene exhibition of ~~his~~ the person's body to anyone under ~~the age of 18~~ years of age;
 - (e) creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under ~~the age of 18~~ years of age; or
 - (f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by ~~him~~ the person to be obscene.
- (2) A thing is obscene if:
- (a) (i) it is a representation or description of perverted ultimate sexual acts, actual or simulated;
 - (ii) it is a patently offensive representation or description of normal ultimate sexual acts, actual or simulated; or
 - (iii) it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and
- (b) taken as a whole the material:
 - (i) applying contemporary community standards, appeals to the prurient interest in sex;
 - (ii) portrays conduct described in subsection (2)(a)(i), (2)(a)(ii), or (2)(a)(iii) in a patently offensive way;
- and
- (iii) lacks serious literary, artistic, political, or scientific value.
- (3) In any prosecution for an offense under this section, evidence ~~shall be~~ is admissible to show:
- (a) the predominant appeal of the material and what effect, if any, it would probably have on the behavior of people;
 - (b) the artistic, literary, scientific, educational, or other merits of the material;
 - (c) the degree of public acceptance of the material in the community;
 - (d) the appeal to prurient interest or absence thereof of that appeal in advertising or other promotion of the material; or
 - (e) the purpose of the author, creator, publisher, or disseminator.

(4) A person convicted of obscenity shall be fined at least \$500 but not more than \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(5) Cities, towns, or counties may adopt ordinances or resolutions ~~which~~ that are more restrictive as to obscenity than the provisions of 45-8-206 and this section."

Section 1703. Section 45-8-203, MCA, is amended to read:

"45-8-203. Certain motion picture theater employees not liable for prosecution. (1) (a) As used in this section, "employee" means any person regularly employed by the owner or operator of a motion picture theater if ~~he~~ the person has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, has no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where ~~he~~ the person is regularly employed.

(b) ~~"Employee"~~ The term does not include a manager of the motion picture theater.

(2) ~~No~~ An employee is not liable to prosecution under 45-8-201 and 45-8-206 or under any city or county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture provided the employee is acting within the scope of ~~his~~ regular employment at a showing open to the public."

Section 1704. Section 45-8-207, MCA, is amended to read:

"45-8-207. Notice of violation. Before a county attorney may prosecute a person for a continuing violation of 45-8-206, ~~he~~ the county attorney shall determine that the material or performance is obscene to minors, give the alleged violator actual notice of the determination and notice that ~~he~~ the person will be prosecuted if ~~he~~ the person does not desist, and determine that the violation continued for at least 3 days after notice was received. The person may seek a declaratory judgment on the question of whether the material or performance is obscene to minors. The statute of limitations for the offense is tolled while the declaratory judgment or an appeal from it is pending."

Section 1705. Section 45-8-210, MCA, is amended to read:

"45-8-210. Causing animals to fight -- owners, trainers, and spectators -- penalties -- exception -- definition. (1) A person commits the offense of causing animals to fight if ~~he~~ the person:

(a) owns, possesses, keeps, or trains any animal with the intent that ~~such~~ the animal fight or be engaged in an exhibition of fighting with another animal;

(b) allows or causes any animal to fight with another animal or causes any animal to menace or injure

another animal for the purpose of sport, amusement, or gain;

(c) knowingly permits any act in violation of subsection (1)(a) or (1)(b) to take place on any premises under ~~his~~ the person's charge or control; or aids or abets any ~~such~~ act described in subsection (1)(a) or (1)(b);

(d) participates in any exhibition in which animals are fighting for the purpose of sport, amusement, or gain.

(2) A person convicted of violating this section is guilty of a felony and shall be fined an amount not to exceed \$5,000 or be imprisoned in the state prison for a term of not less than 1 year or more than 5 years, or both ~~such fine and imprisonment~~.

(3) Nothing in this section prohibits the following:

(a) accepted husbandry practices used in the raising of livestock or poultry;

(b) the use of animals in the normal and usual course of rodeo events; or

(c) the use of animals in hunting and training as permitted by law.

(4) For purposes of this section, "animal" means any cock, bird, dog, or mammal except ~~man~~ a human."

Section 1706. Section 45-8-214, MCA, is amended to read:

"45-8-214. Bribery in contests. (1) A person commits the offense of bribery in contests if ~~he~~ the person purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's failure to use ~~his~~ the recipient's best efforts in connection with any professional or amateur athletic contest, sporting event, or exhibition; or

(b) any benefit as consideration for a violation of a known duty as a person participating in, officiating, or connected with any professional or amateur athletic contest, sporting event, or exhibition.

(2) A person convicted of the offense of bribery in contests shall be fined not to exceed \$5,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 1707. Section 45-8-215, MCA, is amended to read:

"45-8-215. Desecration of flags. (1) In this section, the term "flag" means anything ~~which~~ that is or purports to be the official flag of the United States, the United States shield, the United States coat of arms, the Montana state flag, or a copy, picture, or representation of any of ~~them~~ the described articles.

(2) A person commits the offense of desecration of flags if ~~he~~ the person purposely or knowingly:

(a) publicly mutilates, defiles, or casts contempt upon the flag;

(b) places on or attaches to the flag any work, mark, design, or advertisement not properly a part of ~~such~~ the flag or exposes to public view a flag so altered;

(c) manufactures or exposes to public view an article of merchandise or a wrapper or receptacle for merchandise upon which the flag is depicted; or

(d) uses the flag for commercial advertising purposes.

(3) A person convicted of the offense of desecration of flags shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

(4) This section does not apply to flags depicted on written or printed documents or periodicals or on stationery, ornaments, pictures, or jewelry, ~~provided if~~ provided if there are not unauthorized words or designs on ~~such~~ the flags and ~~provided if~~ provided if the flag is not connected with any advertisement."

Section 1708. Section 45-8-316, MCA, is amended to read:

"45-8-316. Carrying concealed weapons. (1) ~~Every~~ A person who carries or bears concealed upon ~~his~~ the individual's person a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife having a blade 4 inches long or longer, razor, not including a safety razor, or other deadly weapon shall be punished by a fine not exceeding \$500 or be imprisonment in the county jail for a period not exceeding 6 months, or both.

(2) A person who has previously been convicted of an offense, committed on a different occasion than the offense under this section, in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed and who carries or bears concealed upon ~~his~~ the individual's person any of the weapons described in subsection (1) shall be punished by a fine not exceeding \$1,000 or be imprisoned in the state prison for a period not exceeding 5 years, or both."

Section 1709. Section 45-8-325, MCA, is amended to read:

"45-8-325. Permittee change of county of residence -- notification to sheriffs and chief of police. A person with a permit to carry a concealed weapon who changes ~~his~~ the person's county of residence shall within 10 days of the change inform the sheriffs of both the old and new counties of residence of ~~his~~ the change of residence and that ~~he~~ the person holds the permit. If ~~his~~ the person's residence changes either from or to a city or town with a police force, ~~he~~ the person shall also inform the chief of police in each of those cities or towns that has a police force."

Section 1710. Section 45-8-327, MCA, is amended to read:

"45-8-327. Carrying a concealed weapon while under the influence. A person commits the offense of carrying a concealed weapon while under the influence if ~~he~~ the person purposely or knowingly carries a concealed weapon while under the influence of an intoxicating substance. It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or be fined an amount not to exceed \$500, or both."

Section 1711. Section 45-8-331, MCA, is amended to read:

"45-8-331. Switchblade knives. (1) ~~Every~~ A person who carries or bears upon ~~his~~ the individual's person, who carries or bears within or on any motor vehicle or other means of conveyance owned or operated by ~~him~~ the person, or who owns, possesses, uses, stores, gives away, sells, or offers for sale a switchblade knife shall be punished by a fine not exceeding \$500 or by imprisonment in the county jail for a period not exceeding 6 months, ~~or by both such fine and imprisonment.~~

(2) A bona fide collector whose collection is registered with the sheriff of the county in which ~~said~~ the collection is located is ~~hereby~~ exempted from the provisions of this section.

(3) For the purpose of this section, a switchblade knife is defined as any knife ~~which~~ that has a blade 1 1/2 inches long or longer ~~which~~ that opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife."

Section 1712. Section 45-8-333, MCA, is amended to read:

"45-8-333. Reckless or malicious use of explosives. ~~Every~~ A person who ~~shall~~ recklessly or maliciously ~~use~~ uses, ~~handle~~ handles, or ~~have~~ has in ~~his or her~~ the person's possession any blasting powder, giant or Hercules powder, giant caps, or other highly explosive substance ~~whereby~~ through which any human being is intimidated, terrified, or endangered ~~shall be~~ is guilty of a misdemeanor."

Section 1713. Section 45-8-334, MCA, is amended to read:

"45-8-334. Possession of a destructive device. (1) A person who, with the purpose to commit a felony, has in ~~his~~ the person's possession any destructive device on a public street or highway, in or near any theater, hall, school, college, church, hotel, other public building, or private habitation, in, on, or near any aircraft, railway passenger train, car, vessel engaged in carrying passengers for hire, or other public place ordinarily passed by human beings is guilty of the offense of possession of a destructive device.

(2) A person convicted of the offense of possession of a destructive device shall be imprisoned in the state prison for a period of not more than 10 years or be fined an amount of not more than \$50,000, or both."

Section 1714. Section 45-8-335, MCA, is amended to read:

"45-8-335. Possession of explosives. (1) A person commits the offense of possession of explosives if ~~he~~ the person possesses, manufactures, transports, buys, or sells an explosive compound, flammable material, or timing, detonating, or similar device for use with an explosive compound or incendiary device and:

(a) has the purpose to use ~~such~~ the explosive, material, or device to commit an offense; or

(b) knows that another has the purpose to use ~~such~~ the explosive, material, or device to commit an offense.

(2) A person convicted of the offense of possession of explosives shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed \$50,000, or both."

Section 1715. Section 45-8-336, MCA, is amended to read:

"45-8-336. Possession of a silencer. (1) A person commits the offense of possession of a silencer if ~~he~~ the person possesses, manufactures, transports, buys, or sells a silencer and has the purpose to use it to commit an offense or knows that another person has such a purpose.

(2) A person convicted of the offense of possession of a silencer is punishable by imprisonment in the state prison for a term of not less than 5 years or more than 30 years or by a fine of not less than \$1,000 or more than \$20,000 or ~~by both such fine and imprisonment.~~"

Section 1716. Section 45-8-339, MCA, is amended to read:

"45-8-339. Carrying firearms on train -- penalty. (1) Except as authorized by the management of a railroad, it is unlawful for a person not authorized to carry a weapon in the course of ~~his~~ the person's official duties to knowingly or purposely carry or transport firearms on a train in this state unless, prior to boarding, the person has delivered all firearms and ammunition, if any, to the operator of the train.

(2) A person violating this section shall be punished by a fine not exceeding \$500 or by imprisonment in the county jail for a period not exceeding 6 months, or both."

Section 1717. Section 45-8-340, MCA, is amended to read:

"45-8-340. Sawed-off firearm -- penalty. (1) A person commits the offense of possession of a sawed-off

firearm if ~~he~~ the person knowingly possesses a rifle or shotgun that when originally manufactured had a barrel length of:

- (a) 16 inches or more and an overall length of 26 inches or more in the case of a rifle; or
- (b) 18 inches or more and an overall length of 26 inches or more in the case of a shotgun; and
- (c) the firearm has been modified in a manner so that the barrel length, overall length, or both, are less than specified in subsection (1)(a) or (1)(b).

(2) The barrel length is the distance from the muzzle to the rear-most point of the chamber.

(3) This section does not apply to firearms possessed:

- (a) by a peace officer of this state or one of its political subdivisions;
- (b) by an officer of the United States government authorized to carry weapons;
- (c) by a person in actual service as a member of the national guardsman guard;
- (d) by a person called to the aid of one of the persons named in subsections (3)(a) through (3)(c);
- (e) for educational or scientific purposes in which the firearms are incapable of being fired;
- (f) by a person who has a valid federal tax stamp for the firearm, issued by the bureau of alcohol, tobacco, and firearms; or
- (g) by a bona fide collector of firearms if the firearm is a muzzleloading, sawed-off firearm manufactured before 1900.

(4) A person convicted of the offense of possession of a sawed-off firearm ~~must~~ shall be fined not less than \$200 or more than \$500 or be imprisoned in the county jail for not less than 5 days or more than 6 months, or both, upon a first conviction. If a person has one or more prior convictions under this section or one or more prior felony convictions under a law of this state, another state, or the United States, ~~he must~~ the person shall be fined an amount not to exceed \$1,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both."

Section 1718. Section 45-8-405, MCA, is amended to read:

"45-8-405. Pattern of criminal street gang activity. (1) For purposes of this part, "pattern of criminal street gang activity" means the commission, solicitation, conspiracy, or attempt; ~~the~~ the adjudication as a delinquent youth for the commission, attempt, or solicitation; ~~or~~ or ~~the~~ the conviction of two or more of the offenses listed in subsection (2) within a 3-year period, ~~and that the~~ which offenses were committed on separate occasions.

(2) The offenses that form a pattern of criminal street gang activity include:

- (a) deliberate homicide, as defined in 45-5-102;

- (b) assault with a weapon, as defined in 45-5-213;
- (c) intimidation, as defined in 45-5-203;
- (d) kidnapping, as defined in 45-5-302;
- (e) aggravated kidnapping, as defined in 45-5-303;
- (f) robbery, as defined in 45-5-401;
- (g) sexual intercourse without consent, as defined in 45-5-503;
- (h) aggravated promotion of prostitution, as defined in 45-5-603;
- (i) criminal mischief, as defined in 45-6-101;
- (j) arson, as defined in 45-6-103;
- (k) burglary, as defined in 45-6-204;
- (l) theft, as defined in 45-6-301;
- (m) forgery, as defined in 45-6-325;
- (n) tampering with witnesses and informants, as defined in 45-7-206;
- (o) bringing armed ~~men~~ individuals into the state, as defined in 45-8-106;
- (p) unlawful possession of a firearm by a convicted person, as defined in 45-8-313;
- (q) carrying a concealed weapon, as defined in 45-8-316;
- (r) possession of a deadly weapon by a prisoner, as defined in 45-8-318;
- (s) possession of a destructive device, as defined in 45-8-334;
- (t) possession of explosives, as defined in 45-8-335;
- (u) possession of a sawed-off firearm, as defined in 45-8-340;
- (v) the sale, possession for sale, transportation, manufacture, offer for sale, offer to manufacture, or other offense involving a dangerous drug as prohibited by Title 45, chapter 9;
- (w) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership provided in 45-8-403."

Section 1719. Section 45-9-104, MCA, is amended to read:

"45-9-104. Fraudulently obtaining dangerous drugs. A person commits the offense of fraudulently obtaining dangerous drugs if ~~he~~ the person obtains or attempts to obtain a dangerous drug, as defined in 50-32-101, by:

- (1) fraud, deceit, misrepresentation, or subterfuge;
- (2) falsely assuming the title of or representing ~~himself to be~~ that the person is a manufacturer,

wholesaler, practitioner, pharmacist, owner of a pharmacy, or other person authorized to possess dangerous drugs;

- (3) the use of a forged, altered, or fictitious prescription;
- (4) the use of a false name or a false address on a prescription; or
- (5) the concealment of a material fact."

Section 1720. Section 45-9-105, MCA, is amended to read:

"45-9-105. Altering labels on dangerous drugs. A person commits the offense of altering labels on dangerous drugs if ~~he~~ the person affixes a false, forged, or altered label to or otherwise misrepresents a package or receptacle containing a dangerous drug, as defined in 50-32-101."

Section 1721. Section 45-9-106, MCA, is amended to read:

"45-9-106. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs. (1) A person convicted of altering labels on dangerous drugs shall be imprisoned in the county jail for a term not to exceed 6 months.

(2) A person convicted of fraudulently obtaining dangerous drugs included in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V in 50-32-222, 50-32-224, 50-32-226, 50-32-229, or 50-32-232 shall:

(a) upon ~~his~~ a first conviction be imprisoned in the state prison for a term of not less than 1 year or not more than 5 years or be fined an amount not to exceed \$50,000, or both;

(b) upon ~~his~~ a second conviction be imprisoned in the state prison for a term of not less than 5 years or not more than 10 years or be fined an amount not to exceed \$50,000, or both."

Section 1722. Section 45-9-114, MCA, is amended to read:

"45-9-114. Criminal advertisement of imitation dangerous drug -- penalty. (1) A person commits the offense of criminal advertisement of an imitation dangerous drug if ~~he~~ the person knowingly or purposely places in any newspaper, magazine, handbill, or other publication or posts or distributes any advertisement or solicitation to promote the manufacture, sale, exchange, or distribution of an imitation dangerous drug.

(2) A person convicted of criminal advertisement of an imitation dangerous drug under this section is punishable by a fine not to exceed \$100,000 or by imprisonment in the state prison for a term of not more than 10 years, ~~or by both such fine and imprisonment.~~"

Section 1723. Section 45-9-115, MCA, is amended to read:

"45-9-115. Criminal manufacture of imitation dangerous drug -- penalty. (1) A person commits the offense of criminal manufacture of an imitation dangerous drug if ~~he~~ the person knowingly or purposely manufactures, prepares, or cultivates any imitation dangerous drug.

(2) A person convicted of criminal manufacture of an imitation dangerous drug ~~under this section~~ is punishable by a fine not to exceed \$100,000 or by imprisonment in the state prison for a term of not more than 10 years, ~~or by both such fine and imprisonment.~~"

Section 1724. Section 45-9-121, MCA, is amended to read:

"45-9-121. Criminal possession of toxic substances -- penalty. (1) A person commits the offense of criminal possession of a toxic substance if ~~he~~ the person inhales or ingests or possesses with the purpose to inhale or ingest, for the purpose of altering ~~his~~ the person's mental or physical state, any substance with toxic effects that is not manufactured for human consumption or inhalation, including but not limited to glue, fingernail polish, paint and paint thinners, petroleum products, aerosol propellants, and chemical solvents.

(2) The provisions of subsection (1) do not apply to a bona fide institution of higher education conducting research with human volunteers pursuant to guidelines adopted by the institution or any federal or state agency.

(3) A person convicted under this section shall be imprisoned in the county jail for a term not to exceed 6 months or be fined an amount not to exceed \$500, or both.

(4) The youth court has jurisdiction of any violation of subsection (1) by a person under 18 years of age."

Section 1725. Section 45-9-127, MCA, is amended to read:

"45-9-127. Carrying dangerous drugs on train -- penalty. (1) Except as provided in Title 50, chapter 46, a person commits the offense of carrying dangerous drugs on a train in this state if ~~he~~ the person is knowingly or purposely in criminal possession of a dangerous drug and boards any train.

(2) A person convicted of carrying dangerous drugs on a train in this state is subject to the penalties provided in 45-9-102."

Section 1726. Section 45-10-102, MCA, is amended to read:

"45-10-102. Determination of what constitutes paraphernalia. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

- (1) statements by an owner or by anyone in control of the object concerning its use;
- (2) prior convictions, if any, of an owner or of anyone in control of the object; under any state or federal law relating to any controlled substance or dangerous drug;
- (3) the proximity of the object; in time and space; to a direct violation of this part;
- (4) the proximity of the object to dangerous drugs;
- (5) the existence of any residue of dangerous drugs on the object;
- (6) direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to persons whom ~~he~~ the person knows; or should reasonably know; intend to use the object to facilitate a violation of 45-10-103 through 45-10-106. The innocence of an owner or of anyone in control of the object as to a direct violation of 45-10-103 through 45-10-106 does not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.
- (7) instructions, oral or written, provided with the object concerning its use;
- (8) descriptive materials accompanying the object ~~which~~ that explain or depict its use;
- (9) national and local advertising concerning its use;
- (10) the manner in which the object is displayed for sale;
- (11) whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (12) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;
- (13) the existence and scope of legitimate uses for the object in the community;
- (14) expert testimony concerning its use."

Section 1727. Section 45-10-105, MCA, is amended to read:

"45-10-105. Delivery of drug paraphernalia to a minor. Any person 18 years of age or ~~ever~~ older who violates 45-10-104 by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years ~~his junior~~ younger is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 1 year; or be fined not more than \$1,000, or both."

Section 1728. Section 46-2-101, MCA, is amended to read:

"46-2-101. State criminal jurisdiction. (1) A person is subject to prosecution in this state for an offense ~~which he~~ that the person commits while either within or outside the state by ~~his~~ the person's own conduct or that

of another for which ~~he~~ the person is legally accountable if:

- (a) the offense is committed either wholly or partly within the state;
- (b) the conduct outside the state constitutes an attempt to commit an offense within the state and an act in furtherance of the offense occurs in the state; or
- (c) the conduct within the state constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense under the laws of this state and ~~such~~ the other jurisdiction.

(2) An offense is committed partly within this state if either the conduct ~~which~~ that is an element of the offense or the result ~~which~~ that is an element occurs within the state. In homicide, the "result" is either the physical contact ~~which~~ that causes death or the death itself, ~~and if~~ if the body of a homicide victim is found within the state, the death is presumed to have occurred within the state.

(3) An offense ~~which~~ that is based on an omission to perform a duty imposed by the law of this state is committed within the state, regardless of the location of the offender at the time of the omission.

(4) This state includes the land and water and the air space above ~~such~~ the land and water with respect to which the state has legislative jurisdiction."

Section 1729. Section 46-4-101, MCA, is amended to read:

"46-4-101. Jurisdiction -- death and cause of death in different counties. (1) The coroner of the county where a dead human body is found has jurisdiction if:

- (a) the place of death is unknown;
- (b) the dead human body was shipped into the county without proper permits; or
- (c) the death occurred while the deceased was in transit in the state.

(2) When death occurs as a direct result of acts or events that occurred in another county, the coroner of the county where the acts or events causing death occurred has jurisdiction. If a coroner that has jurisdiction of a death fails to act, the state medical examiner has jurisdiction.

(3) A county coroner has primary jurisdiction in the county in which ~~he~~ the coroner is appointed or elected to serve; ~~however~~ However, a qualified coroner may serve in another county upon the request of the coroner or county attorney of that county. A coroner may travel to another county to inquire into a death pursuant to 46-4-122."

Section 1730. Section 46-4-110, MCA, is amended to read:

"46-4-110. Powers of coroner. In the performance of ~~his~~ duties under this chapter, the coroner may:

- (1) pronounce the fact of death of any human being under circumstances in which ~~he~~ the coroner has a duty to inquire pursuant to 46-4-122;
- (2) certify and amend death certificates as considered necessary in circumstances under which ~~he~~ the coroner has a duty to inquire pursuant to 46-4-122;
- (3) issue subpoenas pursuant to 46-4-112;
- (4) order autopsies as provided in 46-4-103;
- (5) conduct examinations and tests as considered necessary to determine the cause, manner, and circumstances of death and identification of a dead human body as provided in 46-4-101 and 46-4-113;
- (6) order a dead human body to be disinterred or removed from its place of disposition, with or without the consent of the next of kin, under circumstances in which ~~he~~ the coroner has a duty to inquire pursuant to 46-4-122;
- (7) conduct inquests pursuant to 46-4-201; and
- (8) order cessation of any activity by any person or agency, other than the law enforcement agency having jurisdiction, that may obstruct or hinder the orderly conduct of an inquiry or the collection of information or evidence needed for an inquiry."

Section 1731. Section 46-4-111, MCA, is amended to read:

"46-4-111. Coroner's authority to seize and preserve evidence. (1) A county coroner may enter any room, dwelling, building, or other place in which ~~he~~ the coroner has probable cause to believe that a dead human body or evidence of the circumstances of a death that requires investigation may be found. If refused entry, a coroner who is investigating a death pursuant to ~~his~~ the coroner's authority may apply to a judge authorized to issue search warrants for a warrant to enter the premises and to search for and seize evidence of the cause of a death, including a dead human body.

- (2) The application for a search warrant must:
 - (a) state facts sufficient to show probable cause that a human body or evidence of the circumstances of death is present in the place to be searched;
 - (b) particularly describe the place to be searched; and
 - (c) particularly describe the things to be seized.
- (3) To preserve evidence of the cause of death, a coroner may:
 - (a) place under ~~his~~ the coroner's custody and control any dwelling, building, item, vehicle, aircraft, railroad engine or train, vessel, enclosure, or open area for a period of not more than 10 days; and

(b) forbid entrance by an unauthorized person into any area specified in subsection (3)(a).

(4) A person may not enter an area that is restricted pursuant to subsection (3) without the permission of the coroner or the law enforcement agency having jurisdiction if there is also a criminal investigation in progress."

Section 1732. Section 46-4-113, MCA, is amended to read:

"46-4-113. Examinations and tests. The coroner may direct a properly qualified expert to conduct any test or examination that ~~he~~ the coroner reasonably believes is necessary to determine the cause, manner, and circumstances of a death or to identify a dead human body. The coroner may also require examination by the next of kin or any other person when necessary to identify a dead human body."

Section 1733. Section 46-4-202, MCA, is amended to read:

"46-4-202. Summoning and swearing in of jurors -- instructions. (1) ~~For~~ When holding an inquest, the coroner shall summon a jury of at least 6 but not more than 12 persons qualified by law to serve as jurors and selected at random from a list of eligible jurors that is furnished to the coroner annually by the county clerk of court.

(2) The jury selected by the coroner must be sworn by the coroner to inquire who the person was and when, where, and by what means ~~he came to his death~~ the person died and into the circumstances attending ~~his~~ the person's death and to render a true verdict on the death according to the evidence offered to them or arising from the inspection of the body.

(3) The coroner shall instruct the jurors as to their duties."

Section 1734. Section 46-4-205, MCA, is amended to read:

"46-4-205. Verdict of jury -- form. The jury may view the body, and the county attorney may require the jury to view the body. The jury shall review the death scene and may do so by videotape, photographs, or slide transparencies. After viewing the body and the death scene and hearing the testimony, the jury shall render its verdict, which must be by majority vote, and certify the ~~same~~ the verdict in writing signed by each juror. The verdict must set forth:

- (1) who the deceased person is;
- (2) when and where ~~he the deceased came to his death~~ died;
- (3) if ~~he the deceased came to his death~~ died by criminal means; and

(4) if ~~he~~ the deceased was killed or ~~his~~ the deceased's death was occasioned by the act of another by criminal means, who committed the act, if known. If the jury finds that the death was not by criminal means, that fact must be stated on the verdict form."

Section 1735. Section 46-4-207, MCA, is amended to read:

"46-4-207. Coroner's register. The county coroner shall keep an official register, in which ~~he must~~ the coroner shall enter the date of holding all inquests, the cause and circumstances of death, if known, and the name of the deceased, when known, and, when not, ~~such a~~ a description of the deceased ~~as~~ that may be sufficient for identification."

Section 1736. Section 46-6-412, MCA, is amended to read:

"46-6-412. Arrest by officer of the United States customs service or immigration and naturalization service. An officer of the United States customs service or immigration and naturalization service may make an arrest without a warrant if the officer is on duty and one or more of the following situations exist:

- (1) A person commits or attempts to commit an offense in the officer's presence.
- (2) The officer believes on reasonable grounds that the person is committing an offense or that the person committed an offense and the circumstances require ~~his~~ the person's immediate arrest.
- (3) The officer believes on reasonable grounds that a warrant for the person's arrest has been issued in this state.
- (4) The officer believes on reasonable grounds that a felony warrant for the person's arrest has been issued in another jurisdiction."

Section 1737. Section 46-7-101, MCA, is amended to read:

"46-7-101. Appearance of arrested person -- use of two-way electronic audio-video communication. (1) A person arrested, whether with or without a warrant, must be taken without unnecessary delay before the nearest and most accessible judge for an initial appearance.

(2) A defendant's initial appearance before a judge may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other and so that the defendant and ~~his~~ the defendant's counsel, if any, can communicate privately. A judge may order a defendant's physical appearance in court for an initial

appearance hearing."

Section 1738. Section 46-9-111, MCA, is amended to read:

"46-9-111. Release on own recognizance. Any person in custody, if otherwise eligible for bail, may be released on ~~his~~ the person's personal recognizance subject to ~~such~~ conditions ~~as~~ that the court may reasonably prescribe to ~~assure his~~ ensure the person's appearance when required. Any person released as ~~herein~~ provided ~~shall~~ in this section must be fully apprised by the court of the penalty provided for failure to comply with the terms of ~~his~~ the person's recognizance."

Section 1739. Section 46-9-203, MCA, is amended to read:

"46-9-203. Report to county attorney concerning drug users. A city judge, judge of a municipal court, or justice of the peace shall report immediately to the county attorney of the county ~~wherein his~~ in which the judge's or justice's court is located any knowledge or information acquired by ~~him~~ the judge or justice in a trial of a cause or hearing before ~~him~~ the judge or justice; ~~which knowledge or information that~~ shows or tends to show that any person is a drug user or drug addict. If ~~such~~ the person is under arrest or liberated on bail at the time the knowledge or information is acquired, ~~such~~ the person may not be liberated, if under arrest, or the bail discharged by the judge or justice of the peace until the report is made to the county attorney."

Section 1740. Section 46-9-206, MCA, is amended to read:

"46-9-206. Setting bail -- appearance or use of two-way electronic audio-video communication. The requirement that a defendant be taken before a judge for setting of bail may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other, so that the defendant and ~~his~~ the defendant's counsel, if any, can communicate privately, and so that the defendant and ~~his~~ the defendant's counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that ~~his~~ the defendant's counsel be in the defendant's physical presence during the two-way electronic audio-video communication. A judge may order a defendant's physical appearance in court for the hearing of an application for admission to bail."

Section 1741. Section 46-9-301, MCA, is amended to read:

"46-9-301. Determining the amount of bail. In all cases ~~that~~ in which bail is determined to be necessary, bail must be reasonable in amount and the amount ~~shall~~ must be:

- (1) sufficient to ensure the presence of the defendant in a pending criminal proceeding;
- (2) sufficient to ~~assure~~ ensure compliance with the conditions set forth in the bail;
- (3) sufficient to protect any person from bodily injury;
- (4) not oppressive;
- (5) commensurate with the nature of the offense charged;
- (6) considerate of the financial ability of the accused;
- (7) considerate of the defendant's prior record;
- (8) considerate of the length of time the defendant has resided in the community and of ~~his~~ the defendant's ties to the community;
- (9) considerate of the defendant's family relationships and ties;
- (10) considerate of the defendant's employment status; and
- (11) sufficient to include the charge imposed in 46-18-236."

Section 1742. Section 46-9-502, MCA, is amended to read:

"46-9-502. Conditions performed -- bail discharged. When the conditions of bail have been performed and the accused has been discharged from ~~his~~ the accused's obligations in the cause, the court shall return to ~~him~~ the accused or ~~his~~ the accused's sureties the deposit of any cash, stocks, or bonds. If the bail is real estate, the court shall notify in writing the county clerk and recorder and the lien of the bail bond on the real estate ~~shall~~ must be discharged. If the bail is a written undertaking or a commercial surety bond, it ~~shall~~ must be discharged and the sureties exonerated."

Section 1743. Section 46-11-301, MCA, is amended to read:

"46-11-301. Summoning grand jury. (1) A grand jury may only be drawn and summoned when the district judge, in ~~his~~ the judge's discretion, considers a grand jury to be in the public interest and orders the grand jury to be drawn or summoned. The composition and drawing of a grand jury must be in accordance with the provisions of Title 3, chapter 15, part 6.

(2) The district judge may direct the selection of one or more alternate jurors, who shall sit as regular jurors before an indictment is found or a grand jury investigation is concluded. A member of the jury who becomes unable to perform the juror's duty may be replaced by an alternate."

Section 1744. Section 46-11-303, MCA, is amended to read:

"46-11-303. Foreman Lead juror. The district court shall appoint one of the jurors to be ~~foreman~~ lead juror. The ~~foreman~~ lead juror has the power to administer oaths or affirmations and shall sign all indictments. The ~~foreman~~ lead juror or another juror designated by the ~~foreman~~ lead juror shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of court, but the record may not be made public except on order of the district court."

Section 1745. Section 46-11-313, MCA, is amended to read:

"46-11-313. Subpoena of witnesses. (1) A subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the county attorney, by the ~~foreman~~ lead juror of the grand jury, or by the judge of the district court.

(2) The fees and mileage of witnesses subpoenaed pursuant to this section must be the same as those for witnesses in criminal actions.

(3) All provisions relating to subpoenas in criminal actions apply to subpoenas issued pursuant to this section, including the provisions of Title 46, chapter 15, part 1."

Section 1746. Section 46-11-331, MCA, is amended to read:

"46-11-331. Finding an indictment. (1) The grand jury shall find an indictment when all the evidence before it taken together would in its judgment warrant a conviction by a trial jury. An indictment may be found only upon the concurrence of at least eight grand jurors.

(2) If a complaint or information is pending against the defendant and eight jurors do not concur in finding an indictment, the ~~foreman~~ lead juror shall report the decision to the district court judge."

Section 1747. Section 46-11-332, MCA, is amended to read:

"46-11-332. Presenting the indictment. (1) An indictment, when found by the grand jury, must be signed by and presented by the ~~foreman~~ lead juror to the district court in the presence of the grand jury and must be filed with the clerk. The district court shall then issue an arrest warrant or summons for the defendant.

(2) If a complaint or information is pending against the defendant and eight jurors do not concur in finding an indictment, the ~~foreman~~ lead juror shall report the decision to the district court judge."

Section 1748. Section 46-11-401, MCA, is amended to read:

"46-11-401. Form of charge. (1) The charge must be in writing and in the name of the state or the appropriate county or municipality and must specify the court in which the charge is filed. The charge must be a plain, concise, and definite statement of the offense charged, including the name of the offense, whether the offense is a misdemeanor or felony, the name of the person charged, and the time and place of the offense as definitely as can be determined. The charge must state for each count the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated.

(2) If the charge is by information or indictment, it must include endorsed on the information or indictment the names of the witnesses for the prosecution, if known.

(3) If the charge is by complaint, it must be signed by a sworn peace officer, under oath by a person having knowledge of the facts, or by the prosecutor.

(4) If the charge is by information, it must be signed by the prosecutor. If the charge is by indictment, it must be signed by the ~~foreman~~ lead juror of the grand jury.

(5) The court, on motion of the defendant, may strike surplusage from an indictment or information.

(6) A charge may not be dismissed because of a formal defect that does not tend to prejudice a substantial right of the defendant."

Section 1749. Section 46-12-104, MCA, is amended to read:

"46-12-104. Bringing defendant into court. The court may direct any official who has custody of the defendant to bring ~~him~~ the defendant before the court to be arraigned."

Section 1750. Section 46-12-203, MCA, is amended to read:

"46-12-203. Time allowed to answer. If on the arraignment the defendant requires it, ~~he~~ the defendant must be allowed a reasonable time, not less than 1 day, to answer or otherwise plead to the indictment, information, or complaint. The answer may include appropriate pretrial motions."

Section 1751. Section 46-16-603, MCA, is amended to read:

"46-16-603. Form of verdict. (1) The jury shall return a verdict as instructed by the court. The verdict must be unanimous in all criminal actions. The verdict must be signed by the ~~foreman~~ lead juror and returned by the jury to the judge in open court.

(2) If there are two or more defendants, the jury, at any time during its deliberations, may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed. If the jury cannot agree with

respect to all, the defendant or defendants as to whom it does not agree may be tried again."

Section 1752. Section 46-16-606, MCA, is amended to read:

"46-16-606. Reasonable doubt as to which offense convicts only of least offense. When it appears beyond a reasonable doubt that the defendant has committed an offense but there is reasonable doubt as to whether ~~he~~ the defendant is guilty of a given offense or one or more lesser included offenses, ~~he~~ the defendant may only be convicted of the greatest included offense about which there is no reasonable doubt."

Section 1753. Section 46-17-302, MCA, is amended to read:

"46-17-302. Execution of judgment. (1) The judgment must be executed by the sheriff, constable, marshal, or ~~policeman~~ police officer of the jurisdiction in which the conviction was had.

(2) When a judgment of imprisonment is entered, a certified copy ~~thereof~~ of the judgment must be delivered to the sheriff or other officer, which is a sufficient warrant for its execution.

(3) If a judgment is rendered imposing a fine only without imprisonment for nonpayment and the defendant is not detained for any other legal cause, ~~he~~ the defendant must be discharged as soon as the judgment is given.

(4) A judgment that the defendant pay a fine may also direct that ~~he~~ the defendant be imprisoned until the fine ~~be~~ is satisfied in the proportion of 1 day's imprisonment for every \$25 of the fine. When the judgment is rendered, the defendant must be held in custody the time specified in the judgment unless the fine is paid.

(5) Any officer charged with the collection of fines under the provisions of this chapter ~~must~~ shall return the execution to the judge within 30 days from its delivery to ~~him~~ the officer and pay over to the judge the money collected, deducting ~~his~~ the officer's fees for the collection."

Section 1754. Section 46-18-232, MCA, is amended to read:

"46-18-232. Payment of costs by defendant. (1) A court may require a convicted defendant in a felony or misdemeanor case to pay costs, as defined in 25-10-201, plus costs of jury service as a part of ~~his~~ the sentence. ~~Such~~ The costs ~~shall~~ must be limited to expenses specifically incurred by the prosecution in connection with the proceedings against the defendant.

(2) The court may not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(3) A defendant who has been sentenced to pay costs and who is not in default in the payment thereof may at any time petition the court that sentenced ~~him~~ the defendant for remission of the payment of costs or of any unpaid portion ~~thereof~~ of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or ~~his~~ the defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of payment."

Section 1755. Section 46-18-233, MCA, is amended to read:

"46-18-233. Fine or costs as a condition on suspended or deferred sentence. (1) Whenever a defendant is sentenced to pay a fine or costs under 46-18-231 or 46-18-232 and the imposition or execution of the rest of ~~his~~ the defendant's sentence is deferred or suspended, the court may make payment of the fine or costs a condition for probation.

(2) A suspended or deferred sentence may not be revoked if the defendant defaults on the payment of the fine and the default is not attributable to an intentional refusal to obey the order of the court or a failure to make a good faith effort to make the payment."

Section 1756. Section 46-18-702, MCA, is amended to read:

"46-18-702. Disposition of prisoner's earnings. The earnings of the prisoner ~~shall~~ must be collected by the sheriff. From ~~such~~ those earnings, the sheriff shall pay the prisoner's board and personal expenses both inside and outside the jail and, to the extent directed by the court, pay the support of ~~his~~ the prisoner's dependents, if any. Any balance ~~shall~~ must be retained until ~~his~~ the prisoner's discharge."

Section 1757. Section 46-18-703, MCA, is amended to read:

"46-18-703. Transfer to another county. The court may by order authorize the sheriff of the sentencing county to arrange with a sheriff of any other county within the state of Montana to have the convicted person transferred to the other county where it appears the convicted person can continue ~~his~~ the person's regular employment in the latter county. When ~~such~~ the transfer has been made to another county, the sheriff of the sentencing county shall still collect all ~~moneys~~ money earned by the convicted person and shall dispose of ~~said moneys~~ the money as provided by 46-18-702."

Section 1758. Section 46-18-705, MCA, is amended to read:

"46-18-705. Effect of violation of conditions. In cases ~~where~~ in which the convicted person violates

the conditions of ~~said a~~ sentence, ~~he shall~~ the person must be returned to the court. The court may then require that the balance of ~~his~~ the person's sentence be spent in full confinement, and further, the court may cancel any diminution of sentence granted under this part."

Section 1759. Section 46-19-203, MCA, is amended to read:

"46-19-203. Procedure for determining if woman is pregnant. If there is good reason to suppose that a woman against whom a judgment of death is rendered is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, ~~must~~ shall summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice of this inquiry must be given to the county attorney of the county who must attend the inquiry and may produce ~~his own~~ witnesses."

Section 1760. Section 46-19-204, MCA, is amended to read:

"46-19-204. Proceedings following determination regarding pregnancy. If it is found by the inquiry referred to in 46-19-203 that the woman is not pregnant, the warden of the Montana state prison shall execute the judgment. If it is found that the woman is pregnant, the warden shall suspend the execution of judgment and transmit the inquisition to the governor. When the governor is satisfied that the woman is no longer pregnant, ~~he~~ the governor may issue a death warrant appointing a day for the execution of the judgment. The warrant must recite the conviction, the judgment, the method of execution, that execution of judgment was suspended due to pregnancy, that the governor is satisfied that the woman is no longer pregnant, the appointed date for the execution, and the duration of the warrant."

Section 1761. Section 46-19-301, MCA, is amended to read:

"46-19-301. Western Interstate Corrections Compact -- contents. The Western Interstate Corrections Compact as contained herein is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

WESTERN INTERSTATE CORRECTIONS COMPACT

Article I. Purpose and Policy

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment, and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on the basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact

is to provide for the development and execution of such programs of cooperation for the confinement, treatment, and rehabilitation of offenders.

Article II. Definitions

As used in this compact, unless the context clearly requires otherwise:

- (1) "state" means a state of the United States or, subject to the limitation contained in Article VII, Guam;
- (2) "sending state" means a state party to this compact in which conviction was had;
- (3) "receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had;
- (4) "inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution;
- (5) "institution" means any prison, reformatory, or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

Article III. Contracts

(1) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

- (a) its duration;
- (b) payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance;
- (c) participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom;
- (d) delivery and retaking of inmates;
- (e) such other matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of the sending and receiving states.

(2) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific ~~per centum~~ percent of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that

moneys are legally available therefor, pay to the receiving state a reasonable sum as consideration for such enlargement of capacity or provision of equipment or structures and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(3) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV. Procedures and Rights

(1) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in or transfer of an inmate to an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(2) The appropriate officials of any state party to this compact shall have access at all reasonable times to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(3) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(4) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state in order that each inmate may have the benefit of ~~his or her~~ the inmate's record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(5) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an

appropriate institution of the sending state.

(6) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subsection shall be borne by the sending state.

(7) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate and the sending and receiving states shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(8) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits, incur or be relieved of any obligations, or have such obligations modified or ~~his~~ the inmate's status changed on account of any action or proceeding in which ~~he~~ the inmate could have participated if confined in any appropriate institution of the sending state located within such state.

(9) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in ~~his~~ the person's exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

Article V. Acts Not Reviewable in Receiving State -- Extradition

(1) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(2) An inmate who escapes from an institution in which he ~~he~~ the inmate is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article VI. Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto, and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that, if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

Article VII. Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon, and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon, and Washington.

Article VIII. Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until 2 years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined

pursuant to the provisions of this compact.

Article IX. Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation, or treatment of inmates or to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Section 1762. Section 46-19-401, MCA, is amended to read:

"46-19-401. Compact adopted -- text. The Interstate Corrections Compact is entered into by this state with any and all other states legally joining therein in the form substantially as follows:

INTERSTATE CORRECTIONS COMPACT Article I. Purpose and Policy

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

Article II. Definitions

As used in this compact, unless the context requires otherwise:

(a) "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" means a state party to this compact in which conviction or court commitment was

had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(d) "Inmate" means a male or female offender who is committed under sentence to or confined in a penal or correctional institution.

(e) "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates may lawfully be confined.

Article III. Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.
2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.
3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.
4. Delivery and retaking of inmates.
5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV. Procedures and Rights

(a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times,

to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state. For transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of ~~his~~ or her the inmate's record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subsection, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or ~~his~~ the inmate's status changed on account of any action or proceeding in which ~~he~~ the inmate could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in ~~his~~ the inmate's exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

Article V. Acts Not Reviewable in Receiving State -- Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which ~~he~~ the inmate is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article VI. Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending

state shall be required therefor.

Article VII. Entry Into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

Article VIII. Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

Article IX. Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Section 1763. Section 46-20-204, MCA, is amended to read:

"46-20-204. Stay of execution and relief pending appeal. (1) If an appeal is taken, a sentence of death ~~shall~~ must be stayed by order of the trial court until final order by the supreme court.

(2) If an appeal is taken and the defendant is admitted to bail, a sentence of imprisonment ~~shall~~ must

be stayed by the trial court.

(3) If an appeal is taken, a sentence to pay a fine or a fine and costs ~~shall~~ must be stayed by the trial court or by the reviewing court.

(4) If an appeal is taken and the accused was admitted to probation, ~~he~~ the accused shall remain on probation or post bail."

Section 1764. Section 46-20-707, MCA, is amended to read:

"46-20-707. Discharge of defendant on reversal of judgment. If a judgment against the defendant is reversed without ordering a new trial, the appellate court ~~must~~ shall:

- (1) if ~~he~~ the defendant is in custody, direct ~~him~~ the defendant to be discharged ~~therefrom~~ from custody;
- (2) if ~~he~~ the defendant is on bail, direct that ~~his~~ the defendant's bail be exonerated; or
- (3) if money was deposited instead of bail, direct that it be refunded to the defendant."

Section 1765. Section 46-22-103, MCA, is amended to read:

"46-22-103. Writ for purpose of bail. When a person is imprisoned or detained in custody on any criminal charge for want of bail, ~~such~~ the person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in ~~his~~ the person's petition, without alleging that ~~he~~ the person is illegally confined."

Section 1766. Section 46-23-207, MCA, is amended to read:

"46-23-207. Penalty for disobedience. Any person who ~~shall~~ without just cause ~~fail~~ fails or ~~refuse~~ refuses to attend and testify, to answer any lawful inquiry, or to produce records, books, papers, and other documents if it is in ~~his~~ the person's power to do so in obedience to a subpoena of the board or any member ~~thereof~~ of the board shall be punished by a fine of not more than \$200, ~~or~~ by imprisonment for not longer than 60 days, ~~or~~ by both ~~such fine and imprisonment~~. Each day ~~such~~ that a violation continues ~~shall be deemed~~ is considered to be a separate offense."

Section 1767. Section 46-23-316, MCA, is amended to read:

"46-23-316. Governor's report to legislature. The governor shall, as provided in 5-11-210, report to the legislature each case of remission of fine or forfeiture, respite, commutation, or pardon granted since the ~~last~~ previous report, stating the name of the convict, the crime of which ~~he~~ the convict was convicted, the sentence and its date, the date of remission, commutation, pardon, or respite, with the reason for granting the same, and

the objection, if any, of any of the members of the board made ~~thereto~~ to the action."

Section 1768. Section 46-23-1022, MCA, is amended to read:

"46-23-1022. Parole services. (1) To assist parolees the department may, in addition to other services, provide the following:

- (a) employment counseling, job placement, and assistance in residential placement;
- (b) family and individual counseling and treatment placement;
- (c) financial counseling;
- (d) vocational and educational counseling and placement; and
- (e) referral services to any other state or local agencies.

(2) The department may purchase necessary services for a parolee if they are otherwise unavailable and the parolee is unable to pay for them. It may assess all or part of the costs of such services to a parolee in accordance with ~~his~~ the parolee's ability to pay for them."

Section 1769. Section 46-24-204, MCA, is amended to read:

"46-24-204. Scheduling changes. (1) As soon as practicable, the prosecuting attorney shall notify a victim or witness of any scheduling changes that may affect the appearance of the victim or witness at a criminal justice proceeding that ~~he~~ the victim or witness is scheduled to attend.

(2) For the purpose of providing notification, the prosecuting attorney shall have available a system for promptly alerting a victim or witness that a scheduling change has been made."

Section 1770. Section 46-30-101, MCA, is amended to read:

"46-30-101. Definitions. ~~Where appearing~~ As used in this chapter, the term:

(1) "executive authority" includes the governor and any person performing the functions of governor in a state other than this state or the ~~chairman~~ presiding officer of a recognized Indian tribe within the state of Montana;

(2) "governor" includes any person performing the functions of governor by authority of the law of this state;

(3) "state", referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America or an Indian reservation within the state of Montana."

Section 1771. Section 46-30-202, MCA, is amended to read:

"46-30-202. Prosecution pending in this state at time of requisition. If a criminal prosecution has been instituted against ~~such a~~ a person under the laws of this state and is still pending, the governor, ~~in his discretion, either~~ may surrender ~~him~~ the person on demand of the executive authority of another state or hold ~~him~~ the person until ~~he~~ the person has been tried and discharged or convicted and punished in this state."

Section 1772. Section 46-30-211, MCA, is amended to read:

"46-30-211. Demand -- form. (1) ~~No~~ A demand for the extradition of a person charged with a crime in another state ~~shall~~ may not be recognized by the governor unless it is in writing alleging that the accused was present in the demanding state at the time of the commission of the alleged crime and that ~~thereafter he~~ after the crime the person fled from the state, except in cases arising under 46-30-204, and accompanied by:

(a) a copy of an indictment found or information supported by an affidavit in the state having jurisdiction of the crime;

(b) a copy of an affidavit made before a magistrate ~~there~~ in that state, together with a copy of any warrant ~~which that~~ was issued ~~thereon~~;

(c) a copy of a judgment of conviction or of a sentence imposed in execution ~~thereof~~ of the judgment or sentence, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of ~~his~~ the person's bail, probation, or parole.

(2) The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state. The copy of the indictment, information, affidavit, judgment of conviction, or sentence must be authenticated by the executive authority making the demand."

Section 1773. Section 46-30-212, MCA, is amended to read:

"46-30-212. Investigation by governor. When a demand ~~shall be~~ is made upon the governor of this state by the executive authority of another state for the surrender of a person ~~so~~ charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand and to report to ~~him~~ the governor the situation and circumstances of the person ~~so~~ demanded and whether ~~he~~ the person ought to be surrendered."

Section 1774. Section 46-30-213, MCA, is amended to read:

"46-30-213. Issuance of arrest warrant by governor. If the governor decides that the demand should be complied with, ~~he~~ the governor shall sign a warrant of arrest, which ~~shall~~ must be sealed with the state seal and be directed to any peace officer or other person whom ~~he~~ the governor may think fit to entrust with the execution ~~thereof~~ of the warrant. The warrant must substantially recite the facts necessary to the validity of its issuance."

Section 1775. Section 46-30-214, MCA, is amended to read:

"46-30-214. Recall of warrant or alias warrant. The governor may recall ~~his~~ the governor's warrant of arrest or may issue another warrant whenever ~~he deems~~ the governor considers it proper."

Section 1776. Section 46-30-215, MCA, is amended to read:

"46-30-215. Execution of warrant. ~~Such~~ The warrant ~~shall~~ must authorize the peace officer or other person to whom it is directed to arrest the accused at any time and any place where ~~he~~ the accused may be found within the state, to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter, to the duly authorized agent of the demanding state."

Section 1777. Section 46-30-217, MCA, is amended to read:

"46-30-217. Rights of accused persons -- habeas corpus. (1) ~~No~~ A person arrested upon ~~such a~~ a warrant pursuant to this chapter may not be delivered over to the agent whom the executive authority demanding ~~him~~ the person has appointed to receive ~~him~~ the person unless ~~he~~ the person is first taken without delay before a judge of a court of record in this state, who shall inform ~~him~~ the person of the demand made for ~~his~~ the person's surrender and of the crime with which ~~he~~ the person is charged and that ~~he~~ the person has the right to demand and procure legal counsel.

(2) If the prisoner or ~~his~~ the prisoner's counsel states that ~~he~~ the prisoner or ~~they~~ the prisoner and counsel desire to test the legality of ~~his~~ the prisoner's arrest, the judge of the court of record shall fix a reasonable time to be allowed ~~him~~ the prisoner within which to apply for a writ of habeas corpus. When the writ is applied for, notice ~~thereof~~ of the writ and of the time and place of hearing ~~thereon~~ on the writ must be given to the prosecuting officer of the county in which the arrest was made and in which the accused is in custody and to the agent of the demanding state."

Section 1778. Section 46-30-218, MCA, is amended to read:

"46-30-218. Penalty for violating accused's rights. ~~Any~~ An officer who ~~shall deliver~~ delivers to the agent for extradition of the demanding state a person in ~~his~~ custody under the governor's warrant in willful disobedience of 46-30-217 shall be guilty of a misdemeanor and on conviction shall be fined not more than \$1,000 or be imprisoned not more than 6 months, or both."

Section 1779. Section 46-30-225, MCA, is amended to read:

"46-30-225. Guilt or innocence of accused, when inquired into. The guilt or innocence of the accused as to the crime of which ~~he~~ the accused is charged may not be inquired into by the governor or in any proceeding after the demand for extradition provided for in 46-30-211 has been presented to the governor except as it may be involved in identifying the person held as the person charged with the crime."

Section 1780. Section 46-30-226, MCA, is amended to read:

"46-30-226. Confinement of accused in jail on route. (1) The officer or persons executing the governor's warrant of arrest or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which ~~he~~ the prisoner may pass. The keeper of ~~such~~ the jail ~~must~~ shall receive and safely keep the prisoner until the officer or person having charge of ~~him~~ the prisoner is ready to proceed on ~~his~~ the route; ~~such~~ However, the officer or person, ~~however,~~ being is chargeable with the expense of keeping the prisoner.

(2) The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state or to whom a prisoner may have been delivered after waiving extradition in ~~such~~ the other state and who is passing through this state with ~~such~~ a prisoner for the purpose of immediately returning ~~such~~ the prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which ~~he~~ the officer or agent may pass. The keeper of ~~such~~ the jail ~~must~~ shall receive and safely keep the prisoner until the officer or agent having charge of ~~him~~ the prisoner is ready to proceed on ~~his~~ the route; ~~such~~ However, the officer or agent, ~~however,~~ being is chargeable with the expense of keeping; ~~provided,~~ however the prisoner. ~~However, that~~ such the officer or agent shall produce and show to the keeper of ~~such~~ the jail satisfactory written evidence of the fact that ~~he~~ the officer or agent is actually transporting ~~such~~ the prisoner to the demanding state after a requisition by the executive authority of ~~such~~ the demanding state. ~~Such~~ The prisoner ~~shall~~ is not be entitled to demand a new requisition while in this state."

Section 1781. Section 46-30-227, MCA, is amended to read:

"46-30-227. Arrest of accused before making of requisition. (1) A judge or magistrate of this state shall issue a warrant directed to any peace officer commanding the officer to apprehend the person named ~~therein~~ in the warrant wherever the person may be found in this state and to bring the person before the ~~same~~ issuer or any other judge, magistrate, or court ~~who or which~~ that may be available in or convenient of access to the place where the arrest is made to answer the charge or complaint and affidavit whenever:

(a) a person within this state is charged on the oath of a credible person before the judge or magistrate with the commission of a crime in another state and, except in cases arising under 46-30-204, with having fled from justice or with having been convicted of a crime in that state and having escaped from confinement or having broken the terms of ~~his~~ the person's bail, probation, or parole; or

(b) a complaint is made before the judge or magistrate setting forth on the affidavit of a credible person in another state that a crime has been committed in the other state and that the accused is believed to be in this state and has been charged in the other state with:

(i) the commission of the crime and, except in cases arising under 46-30-204, having fled from justice;
or

(ii) having been convicted of a crime in that state and having escaped from bail, probation, or parole.

(2) A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued ~~shall~~ must be attached to the warrant."

Section 1782. Section 46-30-228, MCA, is amended to read:

"46-30-228. Written waiver of extradition proceedings. (1) Any person of this state charged with having committed any crime in another state or alleged to have escaped from confinement or broken the terms of ~~his~~ the person's bail, probation, or parole may waive the issuance and service of the warrant provided for in 46-30-213 and 46-30-215 and all other procedures incidental to extradition proceedings by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that ~~he~~ the person consents to return to the demanding state. Before ~~such a~~ such a waiver ~~shall be~~ is executed or subscribed by ~~such~~ the person, it ~~shall be~~ is the duty of ~~such~~ the judge to inform ~~such~~ the person of ~~his~~ the person's rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in 46-30-217.

(2) If and when ~~such~~ consent has been duly executed, it ~~shall forthwith~~ must, without delay, be forwarded to the office of the governor of this state and filed ~~therein~~ in the governor's office. The judge shall direct the officer

having ~~such the~~ person in custody to deliver ~~forthwith such,~~ without delay, the person to the duly accredited agent or agents of the demanding state and shall deliver or cause to be delivered to ~~such the~~ agent or agents a copy of ~~such the~~ consent.

(3) ~~Nothing in this~~ This section ~~shall be deemed to~~ does not limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor ~~shall~~ may this waiver procedure be ~~deemed considered~~ to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state."

Section 1783. Section 46-30-229, MCA, is amended to read:

"46-30-229. Prior waiver of extradition. (1) A person who is alleged to have violated the terms of ~~his~~ the person's bail, probation, parole, or any other conditional release from another state and who is held in this state may be released to the duly authorized agent of that other state without the warrant provided for in 46-30-213 if the following has occurred:

(a) a district court in this state has held a hearing at which the state has presented:

(i) a certified copy of an agreement to waive extradition, signed by the person; or an order from the other state releasing the person on the condition that ~~he~~ the person waive extradition;

(ii) a certified copy of the warrant or order from the other state directing the return of the person for violating the terms of ~~his~~ the person's release; and

(iii) evidence that the person is the same person named in the warrant or order; and

(b) the district court has found that there is probable cause to believe that the person is the same person charged in the warrant or order. Whenever a district court makes this finding, it shall, except as provided in subsection (2), order that the person be remanded to custody and delivered to agents of the other state. The court shall also advise the person of ~~his~~ the right to contest the order by filing a writ of habeas corpus.

(2) If the person wishes to test the validity of the order issued pursuant to subsection (1)(b), the court shall fix a reasonable time for ~~him~~ the person to apply for a writ of habeas corpus before ~~he~~ the person may be released to agents from the other state."

Section 1784. Section 46-30-301, MCA, is amended to read:

"46-30-301. Arrest of accused without warrant. The arrest of a person may also be lawfully made ~~also~~ by any peace officer or a private person without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term of 1 year or more.

When arrested under this section, the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against ~~him~~ the accused under oath setting forth the ground for the arrest as provided in 46-30-227. After the complaint is made, ~~his~~ the accused's answer must be heard as if ~~he~~ the accused had been arrested on a warrant."

Section 1785. Section 46-30-302, MCA, is amended to read:

"46-30-302. Commitment to await requisition. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under 46-30-204, that ~~he~~ the person has fled from justice, the judge or magistrate ~~must~~ shall by a warrant reciting the accusation commit ~~him~~ the person to the county jail for ~~such~~ a time not exceeding 30 days and specified in the warrant ~~as~~ that will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense; unless the accused ~~give~~ posts bail as provided in 46-30-303 or until ~~he shall be~~ the accused is legally discharged."

Section 1786. Section 46-30-303, MCA, is amended to read:

"46-30-303. Bail while awaiting requisition. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond or undertaking with sufficient sureties and in ~~such a sum as he deems~~ that the judge or magistrate considers proper, conditioned for ~~his~~ the prisoner's appearance before ~~him~~ the judge or magistrate at a time specified in ~~such~~ the bond or undertaking and for ~~his~~ the prisoner's surrender to be arrested upon the warrant of the governor of this state."

Section 1787. Section 46-30-304, MCA, is amended to read:

"46-30-304. Extension of time of commitment or bail. If the accused is not arrested under the warrant of the governor by the expiration of the time specified in the warrant, bond, or undertaking, a judge or magistrate may discharge ~~him~~ the accused or may recommit ~~him~~ the accused for a further period of 60 days or a supreme court justice or district court judge may again take bail for ~~his~~ the accused's appearance and surrender, as provided in 46-30-303, for a period not to exceed 60 days after the date of the new bond or undertaking."

Section 1788. Section 46-30-305, MCA, is amended to read:

"46-30-305. Forfeiture of bail. If the prisoner is admitted to bail and fails to appear and surrender

himself according to the conditions of his the prisoner's bond, the judge or magistrate by proper order shall declare the bond forfeited and order his the prisoner's immediate arrest without warrant if ~~he be~~ the prisoner is within this state. Recovery may be had on ~~such the~~ bond in the name of the state as in the case of other bonds or undertakings given by the accused in criminal proceedings within this state."

Section 1789. Section 46-30-402, MCA, is amended to read:

"46-30-402. Requisition by governor. Whenever the governor of this state ~~shall demand~~ demands a person charged with crime or with escaping from confinement or breaking the terms of his the person's bail, probation, or parole in this state from the chief executive of any other state or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive ~~such a~~ demand under the laws of the United States, ~~he~~ the governor shall issue a warrant under the seal of this state to some agent commanding ~~him~~ the agent to receive the person ~~so~~ charged if delivered to ~~him~~ the agent and convey ~~him~~ the person to the proper officer of the county in this state in which the offense was committed."

Section 1790. Section 46-30-403, MCA, is amended to read:

"46-30-403. Extradition of persons held in another state. When it is desired to have returned to this state a person charged in this state with a crime and ~~such the~~ person is imprisoned or is held under criminal proceedings then pending against ~~him~~ the person in another state, the governor of this state may agree with the executive authority of ~~such the~~ other state for the extradition of ~~such the~~ person before the conclusion of ~~such the~~ proceedings or his the person's term of sentence in ~~such the~~ other state, upon condition that ~~such the~~ person be returned to ~~such the~~ other state at the expense of this state as soon as the prosecution in this state is terminated."

Section 1791. Section 46-30-404, MCA, is amended to read:

"46-30-404. Immunity from service of civil process. A person brought into this state on or after waiver of extradition based on a criminal charge ~~shall is~~ not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding ~~to answer which he~~ that the person is being or has been returned to answer until ~~he~~ the person has been convicted in the criminal proceedings or, if acquitted, until ~~he~~ the person has had reasonable opportunity to return to the state from which ~~he~~ the person was extradited."

Section 1792. Section 46-30-405, MCA, is amended to read:

"46-30-405. No immunity from other criminal prosecutions. After a person has been brought back to this state by extradition proceedings, ~~he~~ the person may be tried in this state for other crimes ~~which he~~ that the person may be charged with having committed here as well as that specified in the requisition for ~~his~~ the person's extradition."

Section 1793. Section 46-30-412, MCA, is amended to read:

"46-30-412. Restrictions on compensation for assisting return of fugitive. No compensation, fee, or reward of any kind may be paid to or received by a public officer of this state or other person for a service rendered in procuring from the governor the demand mentioned in 46-30-411(1), for the surrender of the fugitive, or for conveying ~~him~~ the fugitive to this state or detaining ~~him therein~~ the fugitive in this state, except as provided in 46-30-411."

Section 1794. Section 46-31-101, MCA, is amended to read:

"46-31-101. Agreement on detainees -- enactment and text. The agreement on detainees is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainees based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainees based on untried indictments, informations, or complaints. The party states also find that proceedings with reference to such charges and detainees, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

- (1) "state" shall mean a state of the United States, the United States of America, a territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico;
- (2) "sending state" shall mean a state in which a prisoner is incarcerated at the time that ~~he~~ the prisoner

initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof;

(3) "receiving state" shall mean the state in which trial is to be had on an indictment, information, or complaint pursuant to Article III or Article IV hereof.

Article III

(1) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, ~~he~~ the prisoner shall be brought to trial within 180 days after ~~he~~ the prisoner shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of ~~his~~ imprisonment and ~~his~~ the prisoner's request for a final disposition to be made of the indictment, information, or complaint; provided that for good cause shown in open court, the prisoner or ~~his~~ the prisoner's counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(2) The written notice and request for final disposition referred to in subsection (1) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of ~~him~~ the prisoner, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(3) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform ~~him~~ the prisoner of the source and contents of any detainer lodged against ~~him~~ the prisoner and shall also inform ~~him~~ the prisoner of ~~his~~ the right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

(4) Any request for final disposition made by a prisoner pursuant to subsection (1) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the

prisoner. Any notification sent pursuant to this subsection shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(5) Any request for final disposition made by a prisoner pursuant to subsection (1) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of subsection (4) hereof and a waiver of extradition to the receiving state to serve any sentence there imposed upon ~~him~~ the prisoner after completion of ~~his~~ the prisoner's term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of ~~his~~ the prisoner's body in any court where ~~his~~ the prisoner's presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(6) Escape from custody by the prisoner subsequent to ~~his~~ the prisoner's execution of the request for final disposition referred to in subsection (1) hereof shall void the request.

Article IV

(1) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom ~~he~~ the officer has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V(1) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request; and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability either upon ~~his~~ the governor's own motion or upon motion of the prisoner.

(2) Upon receipt of the officer's written request as provided in subsection (1) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate

courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(3) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or ~~his~~ the prisoner's counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(4) Nothing contained in this article shall be construed to deprive any prisoner of any right which ~~he~~ the prisoner may have to contest the legality of ~~his~~ the prisoner's delivery as provided in subsection (1), but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(5) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(5) hereof, such indictment, information, or complaint shall not be of any further force or effect and the court shall enter an order dismissing the same with prejudice.

Article V

(1) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(2) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(a) proper identification and evidence of ~~his~~ the officer's or representative's authority to act for the state into whose temporary custody the prisoner is to be given;

(b) a duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(3) If the appropriate authority shall refuse or fail to accept temporary custody of said person or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been

lodged is not brought to trial within the periods provided by this chapter, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice and any detainer based thereon shall cease to be of any force or effect.

(4) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for ~~his~~ the prisoner's attendance at court and while being transported to or from any place at which ~~his~~ the prisoner's presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(5) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(6) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run, but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(7) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(8) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this subsection shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions as to the payment of costs or responsibilities therefor.

Article VI

(1) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable

to stand trial, as determined by the court having jurisdiction of the matter.

(2) No provision of this agreement and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement and who shall provide within and without the state information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable, and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstances is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Section 1795. Section 46-31-204, MCA, is amended to read:

"46-31-204. Penalty for escape from custody on detainer. Every prisoner confined in state prison for a term less than for life who has been lawfully delivered into the temporary custody of appropriate officers of a party state for trial on a charge or detainer based on an untried indictment, information, or complaint and who escapes therefrom is punishable by a fine in an amount not to exceed \$50,000; or by imprisonment in the state prison for a term of not less than 1 year or more than 10 years, or by both; ~~said~~ The second term of imprisonment to must commence from the time ~~he~~ the prisoner would otherwise have been discharged from ~~said~~ prison."

Section 1796. Section 49-1-101, MCA, is amended to read:

"49-1-101. Right of protection from personal injury. Besides the personal rights mentioned or recognized in other statutes and subject to the qualifications and restrictions provided by law, every person has the right of protection from bodily restraint or harm, personal insult, defamation, and injury to ~~his~~ the person's personal relations."

Section 1797. Section 49-1-202, MCA, is amended to read:

"49-1-202. Right to hold elected office. Every elector is eligible to the office for which ~~he~~ the elector is an elector; except where otherwise specially provided."

Section 1798. Section 49-2-202, MCA, is amended to read:

"49-2-202. Authority to require posted notice. The commission may require any employer, employment agency, labor union, educational institution, or financial institution or the owner, lessee, manager, agent, or employee of any public accommodation or housing accommodation subject to this chapter to post, in a conspicuous place on ~~his~~ the premises or in the accommodation, a notice to be prepared or approved by the commission containing relevant information that the commission considers necessary to explain this chapter. Any person or institution subject to this section who refuses to comply with an order of the commission respecting the posting of a notice is guilty of a misdemeanor and ~~punishable~~ shall be punished by a fine of not more than \$50."

Section 1799. Section 49-2-301, MCA, is amended to read:

"49-2-301. Retaliation prohibited. It is an unlawful discriminatory practice for a person, educational institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise discriminate against an individual because ~~he~~ the individual has opposed any practices forbidden under this chapter or because ~~he~~ the individual has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter."

Section 1800. Section 49-2-310, MCA, is amended to read:

"49-2-310. Maternity leave -- unlawful acts of employers. It ~~shall be~~ is unlawful for an employer or ~~his~~ an employer's agent to:

- (1) terminate a woman's employment because of ~~her~~ the woman's pregnancy;
- (2) refuse to grant to the employee a reasonable leave of absence for ~~such~~ the pregnancy;

(3) deny to the employee who is disabled as a result of pregnancy any compensation to which ~~she~~ the employee is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by ~~her~~ the employer, provided that the employer may require disability as a result of pregnancy to be verified by medical certification that the employee is not able to perform ~~her~~ employment duties; or

(4) require that an employee take a mandatory maternity leave for an unreasonable length of time."

Section 1801. Section 49-2-311, MCA, is amended to read:

"49-2-311. Reinstatement to job following pregnancy-related leave of absence. Upon signifying ~~her~~ an intent to return at the end of ~~her~~ a pregnancy-related leave of absence, ~~such~~ the employee ~~shall~~ must be reinstated to ~~her~~ the employee's original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it impossible or unreasonable to do so."

Section 1802. Section 49-3-209, MCA, is amended to read:

"49-3-209. Retaliation prohibited. It is an unlawful discriminatory practice for a state or local governmental agency to discharge, expel, blacklist, or otherwise discriminate against an individual because ~~he~~ the individual has opposed any practices forbidden under this chapter or because ~~he~~ the individual has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter."

Section 1803. Section 49-4-102, MCA, is amended to read:

"49-4-102. Penalty and civil remedy. A person who practices discrimination in violation of 49-4-101 commits a misdemeanor and is also liable in a district court action for civil damages and ~~attorney's~~ attorney fees by the person discriminated against. ~~Should~~ If the person who allegedly practiced discrimination ~~prevail~~ prevails in the civil action, ~~he shall be~~ the person is entitled to recover reasonable ~~attorney's~~ attorney fees from the person who alleged the discrimination."

Section 1804. Section 49-4-502, MCA, is amended to read:

"49-4-502. Definitions. As used in this part, the following definitions apply:

(1) "Appointing authority" means the presiding judge or justice of any court, the ~~chairman~~ presiding officer of any board, commission, or authority, the director or commissioner of any department or agency, or any other person presiding at any hearing or other proceeding in which a qualified interpreter is required pursuant to this

part.

(2) "Deaf person" means a person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit the person from understanding oral communications. The term further includes; but is not limited to; a person who, because of loss of hearing, cannot communicate spoken language.

(3) "Intermediary interpreter" means a knowledgeable deaf person who, because of the person's intimate acquaintance with deaf persons who use mainly natural gestures for communicating, can be used as an intermediary between the deaf person and a qualified interpreter.

(4) "Principal party in interest" means a person who is a named party in any proceeding or who will be directly affected by the decision or action ~~which~~ that may be made or taken.

(5) "Qualified interpreter" means an interpreter listed by the department of public health and human services as provided in 49-4-507."

Section 1805. Section 49-4-503, MCA, is amended to read:

"49-4-503. Deaf person as participant in judicial or administrative proceeding -- interpreter to be used. A qualified interpreter ~~shall~~ must be appointed as follows:

(1) In any case before any court or a grand jury in which a deaf person is a party, either as a complainant, defendant, or witness, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf person and interpret ~~his~~ the deaf person's testimony or statements and to assist in preparation with counsel.

(2) At all stages in any proceeding of a judicial or quasi-judicial nature before any agency of the state or governing body or agency of a local government in which a deaf person is a principal party in interest, either as a complainant, defendant, witness, or suppliant, the agency or governing body shall appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret ~~his~~ the deaf person's testimony or statements.

(3) (a) In any proceedings in which a deaf person may be subjected to confinement or criminal sanction or in any proceeding preliminary ~~thereto~~, including a coroner's inquest, grand jury proceedings, and proceedings relating to mental health commitments, the presiding judicial officer shall appoint a qualified interpreter to assist the deaf person throughout the proceedings.

(b) Upon arresting a deaf person for an alleged violation of a criminal law and prior to interrogating or taking a statement of the deaf person, the arresting law enforcement official shall make available to the person, at the earliest possible time, a qualified interpreter to assist the person throughout ~~such~~ the interrogation or taking

of a statement.

(c) ~~No~~ A statement, written or oral, made by a person who is deaf in reply to a question of a law enforcement officer or any other person having a prosecutorial function in any criminal or quasi-criminal proceeding may not be used against that deaf person unless either the statement was made or elicited through a qualified interpreter and was made knowingly, voluntarily, and intelligently or, in the case of waiver, the court makes a special finding that any statement made by the deaf person was made knowingly, voluntarily, and intelligently.

(d) This subsection (3) does not apply to apprehensions, arrests, or statements involving a violation of the traffic laws of Montana."

Section 1806. Section 49-4-504, MCA, is amended to read:

"49-4-504. Preliminary determination. The appointing authority may not appoint a qualified interpreter in any case until ~~he~~ the appointing authority makes a preliminary determination that the qualified interpreter is able to accurately communicate with and translate information to and from the deaf person in the case."

Section 1807. Section 49-4-505, MCA, is amended to read:

"49-4-505. Intermediary interpreter to be used. If a qualified interpreter states that ~~he~~ the interpreter is unable to render a satisfactory interpretation and that an intermediary interpreter will improve the quality of interpretation, the appointing authority shall appoint an intermediary interpreter to assist the qualified interpreter subject to the same provisions that govern a qualified interpreter under this part."

Section 1808. Section 49-4-508, MCA, is amended to read:

"49-4-508. Oath of interpreter. ~~Every~~ An interpreter appointed to interpret for a deaf person, before entering upon ~~his~~ the interpreter's duties, shall take an oath that ~~he~~ the interpreter will make a true interpretation in an understandable manner to the person for whom ~~he~~ the interpreter is appointed and that ~~he~~ the interpreter will repeat the statements of ~~such~~ the person in the English language to the best of ~~his~~ the interpreter's skill and judgment."

Section 1809. Section 49-4-509, MCA, is amended to read:

"49-4-509. Compensation. An interpreter appointed to interpret for the deaf is entitled to receive a reasonable fee for ~~his~~ the interpreter's services, together with ~~his~~ actual expenses for travel and transportation.

The appointing authority shall set the fee. When the interpreter is appointed in a criminal proceeding, the fee ~~shall~~ must be paid out of the county general fund², and when the interpreter is otherwise appointed, the fees ~~shall~~ must be paid out of funds available to the appointing authority."

Section 1810. Section 50-2-120, MCA, is amended to read:

"50-2-120. Assistance from law enforcement officials. A state or local health officer may request a sheriff, constable, or other peace officer to assist ~~him~~ the health officer in carrying out the provisions of this chapter. If the officer does not render the service, ~~he~~ the officer is guilty of a misdemeanor and may be removed from office."

Section 1811. Section 50-2-121, MCA, is amended to read:

"50-2-121. Removal of diseased prisoner from jail by local health officer. (1) On written order of a local health officer, a diseased prisoner who is held in a jail and who is considered dangerous to the health of other prisoners may be removed to a hospital or other place of safety.

(2) If the prisoner was committed to jail by order of a court, the order for removal and treatment ~~shall~~ must be signed by the local health officer and filed with the court.

(3) When the prisoner recovers from the disease, ~~he shall~~ the prisoner must be returned to the jail.

(4) A prisoner removed to a hospital or clinic for treatment ~~shall~~ may not be considered to have committed an escape."

Section 1812. Section 50-2-122, MCA, is amended to read:

"50-2-122. Obstructing local health officer in the performance of his duties unlawful. It is unlawful to:

(1) hinder a local health officer in the performance of ~~his~~ duties under this chapter;

(2) remove or deface any placard or notice posted by the local health officer; or

(3) violate a quarantine regulation."

Section 1813. Section 50-2-124, MCA, is amended to read:

"50-2-124. Penalties for violations. (1) A person who does not comply with rules adopted by a local board is guilty of a misdemeanor. On conviction, ~~he~~ the person shall be fined not less than \$10 or more than \$200.

(2) Except as provided in 50-2-123 and subsection (1) of this section ~~and 50-2-123~~, a person who violates the provisions of this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor. On conviction, ~~he~~ the person shall be fined not less than \$10 or more than \$500; or be imprisoned for not more than 90 days, or both.

(3) Each day of violation constitutes a separate offense.

(4) Fines, except justice's court fines, ~~shall~~ must be paid to the county treasurer of the county in which the violation occurs."

Section 1814. Section 50-5-212, MCA, is amended to read:

"50-5-212. Organ procurement program required. The administrator of a hospital licensed under this chapter shall as a condition of licensure under 50-5-201:

(1) establish a written protocol for the identification of potential organ donors that:

(a) ~~assures~~ ensures that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline;

(b) encourages discretion and sensitivity with respect to the circumstances, views, and beliefs of families of potential organ donors; and

(c) requires that a qualified organ procurement agency be notified of potential organ donors;

(2) designate and train a person or persons to represent ~~him~~ the administrator for purposes of requesting an anatomical gift as provided in 72-17-213; and

(3) make known to the public that the hospital has an organ procurement program as described in subsection (1)."

Section 1815. Section 50-5-1105, MCA, is amended to read:

"50-5-1105. Long-term care facility to adopt and post residents' rights. (1) The administrator of each long-term care facility shall:

(a) adopt a written statement of rights applicable to all residents of its facility, including as a minimum the rights listed in 50-5-1104;

(b) provide each resident, at the time of ~~his~~ admission to the facility, a copy of the facility's statement of residents' rights, receipt of which the resident or ~~his~~ the resident's authorized representative shall acknowledge in writing;

(c) provide each resident with a written statement of any change in residents' rights at the time the

change is implemented, receipt of which the resident or ~~his~~ the resident's authorized representative shall acknowledge in writing; and

(d) train and involve staff members in the implementation of residents' rights as expressed in the statement adopted by the facility.

(2) Each staff member shall affirm in writing that ~~he~~ the member has read and understands the facility's statement of residents' rights.

(3) The administrator of the facility shall post in a conspicuous place visible to the public a copy of the facility's statement of residents' rights, presented in a format that can be read easily by the residents and by the public."

Section 1816. Section 50-5-1106, MCA, is amended to read:

"50-5-1106. Resident's rights devolve to authorized representative. The rights and responsibilities listed in 50-5-1104 and 50-5-1105 devolve to the resident's authorized representative when the resident:

- (1) exhibits a communication barrier;
- (2) has been found by ~~his~~ the resident's physician to be medically incapable of understanding these rights; or
- (3) has been adjudicated incompetent by a district court."

Section 1817. Section 50-6-313, MCA, is amended to read:

"50-6-313. Inspections. (1) The department shall make necessary investigations and inspections for enforcement of this part.

(2) The department shall make regular inspections as the rules of the department may direct and special inspections ~~which~~ that it considers necessary.

(3) The department has free access at all reasonable hours to the place of business of any person operating an emergency medical service in order to make necessary inspections. These inspections may include the inspection of any equipment or records pertaining to the activities of the emergency medical service.

(4) A person may not refuse entry or access to an authorized representative of the department who presents appropriate credentials and requests entry for the purpose of conducting an inspection necessitated under this section. A person may not obstruct, hamper, or interfere with an inspection that is properly conducted pursuant to this section.

(5) Upon request, the owner or operator of an emergency medical service must receive a report stating

all facts that relate to ~~his~~ the owner's or operator's compliance with the provisions of this part as determined by the department, based upon its inspection."

Section 1818. Section 50-6-317, MCA, is amended to read:

"50-6-317. Liability protection. (1) A physician or registered nurse licensed under the laws of this state who gives instructions for medical care to a member of an emergency medical service without compensation or for compensation not exceeding \$5,000 in any 12-month period and whose professional practice is not primarily in an emergency or trauma room or ward is not liable for civil damages for an injury resulting from the instructions, except damages for an injury resulting from the gross negligence of the physician or nurse, if the instructions given by the physician or nurse are:

(a) consistent with the protocols and the medical control plan approved by the department in licensing the emergency medical service; and

(b) consistent with the level of certification or licensure of the emergency medical services personnel instructed by the physician or nurse.

(2) An offline medical director is not liable for civil damages for an injury resulting from the performance of ~~his~~ the director's duties, except damages for an injury resulting from the gross negligence of the director."

Section 1819. Section 50-9-103, MCA, is amended to read:

"50-9-103. Declaration relating to use of life-sustaining treatment -- designee. (1) An individual of sound mind and 18 years of age or older may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. The declarant may designate another individual of sound mind and 18 years of age or older to make decisions governing the withholding or withdrawal of life-sustaining treatment. The declaration must be signed by the declarant or another at the declarant's direction and must be witnessed by two individuals. A health care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with this chapter and is valid.

(2) A declaration directing a physician or advanced practice registered nurse to withhold or withdraw life-sustaining treatment may; but need not; be in the following form:

DECLARATION

If I should have an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician or attending advanced practice registered nurse, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment,

I direct my attending physician or attending advanced practice registered nurse, pursuant to the Montana Rights of the Terminally Ill Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary to my comfort or to alleviate pain.

Signed this ____ day of _____, ____.

Signature _____

City, County, and State of Residence _____

The declarant voluntarily signed this document in my presence.

Witness _____

Address _____

Witness _____

Address _____

(3) A declaration that designates another individual to make decisions governing the withholding or withdrawal of life-sustaining treatment may; but need not; be in the following form:

DECLARATION

If I should have an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician or attending advanced practice registered nurse, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I appoint _____ or, if ~~he or she~~ that person is not reasonably available or is unwilling to serve, _____, to make decisions on my behalf regarding withholding or withdrawal of treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain, pursuant to the Montana Rights of the Terminally Ill Act.

If the individual I have appointed is not reasonably available or is unwilling to serve, I direct my attending physician or attending advanced practice registered nurse, pursuant to the Montana Rights of the Terminally Ill Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain.

Signed this ____ day of _____, ____.

Signature _____

City, County, and State of Residence _____

The declarant voluntarily signed this document in my presence.

Witness _____

Address _____

Witness _____

Address _____

Name and address of designee.

Name _____

Address _____

(4) If the designation of an attorney-in-fact pursuant to 72-5-501 and 72-5-502; or the judicial appointment of an individual; contains written authorization to make decisions regarding the withholding or withdrawal of life-sustaining treatment, that designation or appointment constitutes, for the purposes of this part, a declaration designating another individual to act for the declarant pursuant to subsection (1).

(5) A health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if unwilling to comply with the declaration, shall advise the declarant and any individual designated to act for the declarant promptly."

Section 1820. Section 50-15-108, MCA, is amended to read:

"50-15-108. Duty to furnish information. (1) ~~Any~~ A person having knowledge of the fact shall furnish information ~~he that the person~~ possesses about a birth, death, fetal death, marriage, dissolution of marriage, or invalid marriage upon demand of the department.

(2) The person in charge of any institution or facility for the care of persons shall record and report all data required by this chapter relating to inmates or patients of the institution or facility."

Section 1821. Section 50-15-114, MCA, is amended to read:

"50-15-114. Unlawful acts and penalties. (1) It is unlawful to disclose data in the vital statistics records of the department, local registrars, or county clerk and recorder unless disclosure is authorized by law.

(2) A person shall be fined not more than \$1,000; or be imprisoned for not more than 1 year, or both, if:

(a) ~~he the person~~ willfully and knowingly makes any false statement in a report, record, or certificate required to be filed by law or in an application for an amendment ~~thereof of a report, record, or certificate~~ or willfully and knowingly supplies false information intending that the information be used in the preparation of any report, record, or certificate or amendment;

(b) without lawful authority and with the intent to deceive, ~~he the person~~ makes, alters, amends, or mutilates any report, record, or certificate required to be filed under law or a certified copy of the report, record, or certificate;

(c) ~~he~~ the person willfully and knowingly uses or attempts to use or furnish to another for use, for any purpose of deception, any certificate, record, report, or certified copy made, altered, amended, or mutilated;

(d) with the intention to deceive, ~~he~~ the person willfully uses or attempts to use any birth certificate or certified copy of a birth record knowing that ~~such~~ the certificate or certified copy was issued upon a record ~~which~~ that is false in whole or in part or ~~which~~ that relates to the birth of another person;

(e) ~~he~~ the person willfully and knowingly furnishes a birth certificate or certified copy of a birth record with the intention that it be used by a person other than the person to whom the birth record relates.

(3) A person shall be fined not less than \$25 or more than \$500, imprisoned for not more than 30 days, or both, if the person:

(a) ~~he~~ knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided by law;

(b) ~~he~~ refuses to provide information required by law;

(c) ~~he~~ willfully neglects or violates any of the provisions of law or refuses to perform any of the duties imposed upon him by law."

Section 1822. Section 50-15-302, MCA, is amended to read:

"50-15-302. Clerk to report decree of dissolution or declaration of invalidity of marriage. (1) At the same time a decree of dissolution or declaration of invalidity of marriage is filed, the clerk of court shall prepare a report to the department on the form prescribed by the department. Parties to the action or their attorneys shall supply the clerk with necessary information.

(2) The report ~~shall~~ must include the:

(a) name, age, birthplace, residence, race or color, and occupation of each party;

(b) number, date, and place of any previous marriage of either party;

(c) number of children under 18 years of age in custody of either party and residing with ~~him~~ the party;

(d) grounds for the action;

(e) number of the cause of action;

(f) county and judicial district where the action is filed; and

(g) date of judgment and the party ~~which~~ that was granted it."

Section 1823. Section 50-15-402, MCA, is amended to read:

"50-15-402. Copy to be forwarded to deceased's county of residence. If a state resident dies outside

the county of his residence, the clerk and recorder shall send a certified copy of the death certificate to the clerk and recorder of the deceased's county of residence. The copy ~~shall~~ must be considered the same as the original."

Section 1824. Section 50-16-522, MCA, is amended to read:

"50-16-522. Representative of deceased patient. A personal representative of a deceased patient may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other person who is authorized by law to act for him the deceased patient."

Section 1825. Section 50-16-543, MCA, is amended to read:

"50-16-543. Request for correction or amendment. (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which he the provider has access under 50-16-541.

(2) As promptly as required under the circumstances but no later than 10 days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

(a) make the requested correction or amendment and inform the patient of the action and of the patient's right to have the correction or amendment sent to previous recipients of the health care information in question;

(b) inform the patient if the record no longer exists or cannot be found;

(c) if the health care provider does not maintain the record, inform the patient and provide him the patient with the name and address, if known, of the person who maintains the record;

(d) if the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing the earliest date, not later than 21 days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(e) inform the patient in writing of the provider's refusal to correct or amend the record as requested, the reason for the refusal, and the patient's right to add a statement of disagreement and to have that statement sent to previous recipients of the disputed health care information."

Section 1826. Section 50-16-544, MCA, is amended to read:

"50-16-544. Procedure for adding correction, amendment, or statement of disagreement. (1) In

making a correction or amendment, the health care provider shall:

(a) add the amending information as a part of the health record; and

(b) mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

(a) permit the patient to file as a part of the record of ~~his~~ the patient's health care information a concise statement of the correction or amendment requested and the reasons ~~therefor~~ for the correction or amendment; and

(b) mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances."

Section 1827. Section 50-16-553, MCA, is amended to read:

"50-16-553. Civil remedies. (1) A person aggrieved by a violation of this part may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with this part and may order any other appropriate relief.

(3) A health care provider who relies in good faith upon a certification pursuant to 50-16-536(2) is not liable for disclosures made in reliance on that certification.

(4) ~~No~~ A disciplinary or punitive action may not be taken against a health care provider or ~~his~~ the provider's employee or agent who brings evidence of a violation of this part to the attention of the patient or an appropriate authority.

(5) In an action by a patient alleging that health care information was improperly withheld under 50-16-541 and 50-16-542, the burden of proof is on the health care provider to establish that the information was properly withheld.

(6) If the court determines that there is a violation of this part, the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of \$5,000, exclusive of any pecuniary loss.

(7) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses

reasonably incurred in the litigation.

(8) An action under this part is barred unless the action is commenced within 3 years after the cause of action accrues."

Section 1828. Section 50-17-112, MCA, is amended to read:

"50-17-112. Procedure to obtain release from commitment. (1) One hundred and eighty days or more after the date of ~~his~~ commitment, a person committed under 50-17-107 or 50-17-108 may apply to the court that ordered ~~his~~ the person's commitment for a release.

(2) Not fewer than 3 or more than 7 days after receipt of the request, the court shall hold a hearing.

(3) Following the hearing, the court shall:

(a) order ~~his~~ the person's discharge if it finds ~~he~~ that the person has completed an approved course of treatment or does not have tuberculosis; or

(b) dismiss the request if it finds ~~he~~ that the person still has tuberculosis or ~~he~~ that the person has refused to submit to an examination to determine whether ~~he~~ the person has tuberculosis or has not yet completed an approved course of treatment."

Section 1829. Section 50-18-106, MCA, is amended to read:

"50-18-106. Duty to report cases. If a physician or other person knows or has reason to suspect that a person who has a sexually transmitted disease is ~~conducting himself~~ behaving in a way ~~which~~ that might expose another to infection, ~~he~~ the physician or person shall immediately notify the local health officer of the name and address of the diseased person and the essential facts in the case."

Section 1830. Section 50-20-106, MCA, is amended to read:

"50-20-106. Informed consent. (1) An abortion may not be performed without the informed consent of the woman upon whom the abortion is to be performed. The informed consent must be received at least 24 hours prior to the abortion and certified prior to or at the time of the abortion.

(2) Informed consent must be certified by a written statement in a form prescribed by the department and signed by the physician and the woman upon whom the abortion is to be performed in which the physician certifies that the physician has made the full disclosure provided in 50-20-104(5) and in which the woman upon whom the abortion is to be performed acknowledges that the disclosures have been made to the woman and that the woman voluntarily consents to the abortion.

(3) If a woman chooses to review the written materials described in 50-20-304, the materials must be provided to ~~her~~ the woman at least 24 hours before the abortion or be mailed to the woman by certified mail, with delivery restricted to the addressee, at least 72 hours before the abortion.

(4) The information required in 50-20-104(5)(a) may be provided by telephone without conducting a physical examination or tests of the patient. The information may be based on facts supplied to the physician by the woman and other relevant information that is reasonably available to the physician. The information may not be provided by a tape recording but must be provided during a consultation in which the physician is able to ask questions of the woman and the woman is able to ask questions of the physician. If a physical examination, tests, or the availability of other information subsequently indicates, in the medical judgment of the physician, a revision of information previously provided to the patient, the revised information may be communicated to the patient at any time prior to the performance of the abortion.

(5) The information required in 50-20-104(5)(b) may be provided by a tape recording if provision is made to record or otherwise register specifically whether the woman does or does not choose to review the printed materials.

(6) The informed consent or consent provided for in this section is not required if a licensed physician certifies that the abortion is necessary because of a medical emergency as defined in 50-20-303.

(7) An executive officer, administrative agency, or public employee of the state or of any local governmental body may not issue any order requiring an abortion or coerce any woman to have an abortion. A person may not coerce any woman to have an abortion.

(8) ~~Violation~~ A violation of subsections (1) through (7) is a misdemeanor."

Section 1831. Section 50-20-108, MCA, is amended to read:

"50-20-108. Protection of premature infants born alive. (1) A person commits an offense, as defined in 45-5-102 through 45-5-104, if ~~he~~ the person purposely, knowingly, or negligently causes the death of a premature infant born alive, if ~~such~~ the infant is viable.

(2) Whenever a premature infant ~~which~~ that is the subject of abortion is born alive and is viable, it becomes a dependent and neglected child subject to the provisions of state law, unless:

(a) the termination of the pregnancy is necessary to preserve the life of the mother; or

(b) the mother and ~~her~~ the mother's spouse or either of them have agreed in writing in advance of the abortion or within 72 hours thereafter to accept the parental rights and responsibilities of the premature infant if it survives the abortion procedure.

(3) ~~No~~ A person may not use any premature infant born alive for any type of scientific research or other kind of experimentation except as necessary to protect or preserve the life and health of ~~such~~ the premature infant born alive.

(4) ~~Violation~~ A violation of subsection (3) ~~of this section~~ is a felony."

Section 1832. Section 50-21-104, MCA, is amended to read:

"50-21-104. Autopsies. All autopsies of a human body ~~shall~~ must be performed by a physician legally authorized to practice medicine in this state. Upon completion, the physician shall send a written report of ~~his~~ the physician's findings, including the cause of death if determined, to the:

- (1) physician attending the person at the time of death if other than the physician performing the autopsy;
- (2) ~~upon the request of any such hospital or skilled nursing facility, to the hospital or skilled nursing facility, upon request,~~ where the person died or where ~~he~~ the person was confined during ~~his~~ the person's last illness to be retained as part of the permanent record of the hospital or skilled nursing facility;
- (3) to the next of kin of the decedent or the representative of the decedent's estate upon request; and to ~~such~~ any other person lawfully requesting the report."

Section 1833. Section 50-21-106, MCA, is amended to read:

"50-21-106. Penalty for unauthorized postmortem examinations. Unless authorized by law, any person who performs an autopsy, dissection, or other postmortem examination or causes it to be made is guilty of a misdemeanor. Upon conviction, ~~he~~ the person shall be punished by a fine not exceeding \$500."

Section 1834. Section 50-23-102, MCA, is amended to read:

"50-23-102. Prohibition of possession of wild animals -- exceptions. ~~No~~ A person may not possess a wild animal unless ~~he~~ the person possessed it for at least 6 months prior to January 1, 1982, or it is used in a fur-bearing enterprise, contained in a zoological exhibition in ~~such~~ a manner that it may not come in physical contact with members of the public, or acquired by an educational institution for scientific research."

Section 1835. Section 50-30-107, MCA, is amended to read:

"50-30-107. Powers and duties of department's agents. (1) For enforcement of this chapter, officers or employees duly designated by the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized to:

- (a) enter at reasonable times a factory, warehouse, or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction into commerce or are held after ~~such~~ introduction;
 - (b) enter a vehicle being used to transport or hold hazardous substances in commerce;
 - (c) inspect at reasonable times, within reasonable limits, and in a reasonable manner a factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, and labeling ~~therein~~ in the factory, warehouse, establishment, or vehicle; and
 - (d) obtain samples of materials or packages or labeling ~~thereof~~.
- (2) If the officer or employee obtains a sample, prior to leaving the premises ~~he~~ the officer or employee shall pay or offer to pay the owner, operator, or agent in charge for the sample and give a receipt describing the samples obtained."

Section 1836. Section 50-30-204, MCA, is amended to read:

"50-30-204. Toxic defined. "Toxic" means a substance, (other than a radioactive substance), ~~which~~ that has the capacity to produce personal injury or illness to ~~man~~ humans through ingestion, inhalation, or absorption through any body surface."

Section 1837. Section 50-30-205, MCA, is amended to read:

"50-30-205. Highly toxic defined. (1) "Highly toxic" means a substance ~~which~~ that falls within any of the following categories:

- (a) produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams at a single dose of 50 milligrams or less per kilogram of body weight when orally administered;
 - (b) produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams when inhaled continuously for a period of 1 hour or less at an atmosphere concentration of 200 parts per million or less by volume of gas or vapor or 2 milligrams per liter or less by volume of mist or dust if that concentration is likely to be encountered by ~~man~~ humans when the substance is used in a reasonably foreseeable manner; or
 - (c) produces death within 14 days in one-half or more of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight when administered by continuous contact with the bare skin for 24 hours or less.
- (2) If the department finds that available data on human experience with a substance indicates results

different from those obtained on animals in the ~~above-named~~ dosages or concentrations described in subsection (1), the human data ~~shall~~ must take precedence."

Section 1838. Section 50-30-301, MCA, is amended to read:

"50-30-301. Prohibited acts. The following acts and ~~the~~ causing ~~thereof~~ the following acts are prohibited:

(1) the introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance;

(2) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of or the doing of any other act with respect to a hazardous substance if ~~such~~ the act is done while the substance is in commerce or while the substance is held for sale, ~~(whether or not the first sale),~~ after shipment in commerce and results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance;

(3) the receipt in commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery ~~thereof~~ of the substance for pay or otherwise;

(4) the giving of a guarantee or undertaking referred to in 50-30-305(2), ~~which guarantee or undertaking that~~ is false, except by a person who relies upon a guarantee or undertaking to the same effect signed by and containing the name and address of the person residing in the United States from whom ~~he~~ the person received in good faith the hazardous substance;

(5) the failure to permit entry or inspection as authorized by 50-30-107(1) or to permit access to any copying of any record as authorized by 50-30-108;

(6) the introduction or delivery for introduction into commerce or the receipt in commerce and subsequent delivery or proffered delivery for pay or otherwise of a hazardous substance in a reused food, drug, or cosmetic container or in a container ~~which that~~, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification;

(7) the use by any person to ~~his~~ the person's own advantage or revealing other than to the department or officers or employees of the agency or to the courts when relevant in any judicial proceeding under this chapter of any information acquired under authority of 50-30-106 and 50-30-107 concerning any method or process ~~which that~~ as a trade secret is entitled to protection."

Section 1839. Section 50-30-302, MCA, is amended to read:

"50-30-302. Notice and hearing required prior to prosecution. Before a violation of this chapter is reported to a county attorney for the institution of a criminal proceeding, the person against whom the proceeding is contemplated ~~shall~~ must be given appropriate notice and an opportunity to present ~~his~~ the person's views before the department, either orally or in writing and either in person or by attorney, with regard to the contemplated proceeding."

Section 1840. Section 50-30-305, MCA, is amended to read:

"50-30-305. Exceptions to penalty. ~~He~~ A person is not subject to the penalties of 50-30-304:

(1) for having violated 50-30-301(3) if the receipt, delivery, or proffered delivery of the hazardous substance was made in good faith unless ~~he~~ the person refuses to furnish on request of an officer or employee duly designated by the department the name and address of the person from whom ~~he~~ the person purchased or received the hazardous substance and copies of all documents pertaining to the delivery of the hazardous substance to ~~him~~ the person; or

(2) for having violated 50-30-301(1) if ~~he~~ the person establishes a guarantee or undertaking signed by and containing the name and address of the person residing in the United States from whom ~~he~~ the person received in good faith the hazardous substance to the effect that the hazardous substance is not a misbranded or banned hazardous substance within the meaning of those terms in this chapter."

Section 1841. Section 50-30-307, MCA, is amended to read:

"50-30-307. Detainer of misbranded or banned hazardous substance. (1) If a duly authorized agent of the department finds or has probable cause to believe that a hazardous substance is misbranded or is a banned hazardous substance within the meaning of this chapter, ~~he~~ the agent shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected of being misbranded or is a banned hazardous substance and has been detained or embargoed and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It is unlawful for a person to remove or dispose of a detained or embargoed article by sale or otherwise without permission.

(2) If an article detained or embargoed under subsection (1) is found by the agent to be misbranded or a banned hazardous substance, ~~he~~ the agent shall petition the judge of the city, justice's, or district court in whose jurisdiction the article is detained or embargoed for an order of condemnation of the article. If the agent finds that an article ~~is~~ detained or embargoed is not misbranded or a banned hazardous substance, ~~he~~ the agent shall

remove the tag or other marking.

(3) (a) If the court finds that a detained or embargoed article is misbranded or a banned hazardous substance, the article ~~shall~~ must, after entry of the decree, be destroyed at the expense of the claimant ~~thereof of the article~~ under supervision of the agent; and all court costs and fees and storage and other proper expenses are to be taxed against the claimant of the article or ~~his~~ the claimant's agent.

(b) If the misbranding can be corrected by proper labeling of the article, the court, after entry of the decree and after the costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article will be ~~so~~ properly labeled, has been executed, may by order direct that the article be delivered to the claimant ~~thereof of the article~~ for the labeling under the supervision of an agent of the department. The expense of the supervision ~~shall~~ must be paid by the claimant. The article ~~shall~~ must be returned to the claimant on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of the supervision have been paid."

Section 1842. Section 50-31-108, MCA, is amended to read:

"50-31-108. Regulations concerning additives. (1) The department, upon its own motion or upon the petition of any interested party requesting that ~~such a regulation~~ rule be established, whenever public health or other considerations in the state ~~so~~ require, is authorized to adopt, amend, or repeal ~~regulations~~ rules, whether or not in accordance with regulations promulgated under the federal act, prescribing tolerances for any added poisonous or deleterious substances for food additives, for pesticide chemicals in or on raw agricultural commodities, or for color additives, including but not limited to zero tolerances and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities, and prescribing the conditions under which a food additive or a color additive may be safely used and exemptions ~~where such~~ when the food additive or color additive is to be used solely for investigational or experimental purposes.

(2) ~~It shall be incumbent upon such~~ A petitioner ~~to~~ shall establish by data submitted to the department that a necessity exists for ~~such regulation~~ the rule and that its effect will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the department to determine whether ~~such~~ the regulation should be promulgated, the department may require additional data to be submitted and failure to comply with the request ~~shall be~~ is sufficient grounds to deny the request.

(3) In adopting, amending, or repealing ~~regulations~~ rules relating to ~~such the~~ substances, the department shall consider among other relevant factors the following, which the petitioner, if any, shall furnish:

(a) the name and all pertinent information concerning ~~such the~~ substance, including, ~~where~~ when

available;

- (i) its chemical identity and composition;
 - (ii) a statement of the conditions of the proposed use, including directions, recommendations, and suggestions and including specimens of proposed labeling; and
 - (iii) all relevant data bearing on the physical or other technical effect and the quantity required to produce such the effect;
- (b) the probable composition of or other relevant exposure from the article and of any substance formed in or on a food, drug, or cosmetic resulting from the use of such the substance;
- (c) the probable consumption of such the substance in the diet of ~~man~~ humans and animals taking into account any chemically or pharmacologically related substance in such the diet;
- (d) safety factors ~~which that~~, in the opinion of experts qualified by scientific training and experience to evaluate the safety of such the substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;
- (e) the availability of any needed practicable methods of analysis for determining the identity and quantity of:
- (i) such the substance in or on an article;
 - (ii) any substance formed in or on such the article because of the use of such the substance; and
 - (iii) the pure substance and all intermediates and impurities; and
- (f) facts supporting a contention that the proposed use of such the substance will serve a useful purpose."

Section 1843. Section 50-31-504, MCA, is amended to read:

"50-31-504. Notice and hearing required prior to prosecution. Before a violation of this chapter is reported to a state or county attorney for the institution of a criminal proceeding, the person against whom the proceeding is contemplated ~~shall~~ must be given appropriate notice and an opportunity to present ~~his~~ the person's views before the department or its designated agent, either orally or in writing and either in person or by attorney, with regard to the contemplated proceeding."

Section 1844. Section 50-31-507, MCA, is amended to read:

"50-31-507. Exceptions to penalties. (1) ~~No~~ A person ~~shall be~~ is not subject to the penalties of 50-31-506 for having violated ~~subsection (1) or (3) of~~ 50-31-501 (1) or (3) if ~~he~~ the person establishes a guaranty

or undertaking signed by and containing the name and address of the person residing in the state of Montana from whom ~~he~~ the person received in good faith the article to the effect that ~~such~~ the article is not adulterated or misbranded within the meaning of this chapter, designating this chapter.

(2) ~~No~~ The publisher, radiobroadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, ~~shall be~~ is not liable under 50-31-506 by reason of the dissemination by ~~him~~ the person of ~~such~~ the false advertisement, unless ~~he~~ the person has refused, on the request of the department, to furnish the department the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency residing in the state of Montana who causes ~~him~~ the person to disseminate ~~such~~ the advertisement."

Section 1845. Section 50-31-509, MCA, is amended to read:

"50-31-509. Detainer of adulterated or misbranded articles. (1) If an agent of the department finds or has probable cause to believe that any food, drug, device, or cosmetic is adulterated or so misbranded as to be dangerous or fraudulent within the meaning of this chapter, ~~he~~ the agent shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected of being adulterated or misbranded and has been detained or embargoed and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It is unlawful for a person to remove or dispose of a detained or embargoed article by sale or otherwise without permission. The owner of an embargoed article or another authorized person and the department may enter into a disposal agreement providing for the disposal, reconditioning, or other disposition of the embargoed article. If ~~such~~ an agreement is executed or if the embargo is otherwise removed by the department or the court, neither the department nor the state may be held liable for damages caused by ~~such~~ the embargo provided that probable cause existed for its imposition.

(2) If an article detained or embargoed under subsection (1) is found by the agent to be adulterated or misbranded and a disposal agreement is not executed as provided in subsection (1), the agent shall petition the justice of the peace, city judge, or district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. If the agent finds that an article ~~se~~ detained or embargoed is not adulterated or misbranded, ~~he~~ the agent shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is adulterated or misbranded, the article ~~shall~~ must, after entry of the decree, be destroyed at the expense of the claimant ~~thereof~~ of the article under the supervision of the agent and all court costs and fees and storage and other proper expenses ~~shall~~ must be taxed

against the claimant of the article or ~~his~~ the claimant's agent.

(4) If the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after the costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article will be ~~so~~ labeled or processed, has been executed, may by order direct that the article be delivered to the claimant ~~thereof~~ of the article for the labeling or processing under the supervision of an agent of the department. The expense of the supervision ~~shall~~ must be paid by claimant. The article ~~shall~~ must be returned to the claimant on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of the supervision have been paid."

Section 1846. Section 50-32-302, MCA, is amended to read:

"50-32-302. Exceptions to registration requirement. The following persons need not register and may lawfully possess dangerous drugs under this chapter:

(1) an agent or employee of any registered manufacturer, distributor, or dispenser of any dangerous drug if ~~he~~ the agent or employee is acting in the usual course of ~~his~~ business or employment;

(2) a common or contract carrier or ~~warehouseman~~ warehouse operator or an employee ~~thereof~~ of the carrier or warehouse operator, whose possession of any dangerous drug is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any dangerous drug pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V drug;

(4) officers and employees of the state, or a political subdivision of the state, while acting in the course of their official duties."

Section 1847. Section 50-32-311, MCA, is amended to read:

"50-32-311. Revocation or suspension of registration. (1) A registration under 50-32-301 to manufacture, distribute, or dispense a dangerous drug may be suspended or revoked by the board upon a finding that the registrant has:

(a) furnished false or fraudulent material information in any application filed under this chapter;

(b) been convicted of a felony under any state or federal law relating to any dangerous drug or controlled substance; or

(c) had ~~his~~ the registrant's federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

(2) The board may limit revocation or suspension of a registration to the particular dangerous drug with respect to which grounds for revocation or suspension exist.

(3) If the board suspends or revokes a registration, all dangerous drugs owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. ~~No~~ A disposition may not be made of drugs under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application ~~therefor~~, orders the sale of perishable drugs and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all dangerous drugs may be forfeited to the state.

(4) The board shall promptly cause the bureau to be notified of all orders suspending or revoking registration and all forfeitures of dangerous drugs."

Section 1848. Section 50-32-401, MCA, is amended to read:

"50-32-401. Report required for precursor to controlled substance. (1) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to a person in this state ~~must~~ shall submit a report to the department of justice detailing all ~~such~~ transactions:

- (a) phenyl-2-propanone;
- (b) methylamine;
- (c) d-lysergic acid;
- (d) ergotamine tartrate;
- (e) diethyl malonate;
- (f) malonic acid;
- (g) ethyl malonate;
- (h) barbituric acid; and
- (i) piperidine.

(2) The department of justice may adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act that add or delete substances ~~to~~ on the list of regulated substances ~~detailed~~ in subsection (1); if the substance is a precursor to a dangerous drug as defined in 50-32-101.

(3) This section does not apply to any of the following:

- (a) a pharmacist or other authorized person who sells or furnishes the substance upon the prescription of a physician, dentist, podiatrist, or veterinarian;
- (b) a physician, dentist, podiatrist, or veterinarian who administers or furnishes the substance to ~~his~~

patients;

(c) a manufacturer or wholesaler licensed by the board of pharmacy who sells, transfers, or otherwise furnishes the substance to a licensed pharmacist, physician, dentist, podiatrist, or veterinarian;

(d) transfers of the substances listed in subsection (1) within any college or university to an employee or student of the college or university for the purpose of teaching or research authorized by the college or university."

Section 1849. Section 50-41-105, MCA, is amended to read:

"50-41-105. Physician not subject to disciplinary action. A physician may not be subjected to disciplinary action by the board of medical examiners for prescribing or administering laetrile to a patient under ~~his~~ the physician's care as an adjunct to recognized, customary, or accepted modes of therapy in the treatment of any malignancy, disease, illness, or physical condition."

Section 1850. Section 50-42-105, MCA, is amended to read:

"50-42-105. Physician not subject to disciplinary action. A physician may not be subjected to disciplinary action by the board of medical examiners for prescribing or administering DMSO to a patient under ~~his~~ the physician's care as an adjunct to recognized, customary, or accepted modes of therapy in the treatment of any malignancy, disease, illness, or physical condition."

Section 1851. Section 50-43-106, MCA, is amended to read:

"50-43-106. Physician not subject to disciplinary action. A physician may not be disciplined by the board of medical examiners for prescribing or administering calcium-EAP, harnosal, or phosetamin to a patient under ~~his~~ the physician's care in the treatment of any malignancy, disease, illness, or physical condition."

Section 1852. Section 50-50-215, MCA, is amended to read:

"50-50-215. Refusal by local health officer -- appeal to board. (1) The local health officer may ~~only~~ refuse to validate a license issued under this chapter; only upon a finding that the requirements of this chapter and any rules implementing it are not satisfied. If the local health officer refuses to validate the license, ~~he~~ the officer shall notify the applicant and the department in writing stating ~~his~~ the officer's reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the

local health officer's decision.

(3) The hearing before the local board of health ~~shall~~ must be held pursuant to the contested case provisions of the Montana Administrative Procedure Act."

Section 1853. Section 50-50-304, MCA, is amended to read:

"50-50-304. Discovery of food capable of causing food-borne illness. If a state or local health officer, sanitarian, or other authorized person finds food that is capable of causing food-borne illness, ~~he~~ that person shall issue a report in writing recommending that the food be withheld from sale to the public. A duplicate copy of the report, properly authenticated, is admissible in evidence in any action or proceeding where the condition of the food at the time of the inspection is material."

Section 1854. Section 50-50-402, MCA, is amended to read:

"50-50-402. Plant owner not responsible for violation of game laws. A person who owns or operates a frozen food plant ~~which~~ that offers individual compartments to the public is not responsible for violation of game laws by persons who rent locker space from ~~him~~ the owner or operator."

Section 1855. Section 50-50-403, MCA, is amended to read:

"50-50-403. Liability of frozen food plant operators restricted. The liability for loss of food by the owner or operator of a frozen food plant ~~which~~ that offers individual compartments to the public is limited to negligence in operation or negligence of ~~his~~ the owner's or operator's employees."

Section 1856. Section 50-51-107, MCA, is amended to read:

"50-51-107. Provision of nursing services or personal-care services by the facility prohibited. (1) Hotels, motels, boardinghouses, roominghouses, or similar accommodations may not provide professional nursing services or personal-care services. A resident of a hotel, motel, boardinghouse, roominghouse, or similar accommodation may have personal-care, medical, or nursing-related services provided for ~~him~~ the resident in ~~such~~ the facility by a third-party provider.

(2) Whenever a complaint is filed with the department that a person in need of professional nursing services is residing in a roominghouse or other similar accommodation not licensed to provide ~~such~~ that service, the department shall investigate and may require appropriate care or placement of ~~such~~ the person if it is found that professional nursing services are needed."

Section 1857. Section 50-51-204, MCA, is amended to read:

"50-51-204. License fee -- late fee. (1) There ~~shall~~ must be paid to the department with each application for ~~such a~~ license or for renewal of ~~such a~~ license an annual license fee of \$40. The department shall deposit 85% of the fees collected under this section into the local board inspection fund account created in 50-2-108, 11.25% of the fees into the general fund, and 3.75% of the fees into the account provided for in 50-51-110.

(2) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of ~~his~~ the licensee's current license and who operates an establishment governed by this part in the next licensing year. The late fee is \$25 and must be deposited in the account provided for in 50-51-110."

Section 1858. Section 50-51-215, MCA, is amended to read:

"50-51-215. Refusal by local health officer -- appeal to board. (1) The local health officer may ~~only~~ refuse to validate a license issued under this chapter; only upon a finding that the requirements of this chapter and any rules implementing it are not satisfied. If the local health officer refuses to validate the license, ~~he~~ the officer shall notify the applicant and the department in writing stating ~~his~~ the officer's reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health ~~shall~~ must be held pursuant to the contested case provisions of the Montana Administrative Procedure Act."

Section 1859. Section 50-52-202, MCA, is amended to read:

"50-52-202. License fee -- late fee. (1) Each application ~~shall~~ must be accompanied by a fee of \$40.

(2) The department shall deposit 85% of the fees collected under subsection (1) into the local board inspection fund account created in 50-2-108, 11.25% of the fees into the general fund, and 3.75% of the fees ~~collected under subsection (1)~~ into the account provided for in 50-52-210.

(3) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of ~~his~~ the licensee's current license and who operates an establishment governed by this part in the next licensing year. The late fee is \$25 and must be deposited in the account provided for in 50-52-210."

Section 1860. Section 50-52-209, MCA, is amended to read:

"50-52-209. Refusal by local health officer -- appeal to board. (1) The local health officer may ~~only~~ refuse to validate a license issued under this chapter; only upon a finding that the requirements of this chapter and any rules implementing it are not satisfied. If the local health officer refuses to validate the license, ~~he~~ the officer shall notify the applicant and the department in writing stating ~~his~~ the officer's reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health ~~shall~~ must be held pursuant to the contested case provisions of the Montana Administrative Procedure Act."

Section 1861. Section 50-60-502, MCA, is amended to read:

"50-60-502. No penalties for hiring unlicensed plumbers. This part ~~shall~~ may not be construed as imposing any penalty on ~~any~~ a person for hiring or contracting with an unlicensed person to do work in the field of plumbing. However, ~~any~~ a person who ~~shall himself engage~~ engages in the field of plumbing at a time when ~~he~~ the person is not duly licensed ~~shall be~~ is subject to the penalties imposed by this part and Title 37, chapter 69."

Section 1862. Section 50-60-515, MCA, is amended to read:

"50-60-515. Penalty for violations -- exceptions. A person who works ~~at~~ in the field of plumbing or maintains or conducts a plumbing business or an individual who connects or disconnects plumbing from a public water or sewer system in violation of any provisions of this part or at a time when ~~he~~ the person is not exempt from the provisions of this part pursuant to the provisions of a duly enacted and subsisting ordinance of a city or town is guilty of a misdemeanor and, upon conviction ~~thereof~~ in any court of competent jurisdiction, shall be punished by a fine of not less than \$10 and not more than \$100 for each separate offense. However, this part ~~shall~~ may not be construed to apply to or affect plumbing or pipefitting as indicated in the exceptions under 37-69-102 and 50-60-503 ~~exceptions~~."

Section 1863. Section 50-61-116, MCA, is amended to read:

"50-61-116. Lessee who corrects violations entitled to reimbursement. The occupant or lessee of any building who is required to erect fire escapes under the provisions of this chapter is entitled to ~~reimburse~~

himself reimbursement for the cost and expense of erecting the fire escapes out of the rent or lease money of the premises, and the reimbursement is not a breach of any existing lease, contract, or covenant ~~thereof~~ or grounds for any action or damage ouster."

Section 1864. Section 50-62-104, MCA, is amended to read:

"50-62-104. Answer of owner or occupant. (1) The owner of any building ~~so~~ condemned or any occupant or lessee upon whom ~~such~~ the condemnation notice or order ~~shall be~~ is served, within 20 days from the date of ~~such~~ service, may file with the clerk of the district court and serve upon the department of justice or any officer mentioned in 50-62-101 written objections to ~~said~~ the order in the form of a verified answer denying the existence of any of the facts ~~therein~~ cited ~~which he~~ in the notice or order that the person desires to ~~controvert~~ contest.

(2) If an answer ~~be~~ is filed and served, the court shall hear and determine the issues ~~so~~ raised and give judgment ~~thereon~~."

Section 1865. Section 50-62-110, MCA, is amended to read:

"50-62-110. Appeal to department of justice. If the owner or occupant ~~deems himself~~ feels aggrieved by an order of an officer under this chapter, ~~he~~ the owner or occupant may appeal to the department of justice within 24 hours and the cause of the complaint ~~shall at once~~ must be investigated, in a timely manner, by direction of the department. Unless ~~such~~ the order is revoked by the department, it ~~shall remain~~ remains in force and ~~forthwith~~ must be complied with by ~~such~~ the owner or occupant."

Section 1866. Section 50-63-403, MCA, is amended to read:

"50-63-403. Agencies to keep information confidential. The insured's right of individual privacy requires agencies and agency personnel receiving information furnished pursuant to 50-63-401 and 50-63-402 to hold the information in confidence unless:

- (1) the insured waives ~~his~~ the right of individual privacy; or
- (2) release of the information is required pursuant to a criminal or civil proceeding."

Section 1867. Section 50-70-107, MCA, is amended to read:

"50-70-107. Duty of physicians and others to report occupational disease. (1) Before the 11th day after discovery, ~~every~~ a physician, person in charge of a hospital or clinic, or state employee shall report an

occupational disease to the department.

- (2) The report ~~shall~~ must be on forms prescribed by the department and include:
- (a) name and address of the diseased person;
 - (b) name and business address of the employer;
 - (c) business of the employer;
 - (d) place of the person's employment;
 - (e) length of time the person was employed at the place where ~~he~~ the person became ill;
 - (f) nature of the disease;
 - (g) other information required by the department.

(3) Reports made under this section are neither public records nor open to public inspection. They are not admissible as evidence in any legal action or at a hearing under workers' compensation laws of this state."

Section 1868. Section 50-70-115, MCA, is amended to read:

"50-70-115. Inspection. (1) The department may enter and inspect at a reasonable time property, premises, or a place, except a private residence, where a person is or will be employed to ascertain the state of compliance with this chapter and rules adopted under it.

(2) A person may not refuse entry or access to the department when it requests entry for purposes of inspection. A person may not obstruct, hamper, or interfere with an inspection.

(3) ~~At his~~ Upon request, the owner or operator of the premises ~~shall receive~~ must be given a report setting forth facts found ~~which~~ that relate to compliance status."

Section 1869. Section 50-71-201, MCA, is amended to read:

"50-71-201. Employer to provide safe workplace and to purchase, furnish, and require use of health and safety items -- safe practices. Each employer shall:

- (1) furnish a place of employment that is safe for each of ~~his~~ the employer's employees;
- (2) with the exception of footwear, purchase, furnish, and require the use of health and safety devices, safeguards, protective safety clothing, or other health and safety items, including but not limited to air masks, hardhats, and protective gloves, that may be required by state or federal law, the employer, or the terms of an employment contract; unless the terms of a collective bargaining agreement provide otherwise;
- (3) adopt and use practices, means, methods, operations, and processes that are reasonably adequate to render the place of employment safe; and

(4) do any other thing reasonably necessary to protect the life, health, and safety of ~~his~~ the employer's employees."

Section 1870. Section 50-71-203, MCA, is amended to read:

"50-71-203. Removal of or refusal to use health and safety items prohibited. A person may not:

- (1) remove, displace, damage, destroy, carry off, or refuse to use any health and safety device, safeguard, protective clothing, or other health and safety item furnished for ~~his~~ use by ~~his~~ the person's employer;
- (2) interfere with the use of any required health and safety device, safeguard, protective clothing, or other health and safety item by any other person;
- (3) interfere with the use of a method or process adopted for the protection of an employee in the place of employment; or
- (4) fail to do any other thing reasonably necessary to protect the life, health, and safety of employees."

Section 1871. Section 50-71-303, MCA, is amended to read:

"50-71-303. Procedure to compel testimony or production of evidence. (1) The department or any member ~~thereof~~ of the department before whom testimony is to be given or produced, in the case of refusal of any witness to attend or testify or produce any papers required by ~~such a~~ subpoena, may in applying to the district court in and for the county in which the proceeding is pending show that the witness has been subpoenaed in the manner prescribed and the witness has failed or refused to attend or produce the papers required by the subpoena or has refused to answer questions ~~propounded~~ directed to ~~him~~ the witness in the course of ~~such~~ the proceeding and ask the court to compel the witness to attend and testify or produce ~~such~~ the papers before the department.

(2) The court, upon ~~such~~ application, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court ~~then and there~~ to show cause why the witness has not attended and testified or produced the papers before the department or any member ~~thereof~~ of the department.

(3) A copy of the order ~~shall~~ must be served upon the witness.

(4) If it is apparent to the court that the subpoena was regularly issued by the department or member ~~thereof~~ of the department, the court ~~thereupon~~ shall enter an order that the witness appear before the department or member ~~thereof~~ of the department at a time and place to be fixed in ~~such~~ the order and testify and produce the required papers, and upon failure to obey the order, the witness ~~shall~~ must be dealt with as for contempt of court."

Section 1872. Section 50-71-325, MCA, is amended to read:

"50-71-325. Department authorized to prohibit further use of equipment constituting violation.

(1) The department, upon finding any violation of any duly adopted safety code, order, or rule involving failure to install or maintain any safety appliance, device, or safeguard required by ~~such the~~ the safety order, code, or rule, may prohibit the further use of the machine, equipment, or apparatus constituting ~~such the~~ the violation, ~~and, when such~~ if the use is prohibited, the department shall post notice in an appropriate place in plain view of any person likely to use the ~~same~~ machine, equipment, or apparatus calling attention to the unsafe condition, defect, or lack of safeguard and the fact that the further use ~~thereof~~ is prohibited.

(2) The notice required by subsection (1) ~~of this section shall~~ may not be removed until the required safety appliance, device, or safeguard complies with the requirement of the safety order or safety code.

(3) ~~Every~~ A person who, after the notice required by subsection (1) ~~of this section~~ is posted as provided in that subsection, uses or operates any place of employment, machine, device, apparatus, or equipment referred to in subsection (1) ~~of this section~~ before it is made safe and the required safeguards or safety appliances or devices are provided or who defaces or destroys or removes any notice required by subsection (1) ~~of this section~~ without the authority of the department or who fails or refuses to file a report of accident as required by 39-71-307(1) is guilty of a misdemeanor and, in addition to the punishment provided for misdemeanors, is subject to a civil penalty in an amount of not more than \$1,000. This civil penalty may be imposed and collected by the department in an action brought in the name of the state in the county in which the employer resides or in which ~~he~~ the employer employs workers. Any penalty collected under this subsection ~~shall~~ must be paid into the department's state special revenue account.

(4) ~~Any~~ A person aggrieved by an order prohibiting the use of the machine, equipment, apparatus, or place of employment as provided for in this section may request a hearing before the department within 20 days after entry of ~~such the~~ the order. The department shall ~~then~~ affirm, modify, or revoke the order, and all procedures of this chapter ~~relative~~ related to entry of orders, rehearing, and appeal ~~shall~~ apply."

Section 1873. Section 50-71-334, MCA, is amended to read:

"50-71-334. Judicial review. (1) The orders of the department, its rules, findings, and decisions made and entered under the provisions of this chapter may be reviewed by the courts within the time and in the manner specified in this section and not otherwise.

(2) Within 30 days after an application for rehearing is denied or, if the application is granted, within 30 days after rendition of the decision on the rehearing, any affected party ~~affected thereby~~ may appeal to the district

court for the county in which ~~is situated~~ the place of employment ~~complained of~~ is located for the purpose of having the lawfulness of the original order or decision or the order or decision on rehearing inquired into and determined.

(3) To give the district court jurisdiction, it is sufficient that a notice be filed with the clerk of the court to the effect that an appeal is taken to the district court from the order or decision of the department and describing the order or decision sufficiently for purposes of identification. The notice ~~shall~~ must be signed by the party appealing or ~~his~~ the party's attorney, and a copy ~~thereof shall~~ must be served by certified mail upon the department.

(4) Within 10 days after the receipt of the notice, the department shall file with the clerk of court the record of proceedings before the department, including a transcript of all the evidence ~~adduced upon~~ introduced at the hearing and any rehearing before the department. The district court, on application for good cause shown, may extend the time within which the department shall file the record, transcript, and evidence.

(5) The cause ~~shall~~ must be tried in the same manner as a civil action, provided that ~~no~~ new or additional evidence may not be introduced in the court, but the cause ~~shall~~ must be heard on the record to the court as certified to it by the department.

(6) The appeal ~~shall~~ may not be extended further than to determine whether or not:

- (a) the department acted without or in excess of its powers or in violation of the law;
- (b) the order or decision was procured by fraud;
- (c) the order, decision, or rule is unreasonable;
- (d) if findings of fact are made, the finding of fact supports the order or decision under review.

(7) An appeal may be taken from the decree of the district court to the supreme court as in all other civil cases."

Section 1874. Section 50-72-204, MCA, is amended to read:

"50-72-204. Debarment of persons from mine when death or serious injury likely. If, upon any inspection of a mine ~~which~~ that is subject to this chapter, authorized representatives of the department find that the conditions or practices in the mine are such that a danger exists ~~which~~ that could reasonably be expected to cause death or serious physical harm immediately or before the ~~imminence~~ threat of ~~such~~ the danger can be eliminated, ~~such~~ the representatives shall determine the extent of the area of ~~such~~ the mine throughout which the danger exists, ~~and thereupon~~ Upon that determination, the representatives of the department shall issue an order requiring the operator of ~~such~~ the mine to cause all persons to be withdrawn from and to be ~~debarred~~

~~barred~~ from entering ~~such the~~ area, except ~~the~~ persons ~~designated below~~ whose presence in ~~such the~~ area is necessary to eliminate the danger described in ~~such~~ order as follows:

(1) any person whose presence in ~~such the~~ area is necessary in the judgment of the operator of the mine to eliminate the danger described in the order;

(2) any public official whose official duties require ~~him~~ the official to enter ~~such the~~ area;

(3) any legal or technical consultant or any representative of the employees of the mine who is a person qualified to make mine examinations or is accompanied by ~~such~~ a qualified person and whose presence in ~~such the~~ area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order."

Section 1875. Section 50-72-205, MCA, is amended to read:

"50-72-205. Procedure when noncompliance not likely to cause death or serious injury. (1) If, upon any inspection or investigation, an authorized representative finds that there has been a failure to comply with a mandatory standard ~~which that~~ is applicable to ~~such a~~ mine, but that ~~such the~~ failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in ~~such the~~ mine immediately or before the ~~imminence~~ threat of ~~such the~~ danger can be eliminated, ~~he the representative~~ shall ~~find~~ determine what would be a reasonable period of time within which ~~such the~~ violation should be totally abated and ~~thereupon~~ issue a notice fixing a reasonable time for the abatement of the violation.

(2) If, upon the expiration of ~~such the~~ period of time as originally fixed or extended, the authorized representative finds that ~~such the~~ violation has not been totally abated and if ~~he the representative~~ also finds that ~~such the~~ period of time should not be further extended, ~~he the representative~~ shall also ~~find~~ determine the extent of the area ~~which that~~ is affected by ~~such the~~ violation. ~~Thereupon~~ After the determination, the department shall make an order requiring the operator of ~~such the~~ mine to cause all persons in ~~such that~~ area to be withdrawn from and to be ~~debarred~~ barred from entering ~~such the~~ area, ~~excepting~~ except for the following persons whose presence in ~~such the~~ area is necessary to abate the violation described in the order:

(a) any person whose presence in ~~such the~~ area is necessary in the judgment of the operator of the mine to abate the violation described in the order;

(b) any public official whose official duties require ~~him~~ the official to enter ~~such the~~ area;

(c) any legal or technical consultant or any representative of the employees of the mine who is a person qualified to make examinations or is accompanied by ~~such~~ a qualified person and whose presence in ~~such the~~ area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions

described in the order."

Section 1876. Section 50-73-102, MCA, is amended to read:

"50-73-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of labor and industry and the state coal mine inspectors employed by the department.

(2) "Excavations" and "workings" mean all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working places, whether abandoned or in use.

(3) "Gassy mine" means a mine is considered to be potentially gassy. The department may further define this term in its rules.

(4) "Mine" and "coal mine" mean all parts of the property of a mining plant under one management ~~which~~ that contribute, directly or indirectly, to the mining or handling of coal.

(5) "Mine examiner" means a person charged with the examination of the condition of the mine before the miners are permitted to enter it and who is commonly known as the "fire boss".

(6) "Mine ~~foreman~~ supervisor" means a person who is charged with the general direction of the underground work or both the underground work and the outside work of a coal mine and who is commonly known and designated as "mine boss".

(7) "Operator", as applied to the party in control of a mine under this chapter, means the person, firm, or body corporate ~~which~~ that is the immediate proprietor as owner or lessee of the plant and, as such, is responsible for the condition and management ~~thereof~~ of the mine.

(8) "Shaft" means any vertical opening through the strata ~~which~~ that is or may be used for the purpose of ventilation or escape or for hoisting or lowering of ~~men~~ people or material in connection with the mining of coal.

(9) "Slope" and "drift" mean respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft."

Section 1877. Section 50-73-205, MCA, is amended to read:

"50-73-205. Copies of maps for department. The original or true copies of all maps ~~shall~~ must be kept in the office at the mine, and true copies ~~shall~~ must also be furnished the department within 30 days after their completion. The maps delivered to the department ~~shall~~ become the property of the state. ~~They shall~~ The maps must be kept at the office of the department and ~~be~~ are open to inspection by all persons interested in them. An examination ~~shall~~ may only be made in the presence of a department inspector, and ~~he shall~~ the inspector may

not permit any copies of ~~them~~ the maps to be made without the written consent of the operator or owner of the property, under penalty of removal from office."

Section 1878. Section 50-73-207, MCA, is amended to read:

"50-73-207. Annual surveys in mines having only five men people on shift. The department shall require an extension of the last preceding survey once every 12 months of every mine in active operation in which five ~~men~~ people or less are employed on any one shift."

Section 1879. Section 50-73-305, MCA, is amended to read:

"50-73-305. Specific prohibitions and safety precautions. (1) A person may not enter a mine ~~which~~ that is generating firedamp in great enough quantities to be detected by a safety lamp until the mine examiners make a report to the department.

(2) A person, unless accompanied by the mine examiner, may not go beyond a danger signal until all standing gas discovered has been removed or diluted and rendered harmless by a current of air. A person ordered to withdraw by the mine ~~foreman~~ supervisor or mine examiner from the mine on account of the interruption of the ventilation may not reenter the mine until given permission to do so by the mine ~~foreman~~ supervisor.

(3) A person other than the mine examiner may not remove any caution board or danger signal placed at the entrance to any working place or at the entrance to any old workings in a mine.

(4) A person may not erase or change a mark of reference or monument made in connection with a measurement, change marks or dates on any caution board, erase or change the dates at room or entry face when made by the mine examiner, take for ~~his~~ the person's use a life check not issued to ~~him~~ the person under rules adopted by the department, change the checks on cars, wrongfully check a car, or do any act with intent to defraud.

(5) A person may not take anything containing fire into an underground mine, except as provided for in rules adopted by the department.

(6) A person may not place refuse in or obstruct an airway or breakthrough used as an airway. A worker or other person may not damage or alter a water gauge, barometer, aircourse, brattice equipment, machinery, or livestock, obstruct or throw open any airway, handle or disturb any part of the machinery of the hoisting engine of a mine, open a door of a mine and neglect to close it, endanger the miners or those working ~~therein~~ in the mine, disobey an order given in pursuance of law, or do a willful act endangering the lives or health of persons

working there or the security of a mine or machinery."

Section 1880. Section 50-73-307, MCA, is amended to read:

"50-73-307. Operator to make and preserve a record of all injuries. ~~Every~~ An operator of a coal mine or ~~his~~ the operator's agent shall make and preserve for the information of the department, upon uniform blanks furnished by the department, a record of all injuries sustained by any employees on the premises."

Section 1881. Section 50-73-401, MCA, is amended to read:

"50-73-401. Coal mine inspector. (1) The department shall employ an adequate number of qualified coal mine inspectors for the enforcement of this chapter and shall prescribe their duties.

(2) A person is not eligible to be a state coal mine inspector unless ~~he~~ the person is a citizen of the United States, is a resident of this state, and has been actually employed in coal mining for 5 years before ~~his~~ the appointment.

(3) A state coal mine inspector may not act as the agent for a corporation, superintendent, or manager of a mine and ~~shall in no manner~~ may not be in the employ of mining companies, ~~nor shall he be~~ or interested in any way in coal mining operations, either as owner, lessee, or otherwise."

Section 1882. Section 50-73-404, MCA, is amended to read:

"50-73-404. Right of employees' representative and mine owner to accompany department during inspection. The employees' representative has the right to accompany the department in making an official mine inspection. The owner or operator has the right to personally accompany the department while inspecting ~~his~~ the owner's or operator's property or to designate someone to accompany the department."

Section 1883. Section 50-73-410, MCA, is amended to read:

"50-73-410. Department inspection upon advisement of accident, injury, or fatality. (1) When advised by an operator of any accident in a coal mine involving loss of life or serious personal injury, the department shall, if it considers it necessary from the facts reported and in all cases of loss of life, immediately have an inspector go to the scene of the accident within 48 hours of notification.

(2) The department may also make any original or supplementary investigation ~~which~~ that it considers necessary as to the nature and cause of an accident and shall make a record of the circumstances and of the result of the investigations for its files.

(3) The inspection team ~~shall~~ must include a department coal mine inspector, the employer or ~~his~~ the employer's designee, and a representative of the employees."

Section 1884. Section 50-73-411, MCA, is amended to read:

"50-73-411. Miners' organization authorized to investigate fatal accident. The representative of the miners' organization or some person delegated by ~~him~~ the representative may enter any coal mine for the purpose of investigating the causes of a fatal accident."

Section 1885. Section 50-73-412, MCA, is amended to read:

"50-73-412. Debarment of persons from mine when death or serious injury likely. If, upon an inspection of a mine, the department finds that the conditions or practices in the mine ~~are such that~~ create a danger ~~exists which~~ that could reasonably be expected to cause death or serious physical harm immediately or before the danger can be eliminated, the department shall determine the extent of the area of the mine throughout which the danger exists and order the operator of the mine to have all persons withdrawn from and excluded from entering the area, except the persons ~~designated below~~ whose presence in the area is necessary to eliminate the danger described in the order as follows:

- (1) a person whose presence in the area is necessary in the judgment of the operator of the mine to eliminate the danger;
- (2) a public official whose official duties require ~~him~~ the official to enter the area;
- (3) a legal or technical consultant or a representative of the employees of the mine who is a person qualified to make mine examinations or is accompanied by ~~such~~ a qualified person and whose presence in the area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions in the area."

Section 1886. Section 50-73-413, MCA, is amended to read:

"50-73-413. Procedure when noncompliance not likely to cause death or serious injury. If upon an inspection or investigation the department finds that there has been a failure to comply with a mandatory standard ~~which~~ that is applicable to the mine, but that the failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in the mine immediately or before the ~~imminence~~ threat of the danger can be eliminated, it shall determine what would be a reasonable period of time within which the violation should be totally abated and issue a notice fixing a reasonable time for the abatement

of the violation. If, upon the expiration of the period of time as originally fixed or extended, the department finds that the violation has not been totally abated and if it also finds that the period of time should not be further extended, it shall also find the extent of the area ~~which~~ that is affected by the violation. The department shall order the operator of the mine to have all persons in the area to be withdrawn from and excluded from entering the area, excepting the following persons whose presence in the area is necessary to abate the violation described in the order:

- (1) a person whose presence in the area is necessary in the judgment of the operator of the mine to abate the violation;
- (2) a public official whose official duties require ~~him~~ the official to enter the area;
- (3) a legal or technical consultant or a representative of the employees of the mine who is a person qualified to make examinations or is accompanied by ~~such~~ a qualified person and whose presence in the area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions in the area."

Section 1887. Section 50-74-203, MCA, is amended to read:

"50-74-203. Qualifications of boiler inspectors. ~~No~~ A person is not eligible to hold the office of inspector of boilers and steam engines who has not had at least 10 years of actual experience in the operation of steam engines, steam boilers, and steam machinery and who has not held for at least 3 years immediately preceding ~~his~~ the person's appointment a first-class stationary engineer's license of the state of Montana or who is directly or indirectly interested in the manufacture or sale of boilers or steam machinery or any patented article required to be sold relating ~~thereto~~ boilers or steam machinery."

Section 1888. Section 50-74-214, MCA, is amended to read:

"50-74-214. Engineer to assist in inspection. ~~It shall be~~ is the duty of the engineer operating any boiler or boilers to assist the inspectors in their examination of the ~~same~~ boilers and point out any defects known to ~~him~~ the engineer in the boilers or machinery under ~~his~~ the engineer's charge. ~~Any~~ If an engineer does not ~~complying~~ comply with this section, ~~shall have~~ his the engineer's license must be revoked or suspended."

Section 1889. Section 50-74-215, MCA, is amended to read:

"50-74-215. Interior and exterior examination of boiler. (1) The inspector must ~~satisfy himself~~ be satisfied by a thorough interior and exterior examination that the:

- (a) boilers are well-made and of good and suitable material;
- (b) ~~that the~~ openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat are of the proper dimensions and free from obstructions;
- (c) ~~that the~~ flues are circular in shape;
- (d) ~~that the~~ fire line of the furnace is at least 2 inches below prescribed minimum waterline of the boilers;
- (e) ~~that the~~ arrangements for delivering the feed water are such that the boilers cannot be injured ~~thereby~~ by the feed water; and
- (f) ~~that such~~ boilers and the steam connections may be safely employed without danger to life.

(2) ~~No~~ A boiler or steam pipe or any of the connections ~~thereto which~~ to a boiler or steam pipe that are made in whole or in part of bad material or are unsafe from any cause ~~shall~~ may not be approved. Nothing ~~herein~~ shall in this section may be construed to prevent the use of any boiler or steam generator, ~~which may that is~~ that is not ~~be~~ constructed of riveted iron or steel plates, when the inspector has satisfactory evidence that ~~such the~~ boiler or steam generator is equal in strength to and as safe from explosion as boilers of the best quality, constructed of iron or steel plates."

Section 1890. Section 50-74-217, MCA, is amended to read:

"50-74-217. Other inspection requirements. The inspector must ~~satisfy himself~~ be satisfied that:

- (1) the safety valves are of suitable relieving capacity ratings, sufficient in number and area, and properly arranged and ~~are~~ properly adjusted so as not to allow a greater pressure in a boiler than the amount prescribed by the inspection certificate;
- (2) there are a sufficient number of gauge cocks properly inserted to indicate the amount of water and suitable gauges that will correctly record the pressure of steam; and
- (3) adequate and certain provisions for an ample supply of water to feed the boiler at all times and suitable means for blowing out are provided so as to thoroughly remove mud and sediment from all parts of the boiler when it is under pressure of steam."

Section 1891. Section 50-74-311, MCA, is amended to read:

"50-74-311. Waiting period before reexamination permitted. In case of the failure of any applicant to successfully pass an examination, 45 days must elapse before ~~he~~ the applicant can ~~can~~ may again be examined for license."

Section 1892. Section 50-76-101, MCA, is amended to read:

"50-76-101. ~~Where~~ When chapter not to apply. (1) This chapter ~~shall~~ does not apply to hoisting engines, air compressors, or elevators under federal control or to operating elevators in completed private or public buildings.

(2) The provisions of this chapter ~~shall~~ do not apply to forklifts and front-end and rear-end loaders or line trucks and bucket trucks.

(3) For the purposes of this section, "line trucks" are hoisting and digging devices mounted on a standard manufacturer's truck chassis with an all-weather cab capable of transporting a driver and two or more ~~crewmen~~ crew members. Line trucks are equipped with a hydraulically operated, telescoping boom ~~which~~ that uses a nonmetallic cable for hoisting. Line trucks may be equipped with a rotary digging device and are capable of attaining maximum allowable highway speeds. "Bucket trucks" are personnel-lifting devices designed to lift personnel to work stations above ground. Bucket trucks are not designed for the purposes intended for a line truck."

Section 1893. Section 50-76-108, MCA, is amended to read:

"50-76-108. Renewal of application by rejected candidate. ~~Any~~ A person who has applied for a license under this chapter and has been rejected may renew ~~his~~ the application for a license within the time and in the manner prescribed in 50-74-312."

Section 1894. Section 50-77-102, MCA, is amended to read:

"50-77-102. Temporary floors for protection of workmen workers. (1) It ~~shall be~~ is the duty of ~~every~~ an owner, person, or corporation ~~who shall have~~ that has the direct and immediate supervision or control of the construction or remodeling of any building having more than three framed floors, whether some or all of ~~said~~ the floors are above or below the established street grade, to provide and lay upon the upper side of the joists or girders, or both, of the first floor below the riveters and structural steel setters a plank floor, which ~~shall~~ must be laid to form a good substantial temporary floor for the protection of employees and all persons engaged above or below or on ~~such~~ the temporary floor in ~~such~~ the building.

(2) ~~Where~~ If the permanent floor is in place on the floor ~~herein~~ required to be planked, a temporary protective floor ~~shall~~ may not be required.

(3) If the floor or permanent floor of the second floor, any other floor above the second floor, or the roof is being placed previous to the permanent floor immediately below the floor ~~which~~ that is being arched or planked,

a good substantial temporary floor ~~shall~~ must be laid on the joists and girders of the next lower floor.

(4) For the purpose of this section, the lowest framed floor in the building ~~shall be~~ is considered the first floor."

Section 1895. Section 50-78-204, MCA, is amended to read:

"50-78-204. Employee rights. (1) An employee who may be exposed to hazardous chemicals must be informed of the potential or actual exposure and must be provided access to the workplace chemical list and to the material safety data sheet for each hazardous chemical. An employer who does not provide an employee with information on a hazardous chemical within 5 working days of the request for information, as required by this chapter, may not require the employee to work with the hazardous chemical until the information is made available.

(2) Each employee must receive training from ~~his~~ the employer, as provided in 50-78-305 or in the OSHA standard, on the hazards of workplace chemicals and on protective measures for handling those chemicals.

(3) Each employee required to work with a hazardous chemical must be provided with appropriate personal protective equipment.

(4) ~~No~~ An employer ~~shall~~ may not discharge, cause to be discharged, discipline, discriminate against, or initiate any adverse personnel action against any employee who exercises ~~his~~ the employee's rights, testifies, or assists others in exercising their rights or duties under this chapter.

(5) A waiver by an employee of the benefits, rights, or requirements of this chapter is against public policy and is void. An employer's request or requirement that an employee waive any rights under this chapter as a condition of employment is a violation of this chapter.

(6) A designated representative may act on behalf of an employee in pursuing any right or enforcement remedy under this chapter."

Section 1896. Section 50-78-305, MCA, is amended to read:

"50-78-305. Employee education program. (1) Each employer shall provide, at least annually, an education and training program for all ~~his~~ of the employer's employees using or handling hazardous chemicals. Additional instruction must be provided whenever the potential for exposure to hazardous chemicals is altered or whenever new and significant information is received by the employer concerning the hazards of a chemical. New or newly assigned employees must be provided training before working with or in a work area containing a hazardous chemical.

(2) The programs must provide instruction in:

(a) interpreting labels and material safety data sheets and the relationship between these two methods of hazard communication;

(b) the location and acute and chronic effects of hazardous chemicals used by the employees; and

(c) the safe handling, protective equipment, first-aid treatment, and cleanup and disposal procedures for hazardous chemicals.

(3) The employer shall keep a record of the dates of training sessions given to employees and the names of the employees attending."

Section 1897. Section 50-78-402, MCA, is amended to read:

"50-78-402. Complaints, investigation, and penalties. (1) An employee in a workplace covered by the OSHA standard who believes ~~his~~ the employer is not complying with the provisions of the OSHA standard may report the alleged violation to the federal occupational safety and health administration.

(2) An employee who believes an employer is not complying with the provisions of this chapter may submit a written complaint to the local health officer, as defined and described in Title 50, chapter 2, part 1.

(3) If the local health officer chooses to act on the complaint, ~~he~~ the officer shall:

(a) within 5 working days of receipt of the complaint, investigate the complaint and, in the event of an apparent violation, seek a corrective response from the employer;

(b) within 10 working days of receipt of a complaint, complete a report that details the findings of the investigation and the response of the employer;

(c) upon completion of the report, submit copies to the employee requesting the investigation, the county attorney, and the employer; and

(d) if the evidence suggests that the employer has violated the provisions of this chapter and the health officer does not receive a corrective response within 10 days of notifying the employer of the violation, file a complaint in the appropriate court or request appropriate action by the county attorney to prosecute the alleged violation.

(4) An employee may submit a written complaint to the county attorney.

(5) The county attorney shall investigate any complaint received and, if a violation appears to have occurred and the county attorney does not receive a corrective response within 10 days of notifying the employer of the violation, initiate appropriate court proceedings to prosecute the violation.

(6) A person found to be knowingly in violation of this chapter is guilty of a misdemeanor. Each day of

violation is a separate offense."

Section 1898. Section 50-79-501, MCA, is amended to read:

"50-79-501. Northwest Interstate Compact on Low-Level Radioactive Waste Management. The legislature of the state of Montana approves and ratifies the compact designated as the "Northwest Interstate Compact on Low-Level Radioactive Waste Management", which compact is as follows:

NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE

MANAGEMENTARTICLE I -- Policy and Purpose

The party states recognize that low-level radioactive wastes are generated by essential activities and services that benefit the citizens of the states. It is further recognized that the protection of the health and safety of the citizens of the party states and the most economical management of low-level radioactive wastes can be accomplished through cooperation of the states in minimizing the amount of handling and transportation required to dispose of such wastes and through the cooperation of the states in providing facilities that serve the region. It is the policy of the party states to undertake the necessary cooperation to protect the health and safety of the citizens of the party states and to provide for the most economical management of low-level radioactive wastes on a continuing basis. It is the purpose of this compact to provide the means for such a cooperative effort among the party states so that the protection of the citizens of the states and the maintenance of the viability of the states' economies will be enhanced while sharing the responsibilities of radioactive low-level waste management.

ARTICLE II -- Definitions

As used in this compact:

(1) "Facility" means any site, location, structure, or property, excluding federal waste facilities, used or to be used for the storage, treatment, or disposal of low-level waste.

(2) "Low-level waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release. Low-level waste does not include waste containing more than 10 nanocuries of transuranic contaminants per gram of material, spent reactor fuel, or material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.

(3) "Generator" means any person, partnership, association, corporation, or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste.

(4) "Host state" means a state in which a facility is located.

ARTICLE III -- Regulatory Practices

Each party state hereby agrees to adopt practices which will require low-level waste shipments originating within its borders and destined for a facility within another party state to conform to the applicable packaging and transportation requirements and regulations of the host state. Such practices shall include:

- (1) maintaining an inventory of all generators within the state that have shipped or expect to ship low-level waste to facilities in another party state;
- (2) periodic unannounced inspection of the premises of such generators and the waste management activities thereon;
- (3) authorization of the containers in which such waste may be shipped and a requirement that generators use only that type of container authorized by the state;
- (4) assurance that inspections of the carriers which transport such waste are conducted by proper authorities and appropriate enforcement action is taken for violations;
- (5) after receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, taking appropriate action to assure that such violations do not recur. Such action may include inspection of every individual low-level waste shipment by that generator.

Each party state may impose fees upon generators and shippers to recover the cost of the inspections and other practices under this article. Nothing in this article shall be construed to limit any party state's authority to impose additional or more stringent standards on generators or carriers than those required under this article.

ARTICLE IV -- Regional Facilities

(1) Facilities located in any party state, other than facilities established or maintained by individual low-level waste generators for the management of their own low-level waste, shall accept low-level waste generated in any party state if such waste has been packaged and transported according to applicable laws and regulations.

(2) No facility located in any party state may accept low-level waste generated outside the region comprising the party states, except as provided in Article V.

(3) Until such time as paragraph (2) of this article takes effect as provided in Article VI, facilities located in any party state may accept low-level waste generated outside of any of the party states only if such waste is accompanied by a certificate of compliance issued by an official of the state in which such waste shipment originated. Such certificate must be in such form as may be required by the host state and shall contain at least the following:

- (a) the generator's name and address;
- (b) a description of the contents of the low-level waste container;

(c) a statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by ~~his~~ the official's agent or by a representative of the United States Nuclear Regulatory Commission and was found to have been packaged in compliance with applicable federal regulations and such additional requirements as may be imposed by the host state;

(d) a binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of such waste during shipment or after such waste reaches the facility.

(4) Each party state shall cooperate with the other party states in determining the appropriate site of any facility that might be required within the region comprising the party states in order to maximize public health and safety while minimizing the use of any one party state as the host of such facilities on a permanent basis. Each party state further agrees that decisions regarding low-level waste management facilities in its region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.

(5) The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management. Therefore, in consideration of the state of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho, which host hazardous chemical waste disposal facilities, will allow access to such facilities by generators within other party states. Nothing in this compact may be construed to prevent any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders or from ordering the closure of such facilities, so long as such action by a host state is applied equally to all generators within the region composed of the party states.

(6) Any host state may establish a schedule of fees and requirements related to its facilities to assure that closure, perpetual care, and maintenance and contingency requirements are met, including adequate bonding.

ARTICLE V -- Northwest Low-Level Waste Compact Committee

The Governor of each party state shall designate one official of that state as the person responsible for administration of this compact. The officials so designated shall together comprise the Northwest Low-Level Waste Compact Committee. The committee shall meet as required to consider matters arising under this compact. The parties shall inform the committee of existing regulations concerning low-level waste management in their states and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in such regulations. Notwithstanding any provision of Article IV to the contrary, the committee may

enter into arrangements with states, provinces, individual generators, or regional compact entities outside the region comprising the party states for access to facilities on such terms and conditions as the committee may deem appropriate. However, it shall require a two-thirds vote of all such members, including the affirmative vote of the member of any party state in which a facility affected by such arrangement is located, for the committee to enter into such arrangement.

ARTICLE VI -- Eligible Parties and Effective Date

(1) Each of the following states is eligible to become a party to this compact: Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, and Wyoming. As to any eligible party, this compact shall become effective upon enactment into law by that party, but it shall not become initially effective until enacted into law by two states. Any party state may withdraw from this compact by enacting a statute repealing its approval.

(2) After the compact has initially taken effect pursuant to paragraph (1) of this article, any eligible party state may become a party to this compact by the execution of an executive order by the Governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its Legislature or July 1, 1983, whichever occurs first, unless the compact has by then been enacted as a statute by that state.

(3) Paragraph (2) of Article IV of this compact shall take effect on July 1, 1983, if consent is given by Congress. As provided in Public Law 96-573, Congress may withdraw its consent to the compact after every 5-year period.

ARTICLE VII -- Severability

If any provision of this compact or its application to any person or circumstance is held to be invalid, all other provisions of this compact and the application of all of its provisions to all other persons and circumstances shall remain valid, and to this end the provisions of this compact are severable."

Section 1899. Section 52-2-723, MCA, is amended to read:

"52-2-723. Requirements for licensure. (1) The department shall include in the minimum standards for day-care centers the following requirements:

(a) The applicant, ~~his~~ the applicant's employees, and all those persons who will come in direct contact with the children are of good character.

(b) The staff of the day-care facility is sufficient in number as provided by rule to provide adequate supervision and care of the children in the facility.

(c) Essential programs and practices carried on by the facility staff are developed and carried out with

due regard for the protection of the health, safety, development, and well-being of the children.

(d) Applicant and staff are qualified by practical experience or education or training to give good care and treatment to the children.

(e) Intake records are kept on each child admitted for care.

(f) The applicant and staff limit admissions to the maximum number indicated on the current license.

(g) The applicant will arrange for the necessary precautions to guard against communicable diseases.

(h) Public liability insurance and fire insurance are currently in force for the protection of the operator, ~~his~~ the staff, and the facility.

(i) ~~Specify the~~ The ages and numbers of children that may be cared for in a day-care facility are specified.

(2) It is the duty of the department or its authorized representative to assist applicants in meeting the minimum requirements."

Section 1900. Section 52-3-602, MCA, is amended to read:

"52-3-602. Definitions. In this part, the following definitions apply:

(1) "Local ombudsman" means a person officially designated by the long-term care ombudsman to act as ~~his~~ the long-term care ombudsman's local representative.

(2) "Long-term care facility" means a facility or part ~~thereof~~ of a facility that provides skilled nursing care, intermediate nursing care, or personal care, as these terms are defined in 50-5-101.

(3) "Long-term care ombudsman" means the individual appointed under 42 U.S.C. 3027(a)(12) to fulfill the federal requirement that the state provide an advocate for residents of long-term care facilities."

Section 1901. Section 52-5-105, MCA, is amended to read:

"52-5-105. Superintendents to manage facilities. Each facility provided for in 52-5-101 is under the immediate management and control of a superintendent. If the parent or legal guardian of a resident of a facility cannot be located, the superintendent or ~~his~~ the superintendent's designee may consent to necessary medical treatment for the resident of the facility under ~~his~~ the superintendent's management and control."

Section 1902. Section 52-5-114, MCA, is amended to read:

"52-5-114. Penalty for aiding resident in leaving or not returning to a youth correctional facility.

(1) A person is guilty of an offense if ~~he~~ the person purposely or knowingly:

- (a) permits or assists a resident of a youth correctional facility to leave a facility without permission;
 - (b) permits or assists a resident's failure to return to a youth correctional facility from which ~~he~~ the resident had permission to leave;
 - (c) furnishes or attempts to furnish to ~~such~~ a resident a tool, weapon, or other article with the intent of aiding ~~him~~ the resident to leave without permission or to not return; or
 - (d) harbors or conceals a resident who has left without permission.
- (2) Upon conviction of a violation of subsection (1), a person shall be punished by imprisonment for a term of not less than 6 months or more than 2 years or by a fine not exceeding \$1,000, ~~or by both such fine and imprisonment.~~"

Section 1903. Section 53-2-107, MCA, is amended to read:

"53-2-107. Fraudulent obtaining of public assistance treated as theft. Whoever knowingly obtains by means of a willfully false statement, representation, or impersonation or other fraudulent device public assistance to which ~~he~~ the person is not entitled is guilty of theft as provided in 45-6-301."

Section 1904. Section 53-5-901, MCA, is amended to read:

"53-5-901. Medicare assignments -- notice required. (1) A health care provider shall give notice to a medicare patient as to whether or not the provider accepts payment for services on the basis of an assignment, pursuant to section 1842(b)(3)(B)(ii) of the federal Social Security Act, ~~{42 U.S.C. 1395u(b)(3)(B)(ii)}~~, the terms of which provide that the full charge for services is the amount of the ~~medicare approved~~ medicare-approved rate for payment of the applicable service plus any deductible, coinsurance, or copayment required to be paid by the patient.

(2) The notice required under subsection (1) must be posted by each health care provider in a conspicuous area in ~~his~~ the provider's place of business.

(3) For purposes of this section, "health care provider" means a person, firm, corporation, association, or institution that provides goods or services subject to reimbursement under the federal medicare program in accordance with Title XVIII of the federal Social Security Act, ~~{42 U.S.C. 1395, et seq.}~~."

Section 1905. Section 53-19-106, MCA, is amended to read:

"53-19-106. Eligibility for services. (1) The department, in its discretion and in accordance with this part and Title VII of the federal Rehabilitation Act of 1973, ~~{29 U.S.C. 796, et seq.}~~, as may be amended, may

determine eligibility of persons for services under this part.

(2) To be eligible for services under this part, a person must have a disability of such severity that, to secure and maintain employment or to function independently, ~~he~~ the person requires intensive vocational or comprehensive rehabilitation services.

(3) A person with severe disabilities not receiving other vocational and rehabilitation services provided by the department has priority for services provided under this part."

Section 1906. Section 53-19-110, MCA, is amended to read:

"53-19-110. Eligibility for residential services in a community home for persons with severe disabilities. (1) The department, in its discretion and in accordance with this part, may determine eligibility for residential services in a community home for persons with severe disabilities, based on the residential needs of the person and on the availability of residential services. Any person with a severe disability, as defined in 52-4-202, may be considered for placement in a community home, regardless of the source of funding for ~~his~~ the person's residential services.

(2) A person who has a primary diagnosis of mental illness or who receives mental health services under Title 53, chapter 21, is not eligible for placement in a community home for persons with severe disabilities unless ~~he~~ the person is eligible for and receiving services under this part and Title VII of the federal Rehabilitation Act of 1973, (29 U.S.C. 796, et seq.), as may be amended, or Title XIX of the Social Security Act, (42 U.S.C. 1396, et seq.), as may be amended."

Section 1907. Section 53-20-131, MCA, is amended to read:

"53-20-131. Placement in nonstate facility. (1) Consistent with other provisions of this part, a person admitted to a residential facility under this part for a period of more than 30 days may be committed by the court to the custody of friends or next of kin residing outside the state or transferred to an out-of-state facility for the habilitation of persons who are persons with developmental disabilities if the out-of-state facility agrees to receive the person. ~~Such a~~ The commitment or transfer may not be for a longer period of time than is permitted within Montana. If the person is indigent, the expense of supporting ~~him~~ the person in an out-of-state facility and the expense of transportation must be borne by the state of Montana.

(2) The transfer of persons admitted to a residential facility ~~out~~ outside of Montana under the provisions of this part or into Montana under the laws of another jurisdiction must be governed by the provisions of the Interstate Compact on Mental Health."

Section 1908. Section 53-20-145, MCA, is amended to read:

"53-20-145. Right to be free from unnecessary or excessive medication. Residents have a right to be free from unnecessary or excessive medication. Medication may not be administered unless at the written order of a physician. The individual treatment planning team and the attending physician are responsible for all medication given or administered to a resident. The use of medication may not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication must be kept in ~~his~~ the individual's medical records. A pharmacist or a registered nurse shall review monthly the record of each resident on medication for potential adverse reactions, allergies, interactions, contraindications, rationality, and laboratory test modifications and shall advise the physician of any problems. Medications must be reviewed quarterly by the attending or staff physician. At least monthly, an attending physician shall review the drug regimen of each patient on psychotropic medication. All prescriptions must be written with a termination date that may not exceed 90 days. Medication for newly admitted residents must be reviewed and reordered as necessary upon admission and then every 30 days for the first 90 days. Medications may not be used as punishment, for the convenience of staff, as a substitute for a habilitation program, or in quantities that interfere with the resident's treatment program. ~~Nothing in this~~ This section may not be interpreted to relieve a physician or other professional or medical staff person from any obligation to adequately monitor the medication of a resident, with due consideration to the nature of the medication, the purpose for which it is given, and the condition of the resident."

Section 1909. Section 53-20-164, MCA, is amended to read:

"53-20-164. Resident labor. The following rules govern resident labor:

(1) A resident may not be required to perform labor that involves the operation and maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility may not be conditioned upon the performance of labor covered by this provision. Residents may voluntarily engage in ~~such~~ the labor described in this subsection if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(2) A resident may not be involved in the ~~care~~ (feeding, clothing, bathing), training, or supervision of other residents unless ~~he~~ the resident:

- (a) has volunteered;
- (b) has been specifically trained in the necessary skills;
- (c) has the humane judgment required for ~~such~~ the activities;

(d) is adequately supervised; and

(e) is reimbursed in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(3) Residents may be required to perform vocational training tasks that do not involve the operation and maintenance of the facility, subject to a presumption that an assignment of longer than 3 months to any task is not a training task, provided that the specific task or any change in task assignment is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by the qualified mental retardation professional and the individual treatment planning team responsible for supervising the resident's habilitation; and

(b) supervised by a staff member to oversee the habilitation aspects of the activity.

(4) Residents may voluntarily engage in habilitative labor at nonprogram hours for which the facility would otherwise have to pay an employee, ~~provided~~ if the specific labor or any change in labor is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by the qualified mental retardation professional and the individual treatment planning team responsible for supervising the resident's habilitation;

(b) supervised by a staff member to oversee the habilitation aspects of the activity; and

(c) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(5) If a resident performs habilitative labor that involves the operation and maintenance of a facility but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then the resident may be compensated at a rate that bears the same approximate relation to the statutory minimum wage as ~~his~~ the resident's ability to perform that particular job bears to the ability of a person not so afflicted.

(6) Residents may be required to perform tasks of a personal housekeeping nature, such as the making of one's own bed.

(7) Deductions or payments for care and other charges may not deprive a resident of a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses.

(8) Staffing must be sufficient so that the facility is not dependent upon the use of residents or volunteers for the care, maintenance, or habilitation of other residents or for income-producing services. The facility shall formulate a written policy to protect the residents from exploitation when they are engaged in productive work."

Section 1910. Section 53-20-209, MCA, is amended to read:

"53-20-209. Eligibility for services. (1) ~~Any~~ A person suspected of having a developmental disability ~~shall be~~ is eligible for an evaluation to determine whether the person is a person with developmental disabilities.

(2) If the department determines through a screening process that a person with developmental disabilities is in need of available services and those services can be provided to ~~him~~ the person, the department may provide services available under ~~this part and~~ Title 53, chapter 20, part 3, and this part."

Section 1911. Section 53-21-105, MCA, is amended to read:

"53-21-105. Certification of professional persons required. ~~No~~ A person may not act in a professional capacity as provided for in this part unless ~~he~~ the person is a professional person as defined in 53-21-102."

Section 1912. Section 53-21-114, MCA, is amended to read:

"53-21-114. Notice of rights to be given. (1) Whenever a person is involuntarily detained pursuant to 53-21-121 through 53-21-126, the person ~~shall~~ must at the time of detention be informed of ~~his~~ the person's constitutional rights and ~~his~~ the person's rights under this part. Within 3 days of ~~such~~ detention, ~~he~~ the person must also be informed in writing by the county attorney of ~~such~~ the enumerated rights.

(2) ~~Every~~ A respondent who is subject to an order for short-term treatment or long-term care and treatment ~~shall~~ must be advised in writing of ~~his~~ the right to appeal the order by the court at the conclusion of any hearing the result of which ~~such~~ an order may be entered."

Section 1913. Section 53-21-117, MCA, is amended to read:

"53-21-117. Right to representation by own attorney. The respondent or the friend of respondent appointed by the court may secure an attorney of ~~his~~ the person's own choice and at ~~his~~ the person's own expense to represent the respondent."

Section 1914. Section 53-21-118, MCA, is amended to read:

"53-21-118. Right to examination by professional person of own choosing. (1) The respondent, ~~his~~ the respondent's attorney, or the friend of respondent appointed by the court may secure a professional person of ~~his~~ the individual's own choice to examine the respondent and to testify at the hearing before the court or jury as to the results of ~~his~~ the professional person's examination.

(2) If the person wishing to secure the testimony of a professional person is unable to do so because

of financial reasons and if the respondent joins in the request for the examination, the court shall appoint a professional person other than the professional person requesting the commitment to perform the examination. Whenever possible, the court shall allow the respondent a reasonable choice of an available professional person qualified to perform the requested examination who will be compensated from the public funds of the county where the respondent resides."

Section 1915. Section 53-21-119, MCA, is amended to read:

"53-21-119. Waiver of rights. (1) A person may waive ~~his~~ the person's rights, or if the person is not capable of making an intentional and knowing decision, these rights may be waived by ~~his~~ the person's counsel and friend of respondent acting together if a record is made of the reasons for the waiver. The right to counsel may not be waived. The right to treatment provided for in this part may not be waived.

(2) The right of the respondent to be physically present at a hearing may also be waived by ~~his~~ the respondent's attorney and the friend of respondent with the concurrence of the professional person and the judge upon a finding supported by facts that:

(a) the presence of the respondent at the hearing would be likely to seriously adversely affect ~~his~~ the respondent's mental condition; and

(b) an alternative location for the hearing in surroundings familiar to the respondent would not prevent ~~such~~ the adverse effects on ~~his~~ the respondent's mental condition.

(3) (a) In the case of a minor, provided that a record is made of the reasons for the waiver, ~~his~~ the minor's rights may be waived by the mutual consent of ~~his~~ the minor's counsel and parents or guardian or guardian ad litem if there are no parents or guardian.

(b) If there is an apparent conflict of interest between a minor and ~~his~~ the minor's parents or guardian, the court shall appoint a guardian ad litem for ~~him~~ the minor."

Section 1916. Section 53-21-125, MCA, is amended to read:

"53-21-125. Request for jury trial. At any time prior to the date set for hearing, the respondent, through ~~his~~ counsel, may request a jury trial, ~~whereupon~~ and upon the request, the time set for hearing ~~shall~~ must be vacated and the matter set on the court's jury calendar at the earliest date possible, the matter taking precedence over all other matters. If there is not a jury in attendance, a jury ~~shall~~ must be selected in the manner provided in 3-15-506 and a date must be set for trial by a jury ~~not later than~~ within 7 days, exclusive of Saturdays, Sundays, and holidays."

Section 1917. Section 53-21-133, MCA, is amended to read:

"53-21-133. Transfer to nonstate facilities. (1) If a person is committed under the provisions of this part and is eligible for hospital care or treatment by an agency of the United States and if a certificate of notification from ~~such the~~ the agency showing that facilities are available and that the person is eligible for care or treatment ~~therein~~ is received, the court may order the person to be placed in the custody of the agency for hospitalization. The chief officer of any hospital or institution operated by ~~such~~ an agency and in which a person is ~~so~~ hospitalized ~~shall be~~ is vested with the same powers as the superintendent of the state hospital with respect to detention, custody, transfer, conditional release, or discharge of the person. Jurisdiction ~~shall~~ must be retained in the appropriate courts of this state to inquire into the mental condition of persons ~~so~~ hospitalized under this section and to determine the necessity for continuance of their hospitalization.

(2) Consistent with other provisions of this part, a person committed under this part for a period of 3 months or longer may be committed by the court to the custody of friends or next of kin residing outside the state or to a mental health facility located outside the state if the out-of-state facility agrees to receive the patient. ~~No such~~ The commitment ~~shall~~ may not be for a longer period of time than is permitted within the state. If the patient is indigent, the expense of supporting ~~him~~ the patient in an out-of-state facility and the expense of transportation ~~shall~~ must be borne by the state of Montana.

(3) The transfer out of Montana of persons committed under the provisions of this part or into Montana under the laws of another jurisdiction ~~shall~~ must be governed by the provisions of the Interstate Compact on Mental Health."

Section 1918. Section 53-21-141, MCA, is amended to read:

"53-21-141. Civil and legal rights of person committed. (1) Unless specifically stated in an order by the court, a person involuntarily committed to a facility for a period of evaluation or treatment does not forfeit any legal right or suffer any legal disability by reason of the provisions of this part except ~~insofar~~ as it may be necessary to detain the person for treatment, evaluation, or care. All communication between an alleged mentally ill person and a professional person is privileged under normal privileged communication rules unless it is clearly explained to the person in advance that the purpose of an interview is for evaluation and not treatment.

(2) Whenever a person is committed to a mental health facility for a period of 3 months or longer, the court ordering the commitment may make an order stating specifically any legal rights ~~which that~~ that are denied the respondent and any legal disabilities ~~which that~~ that are imposed on ~~him~~ the respondent. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant

to this section terminates upon the conclusion of the involuntary commitment if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of involuntary commitment may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally. In the case of a person admitted to a program or facility for the purpose of receiving mental health services, an individual employed by or receiving remuneration from the program or facility may not act as the person's guardian or representative unless the program or facility can demonstrate that no other person is available or willing to act as the person's guardian or representative.

(3) A person who has been committed to a mental health facility pursuant to this part is automatically restored upon the termination of the commitment to all of ~~his~~ the person's civil and legal rights ~~which that~~ may have been lost when ~~he~~ the person was committed. ~~This~~ However, this subsection does not affect, ~~however,~~ a guardianship or conservatorship created independently of the commitment proceedings according to the provisions of Montana law relating to the appointment of conservators and guardians generally. A person who leaves a mental health facility following a period of evaluation and treatment ~~shall~~ must be given a written statement setting forth the substance of this subsection.

(4) A person committed to a mental health facility prior to July 1, 1975, enjoys all the rights and privileges of a person committed after that date."

Section 1919. Section 53-21-142, MCA, is amended to read:

"53-21-142. Rights of persons admitted to facility. Patients admitted to a mental health facility, whether voluntarily or involuntarily, ~~shall~~ have the following rights:

(1) Patients have a right to privacy and dignity.

(2) Patients have a right to the least restrictive conditions necessary to achieve the purposes of commitment. Patients must be accorded the right to appropriate treatment and related services in a setting and under conditions that:

(a) are the most supportive of the patient's personal liberty; and

(b) restrict the patient's liberty only to the extent necessary and consistent with the patient's treatment need, applicable requirements of law, and judicial orders.

(3) Patients ~~shall have the same~~ rights to visitation and reasonable access to telephone communications, including the right to converse with others privately, except to the extent that the professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued.

Patients ~~shall~~ have an unrestricted right to visitation with attorneys, with spiritual counselors, and with private physicians and other professional persons.

(4) Patients ~~shall~~ have an unrestricted right to send sealed mail. Patients ~~shall~~ have an unrestricted right to receive sealed mail from their attorneys, private physicians and other professional persons, the mental disabilities board of visitors, courts, and government officials. Patients ~~shall~~ have a right to receive sealed mail from others except to the extent that a professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions on receipt of sealed mail. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued.

(5) Patients have an unrestricted right to have access to letter-writing materials, including postage, and have a right to have staff members of the facility assist persons who are unable to write, prepare, and mail correspondence.

(6) Patients have a right to wear their own clothes and to keep and use their own personal possessions, including toilet articles, except ~~insofar as such~~ to the extent that clothes or personal possessions may be determined by a professional person in charge of the patient's treatment plan to be dangerous or otherwise inappropriate to the treatment regimen. The facility has an obligation to supply an adequate allowance of clothing to any patients who do not have suitable clothing of their own. Patients ~~shall~~ must have the opportunity to select from various types of neat, clean, and seasonable clothing. ~~Such~~ The clothing ~~shall~~ must be considered the patient's throughout ~~his~~ the patient's stay at the facility. The facility shall make provision for the laundering of patient clothing.

(7) Patients have the right to keep and be allowed to spend a reasonable sum of their own money.

(8) Patients have the right to religious worship. Provisions for ~~such~~ worship ~~shall~~ must be made available to all patients on a nondiscriminatory basis. ~~No~~ An individual ~~shall~~ may not be required to engage in any religious activities.

(9) Patients have a right to regular physical exercise several times a week. ~~Moreover, it shall be the duty of the~~ The facility to ~~shall~~ provide facilities and equipment for ~~such~~ physical exercise. Patients have a right to be outdoors at regular and frequent intervals in the absence of contrary medical considerations.

(10) Patients have the right to be provided, with adequate supervision, suitable opportunities for interaction with members of the opposite sex except to the extent that a professional person in charge of the patient's treatment plan writes an order stating that ~~such~~ the interaction is inappropriate to the treatment regimen.

(11) Patients have a right to receive prompt and adequate medical treatment for any physical ailments. In providing medical care, the mental health facility shall take advantage of whatever community-based facilities

are appropriate and available and shall coordinate the patient's treatment for mental illness with ~~his~~ the patient's medical treatment.

(12) Patients have a right to a diet that will provide at a minimum the recommended daily dietary allowances as developed by the national academy of sciences. Provisions ~~shall~~ must be made for special therapeutic diets and for substitutes at the request of the patient or the friend of respondent in accordance with the religious requirements of any patient's faith. Denial of a nutritionally adequate diet ~~shall~~ may not be used as punishment.

(13) Patients have a right to a humane psychological and physical environment within the mental health facilities. These facilities ~~shall~~ must be designed to afford patients with comfort and safety, promote dignity, and ensure privacy. The facilities ~~shall~~ must be designed to make a positive contribution to the efficient attainment of the treatment goals set for the patient. In order to ~~assure~~ ensure the accomplishment of this goal:

(a) regular housekeeping and maintenance procedures ~~which that~~ will ensure that the facility is maintained in a safe, clean, and attractive condition ~~shall~~ must be developed and implemented;

(b) there must be special provision made for geriatric and other nonambulatory patients to ~~assure~~ ensure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision ~~shall~~ must be made to permit nonambulatory patients to communicate their needs to the facility staff.

(c) pursuant to an established routine maintenance and repair program, the physical plant of ~~every~~ each facility ~~shall~~ must be kept in a continuous state of good repair and operation in accordance with the needs of the health, comfort, safety, and well-being of the patients;

(d) ~~every~~ each facility must meet all fire and safety standards established by the state and locality. In addition, any hospital ~~shall~~ must meet ~~such~~ the provisions of the life safety code of the national fire protection association ~~as that~~ are applicable to hospitals. ~~Any~~ A hospital ~~shall~~ must meet all standards established by the state for general hospitals ~~insofar as~~ to the extent that they are relevant to psychiatric facilities.

(14) A patient at a facility has the right:

(a) to be informed of the rights described in this section at the time of ~~his~~ admission and periodically ~~thereafter~~ after admission; in language and terms appropriate to the patient's condition and ability to understand;

(b) to assert grievances with respect to infringement of the rights described in this section, including the right to have a grievance considered in a fair and timely manner according to an impartial grievance procedure that must be provided for by the facility; and

(c) to exercise the rights described in this section without reprisal and may not be denied admission to the facility as reprisal for the exercise of the rights described in this section.

(15) In order to assist a person admitted to a program or facility in the exercise or protection of the patient's rights, the patient's attorney, advocate, or legal representatives ~~shall have~~ must be given reasonable access to:

- (a) the patient;
- (b) the program or facility areas where the patient has received treatment or has resided or the areas to which ~~he~~ the patient has had access; and
- (c) pursuant to the written authorization of the patient, records and information pertaining to the patient's diagnosis, treatment, and related services.

(16) A person admitted to a facility ~~shall have~~ must be given access to any available individual or service that provides advocacy for the protection of the person's rights and that assists the person in understanding, exercising, and protecting ~~his~~ the person's rights as described in this section.

(17) This section may not:

- (a) obligate a professional person to administer treatment contrary to the professional's clinical judgment;
- (b) prevent a facility from discharging a patient for whom appropriate treatment, consistent with the clinical judgment of a professional person responsible for the patient's treatment, is or has become impossible to administer because of the patient's refusal to consent to the treatment;
- (c) require a facility to admit a person who has, on prior occasions, repeatedly withheld consent to appropriate treatment; or
- (d) obligate a facility to treat a person admitted to the facility solely for diagnostic evaluation."

Section 1920. Section 53-21-146, MCA, is amended to read:

"53-21-146. Right to be free from physical restraint and isolation. Patients have a right to be free from physical restraint and isolation. Except for emergency situations in which it is likely that patients could harm themselves or others and in which less restrictive means of restraint are not feasible, patients may be physically restrained or placed in isolation only on a professional person's written order ~~which~~ that explains the rationale for ~~such~~ the action. The written order may be entered only after the professional person has personally seen the patient concerned and evaluated ~~whatever~~ the episode or situation that is ~~said~~ alleged to call for restraint or isolation. Emergency use of restraints or isolation ~~shall~~ may not be for ~~no~~ more than 1 hour, by which time a professional person ~~shall~~ must have been consulted and ~~shall~~ must have entered an appropriate order in writing. ~~Such~~ The written order ~~shall be~~ is effective for no more than 24 hours and must be renewed if restraint and isolation are to be continued. Whenever a patient is subject to restraint or isolation, adequate care ~~shall~~ must be

taken to monitor ~~his~~ the patient's physical and psychiatric condition and to provide for ~~his~~ the patient's physical needs and comfort. Physical restraint may not be used as punishment, for the convenience of the staff, or as a substitute for a treatment program."

Section 1921. Section 53-21-148, MCA, is amended to read:

"53-21-148. Right not to be subjected to hazardous treatment. Patients have a right not to be subjected to treatment procedures such as lobotomy, aversive reinforcement conditioning, or other unusual or hazardous treatment procedures without their express and informed consent after consultation with counsel, the legal guardian, if any, the friend of respondent appointed by the court, and any other interested party of the patient's choice. At least one of those consulted ~~must~~ shall consent to the treatment, along with the patient's counsel. If there is no friend of respondent or if the friend of respondent appointed by the court is no longer available, then a friend of respondent who is in no way connected with the facility or with the department ~~shall~~ must be appointed before any ~~such~~ enumerated treatment procedure can be employed. At least 10 days prior to the commencement of the extraordinary treatment program, the facility shall send notice of intent to employ extraordinary treatment procedures to the patient, ~~his~~ the patient's next of kin, if known, the legal guardian, if any, the attorney who most recently represented ~~him~~ the patient, and the friend of respondent appointed by the court."

Section 1922. Section 53-21-163, MCA, is amended to read:

"53-21-163. Examination following commitment. ~~No later than~~ Within 30 days after a patient is committed to a mental health facility, the professional person in charge of the facility or ~~his~~ the professional person's appointed, professionally qualified agent shall reexamine the committed patient and shall determine whether ~~he~~ the patient continues to require commitment to the facility and whether a treatment plan complying with this part has been implemented. If the patient no longer requires commitment to the facility in accordance with the standards for commitment, ~~he~~ the patient must be released immediately unless ~~he~~ the patient agrees to continue with treatment on a voluntary basis. If for sound professional reasons a treatment plan has not been implemented, this fact ~~shall~~ must be reported immediately to the professional person in charge of the facility, the director of the department, the mental disabilities board of visitors, and the patient's counsel."

Section 1923. Section 53-21-167, MCA, is amended to read:

"53-21-167. Patient labor. The following rules ~~shall~~ govern patient labor:

(1) ~~No~~ A patient ~~shall~~ may not be required to perform labor ~~which~~ that involves the operation and

maintenance of a facility or for which the facility is under contract with an outside organization. Privileges or release from the facility ~~shall~~ may not be conditioned upon the performance of labor covered by this provision. Patients may voluntarily engage in ~~such~~ the labor if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(2) (a) Patients may be required to perform therapeutic tasks ~~which~~ that do not involve the operation and maintenance of the facility, ~~provided~~ if the specific task or any change in assignment is:

(i) an integrated part of the patient's treatment plan and approved as a therapeutic activity by a professional person responsible for supervising the patient's treatment; and

(ii) supervised by a staff member to oversee the therapeutic aspects of the activity.

(b) Patients may voluntarily engage in therapeutic labor for which the facility would otherwise have to pay an employee; ~~provided~~ if the specific labor or any change in labor assignment is:

(i) an integrated part of the patient's treatment plan and approved as a therapeutic activity by a professional person responsible for supervising the patient's treatment;

(ii) supervised by a staff member to oversee the therapeutic aspects of the activity; and

(iii) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(3) If any patient performs therapeutic labor ~~which~~ that involves the operation and maintenance of a facility but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then the patient may be compensated at a rate ~~which~~ that bears the same approximate relation to the statutory minimum wage as ~~his~~ the patient's ability to perform that particular job bears to the ability of a person not so afflicted.

(4) Patients may be required to perform tasks of a personal housekeeping nature, such as the making of one's own bed.

(5) Deductions or payments for care and other charges ~~shall~~ may not deprive a patient of a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses."

Section 1924. Section 53-21-168, MCA, is amended to read:

"53-21-168. Statement of rights to be furnished and posted. Each patient shall promptly upon ~~his~~ admission receive in language ~~he~~ the patient understands a written statement of all of ~~his~~ the patient's rights under this part, including the right to treatment, the right to the development of a treatment plan, the right to and

the availability of legal counsel, and the rules for patient labor. In addition, a copy of the ~~foregoing~~ statement ~~shall~~ of rights must be posted in each ward."

Section 1925. Section 53-21-183, MCA, is amended to read:

"53-21-183. Release conditioned on receipt of outpatient care. (1) When, in the opinion of the professional person in charge of a mental health facility providing involuntary treatment, the committed person can be appropriately served by outpatient care prior to the expiration of the period of commitment, then outpatient care may be required as a condition for early release for a period ~~which~~ that, when added to the inpatient treatment period, except as provided in 53-21-198, may not exceed the period of commitment. If the mental health facility designated to provide outpatient care is other than the facility providing involuntary treatment, the designated outpatient facility ~~so designated must~~ shall agree in writing to assume ~~such~~ the responsibility.

(2) The mental health facility designated to provide outpatient care or the professional person in charge of the patient's case may modify the conditions for continued release when the modification is in the best interest of the patient. This includes the authorization to transfer the patient to another mental health facility designated to provide outpatient care, ~~provided if~~ if the transfer is in the best interest of the patient and the designated outpatient facility ~~so designated~~ agrees in writing to assume responsibility. Notice of an intended transfer ~~shall~~ must be given to the professional person in charge of the mental health facility that provided the involuntary treatment.

(3) Notice in writing to the court ~~which~~ that committed the patient for treatment and the county attorney who initiated the action ~~shall~~ must be provided by the professional person in charge of ~~him~~ the patient at least 5 days prior to ~~his~~ the patient's release from commitment or outpatient care.

(4) ~~This section and Sections 53-21-195 through 53-21-198 and this section~~ do not apply to a temporary release, certified ~~as such~~ by the professional person in charge of the mental health facility, from the facility for the purposes of a home visit not exceeding 30 days."

Section 1926. Section 53-21-187, MCA, is amended to read:

"53-21-187. Clothing for patients discharged or conditionally released. A patient may not be discharged or conditionally released from a mental health facility without suitable clothing adapted to the season in which ~~he~~ the patient is discharged."

Section 1927. Section 53-22-101, MCA, is amended to read:

"53-22-101. Enactment of compact. The Interstate Compact on Mental Health as contained ~~herein~~ in this section is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

Article I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

Article II

As used in this compact:

- (1) "sending state" means a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent;
- (2) "receiving state" means a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent;
- (3) "institution" means any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency;
- (4) "patient" means any person subject to or eligible, as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact;
- (5) "aftercare" means care, treatment, and services provided a patient, as defined herein, on convalescent status or conditional release;
- (6) "mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for ~~his~~ the person's own welfare, the welfare of others, or of the community;
- (7) "mental deficiency" means mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing ~~himself~~ the person and ~~his~~ the person's affairs but shall not include mental illness as defined herein; and

(8) "state" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article III

(1) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, ~~he~~ the person shall be eligible for care and treatment in an institution in that state irrespective of ~~his~~ the person's residence, settlement, or citizenship qualifications.

(2) The provisions of subsection (1) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this subsection shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(3) No state shall be obliged to receive any patient pursuant to the provisions of subsection (2) of this article unless the sending state gives advance notice of its intention to send the patient, furnishes all available medical and other pertinent records concerning the patient, gives the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish, and unless the receiving state agrees to accept the patient.

(4) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that ~~he~~ the patient would be taken if ~~he~~ the patient were a local patient.

(5) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

Article IV

(1) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate

authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(2) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(3) In supervising, treating, or caring for a patient on aftercare pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

Article V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escapee in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, ~~he~~ the patient shall be detained in the state where found pending disposition in accordance with law.

Article VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact without interference.

Article VII

(1) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(2) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific arrangement for that purpose, arrange for a different allocation of costs as among themselves.

(3) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies, and officers of and in the government of a party state or between a party state and its

subdivisions as to the payment of costs or responsibilities therefor.

(4) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(5) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care, or treatment of the mentally ill or mentally deficient or any statutory authority pursuant to which such agreements may be made.

Article VIII

(1) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on ~~his~~ the guardian's own behalf or in respect of any patient for whom ~~he~~ the guardian may serve, except that, where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall, upon being duly advised of the new appointment and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances. In the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue ~~his~~ the guardian's power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(2) The term "guardian" as used in subsection (1) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

Article IX

(1) No provisions of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(2) To every extent possible it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail, or lockup, but such patient shall with all expedition be taken to a suitable

institutional facility for mental illness or mental deficiency.

Article X

(1) Each party state shall appoint a compact administrator who, on behalf of ~~his~~ the administrator's state, shall act as general coordinator of activities under the compact in ~~his~~ that state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by ~~his~~ that state either in the capacity of a sending or receiving state. The compact administrator or ~~his~~ the administrator's duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(2) The compact administrators of the respective party states shall have power to promulgate reasonable rules to carry out more effectively the terms and provisions of this compact.

Article XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

Article XII

This compact shall enter into full force and effect as to any state when enacted by it into law, and such state shall thereafter be a party thereto with any and all states legally joining therein.

Article XIII

(1) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect 1 year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(2) Withdrawal from any agreement permitted by Article VII(2) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

Article XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be

contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Section 1928. Section 53-22-105, MCA, is amended to read:

"53-22-105. Court review. The compact administrator is hereby directed to consult with the immediate family of any proposed transferee and, in the case of a proposed transferee from an institution in this state to an institution in another party state, to not make ~~no~~ a transfer out of the state without approval of the district or probate court. Before granting ~~such~~ approval, the court shall hold ~~such~~ hearings ~~as~~ that it considers appropriate. In addition, the court shall designate some appropriate person to deliver written notice of the proposed transferee's right to a hearing to the proposed transferee and ~~his~~ the transferee's guardian ad litem. The person serving ~~such~~ the notices shall make a written return to the court that ~~such~~ service has been ~~done~~ made. At the conclusion of ~~such~~ the hearing, if any, the court may approve the proposed transfer, order the release of the proposed transferee, or enter any other suitable order."

Section 1929. Section 53-30-104, MCA, is amended to read:

"53-30-104. Punishment of inmates. ~~No barbarous~~ Barbarous punishments may not be prescribed for an inmate of the state prison, ~~nor shall~~ and an inmate, as punishment, may not be deprived of ~~his~~ the inmate's normal provision of food while being compelled to work the usual number of hours per day."

Section 1930. Section 53-30-142, MCA, is amended to read:

"53-30-142. Escape from extended confinement. Purposeful or knowing failure of an inmate to remain within the extended limits of ~~his~~ confinement or to return within the time prescribed by prison officials to the place of confinement designated by the department is an escape punishable as provided in 45-7-306."

Section 1931. Section 60-4-205, MCA, is amended to read:

"60-4-205. Private sale if no bid or offer. (1) If, after proper notice is published, the department ~~receives neither~~ does not receive a bid at public sale ~~nor~~ or an offer from the original owner or ~~his~~ the owner's successor in interest, it may at any time ~~thereafter~~ sell the interest at private sale. At the sale, the department may

accept as the purchase price an amount of money not less than 90% of the appraised value.

(2) Title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department."

Section 1932. Section 60-5-111, MCA, is amended to read:

"60-5-111. Violations -- penalties. (1) On any controlled-access highway or facility, it is unlawful for any person to construct, operate, or maintain any road or private driveway connecting with the highway or facility without first obtaining permission in writing from the highway authority having jurisdiction and, with the exception of an interstate highway, from the local governing body.

(2) ~~Any~~ A person who violates any of the provisions of this section is guilty of a misdemeanor. Upon arrest and conviction ~~therefor, he~~ the person shall be punished by a fine of not less than \$5 or more than \$100 or by imprisonment in the city or county jail for not less than 5 days or more than 90 days, ~~or by both fine and imprisonment.~~"

Section 1933. Section 60-7-204, MCA, is amended to read:

"60-7-204. Flagmen Flag escorts -- prohibitions against nighttime herding on public highways. A person who owns, controls, or possesses livestock may not herd or drive ~~a herd of livestock numbering~~ more than 10 livestock on an interstate or state primary highway ~~designated as such by the transportation commission~~ unless the livestock is preceded and followed by ~~flagmen~~ flag person escorts for the purpose of warning other highway users. Livestock may not be herded or driven on an interstate or state primary highway during nighttime, as that term is defined in 1-1-301, except in a case of emergency. In the case of an emergency during the nighttime, the ~~flagmen~~ flag person escorts shall use adequate warning lights, such as but not limited to portable lamps, lanterns, or rotating beacons. This section does not apply during daytime at posted livestock crossings on highways."

Section 1934. Section 60-11-201, MCA, is amended to read:

"60-11-201. Agreements for rail passenger service application. The governor or ~~his~~ the governor's authorized representative may negotiate with the proper authority representing any other state to establish an agreement to enable Montana, in concert with other states, to submit an application to the rail passenger corporation for institution of rail passenger service under the provisions of the Rail Passenger Service Act, {45 U.S.C. 563(b)}₂, or any interstate or federal proposal for the purpose of maintaining or augmenting rail passenger

service in the state. The governor may not participate in the submission of an application until the base agreement and any application have been approved by the legislature. However, the governor or ~~his~~ the governor's authorized representative may enter into agreements to expand Amtrak rail passenger service under 45 U.S.C. 563(b), as that statute reads on July 1, 1985, subject to appropriation by the legislature."

Section 1935. Section 61-2-105, MCA, is amended to read:

"61-2-105. Local programs. Except as provided in this part, all highway traffic safety programs of political subdivisions must be approved by the governor and ~~no~~ funds may not be spent unless ~~his~~ the governor's approval is obtained. All local and state officials shall cooperate with the governor and department to accomplish the purposes of this part. The governor shall administer the highway traffic safety programs of this state and its political subdivisions in accordance with this part and federal rules."

Section 1936. Section 61-2-106, MCA, is amended to read:

"61-2-106. County drinking and driving prevention program. (1) The governing body of a county may appoint a task force to study the problem of alcohol-related traffic accidents and recommend a program designed to:

(a) prevent driving while under the influence of alcohol;

(b) reduce alcohol-related traffic accidents; and

(c) educate the public on the dangers of driving after consuming alcoholic beverages or other chemical substances that impair judgment or motor functions.

(2) A task force appointed under subsection (1) shall conduct its study and submit its recommendations within 6 months from the date it was appointed. Task force meetings are open to the public. The task force shall give notice by publication in the community meeting announcement section of a newspaper of general circulation in the county.

(3) The county governing body may by resolution adopt the recommendations of the task force appointed under subsection (1). The proposed program must be approved by the governor as provided in 61-2-105.

(4) The ~~chairman~~ presiding officer of the task force shall submit to the county governing body:

(a) a budget and a financial report for each fiscal year; and

(b) an annual report containing but not limited to:

(i) an evaluation of the effectiveness of the program;

(ii) the number of arrests and convictions in the county for driving under the influence of alcohol and the

sentences imposed for these convictions;

(iii) the number of alcohol-related traffic accidents in the county; and

(iv) any other information requested by the county governing body or considered appropriate by the task force.

(5) A copy of the annual report may be submitted to the department."

Section 1937. Section 61-2-201, MCA, is amended to read:

"61-2-201. Vehicle Equipment Safety Compact. This part shall be known and may be cited as the "Vehicle Equipment Safety Compact".

Article I. Findings and Purposes

(1) The party states find that:

(a) accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare;

(b) there is a vital need for the development of greater interjurisdictional cooperation to achieve the necessary uniformity in the laws, rules, regulations, and codes relating to vehicle equipment, and to accomplish this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(2) The purposes of this compact are to:

(a) promote uniformity in regulation of and standards for equipment;

(b) secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety;

(c) provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subsection (1) of this article.

(3) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

Article II. Definitions

As used in this compact:

(1) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails

or tracks.

(2) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(3) "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

Article III. The Commission

(1) There is hereby created an agency of the party states to be known as the "Vehicle Equipment Safety Commission", hereinafter called the commission. The commission shall be composed of one commissioner from each party state who shall be appointed, serve, and be subject to removal in accordance with the laws of the state which ~~he~~ the commissioner represents. If authorized by the laws of ~~his~~ the commissioner's party state, a commissioner may provide for the discharge of ~~his~~ the commissioner's duties and the performance of ~~his~~ the commissioner's functions on the commission, either for the duration of ~~his~~ the commissioner's membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of ~~his~~ the alternate's identity and appointment shall have been given to the commission in such form as the commission may require. Each commissioner, and each alternate when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the commission for expenses actually incurred in attending commission meetings or while engaged in the business of the commission.

(2) The commissioners shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(3) The commission shall have a seal.

(4) The commission shall elect annually, from among its members, a ~~chairman~~ presiding officer, a ~~vice-chairman~~ vice presiding officer, and a treasurer. The commission may appoint an executive director and fix ~~his~~ the director's duties and compensation. Such executive director shall serve at the pleasure of the commission, and together with the treasurer shall be bonded in such amount as the commission shall determine. The executive director also shall serve as secretary. If there be no executive director, the commission shall elect a secretary in addition to the other officers provided by this subdivision.

(5) Irrespective of the civil service, personnel, or other merit system laws of any of the party states, the executive director with the approval of the commission, or the commission if there be no executive director, shall appoint, remove, or discharge such personnel as may be necessary for the performance of the commission's

functions, and shall fix the duties and compensation of such personnel.

(6) The commission may establish and maintain independently or in conjunction with any one or more of the party states a suitable retirement system for its full time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(7) The commission may borrow, accept, or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

(8) The commission may accept for any of its purposes and functions under this compact any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize, and dispose of the same.

(9) The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(10) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(11) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been issued by the commission. The commission may make such additional reports as it may deem desirable.

Article IV. Research and Testing

The commission shall have power to:

- (1) collect, correlate, analyze, and evaluate information resulting or derivable from research and testing activities in equipment and related fields;
- (2) recommend and encourage the undertaking of research and testing in any aspect of equipment or

related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken;

(3) contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing;

(4) recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations, or codes which would promote effective governmental action or coordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

Article V. Vehicular Equipment

(1) In the interest of vehicular and public safety, the commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this article. No less than 60 days after the publication of a report containing the results of such study, the commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(2) Following the hearing or hearings provided for in subsection (1) of this article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the commission may issue rules, regulations, or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the commission will be fair and equitable and effectuate the purposes of this compact.

(3) Each party state obligates itself to give due consideration to any and all rules, regulations, and codes issued by the commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(4) The commission shall send prompt notice of its action in issuing any rule, regulation, or code pursuant to this article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation, or code.

(5) If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation, or code. In such event, the commissioner of such party state shall submit any commission rule, regulation, or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(6) Except as otherwise specifically provided in or pursuant to subsections (5) and (7) of this article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation, or code within 6 months of the sending of the notice and, upon such adoption, the rule, regulation, or code shall have the force and effect of law therein.

(7) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation, or code issued by the commission pursuant to this article if such agency specifically finds, after public hearing on due notice, that a variation from the commission's rule, regulation, or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subsection.

Article VI. Finance

(1) The commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(2) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: one-third in equal shares and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the commission may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning vehicular registrations.

(3) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article III(8) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under Article III(8) hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its

rules. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the commission.

(5) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(6) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VII. Conflict of Interest

(1) The commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the commission and contractors with the commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale, or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the commission or on its behalf for testing, conduct of investigations, or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment, or business, any violation of a commission rule or regulation adopted pursuant to this article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the commission subject to cancellation by the commission.

(2) Nothing contained in this article shall be deemed to prevent a contractor for the commission from using any facilities subject to ~~his~~ the contractor's control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the commission, or to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

Article VIII. Advisory and Technical Committees

The commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

Article IX. Entry Into Force and Withdrawal

(1) This compact shall enter into force when enacted into law by any six or more states. Thereafter, this

compact shall become effective as to any other state upon its enactment thereof.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 1 year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article X. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters."

Section 1938. Section 61-2-204, MCA, is amended to read:

"61-2-204. State commissioner on vehicle equipment safety commission. Notwithstanding section 1, Chapter 272, Laws of 1971, the commissioner of this state on the vehicle equipment safety commission is the highway patrol chief who shall serve during ~~his~~ the continuance as ~~such officer~~ highway patrol chief. The commissioner appointed pursuant to this section may designate an alternate from among the officers and employees of ~~his agency~~ the highway patrol to serve in ~~his~~ the commissioner's place on the vehicle equipment safety commission. Subject to the provisions of the compact and bylaws of the vehicle equipment safety commission, the authority and responsibilities of the alternate are as determined by the commissioner ~~designating~~ him."

Section 1939. Section 61-2-207, MCA, is amended to read:

"61-2-207. Documents filed and notices given by equipment safety commission. Filing of documents as required by Article III(10) of the compact ~~shall~~ must be with the department. ~~Any and all~~ All notices required by commission bylaws to be given pursuant to Article III(10) of the compact ~~shall~~ must be given to the commissioner of this state and ~~his~~ the commissioner's alternate."

Section 1940. Section 61-4-106, MCA, is amended to read:

"61-4-106. Transfer of license. A registered dealer or wholesaler who sells or disposes of ~~his~~ the ~~dealer's or wholesaler's~~ entire business to another person may have ~~his~~ the dealer's or wholesaler's certificate of registration transferred to the purchaser upon filing with the department a statement containing the name of the registered dealer or wholesaler, the number under which the business is registered, the name of the purchaser, and the location of the place of business ~~to~~ sold. Upon the filing of the statement, accompanied by a filing fee of \$2, the department shall note upon the registration record of the dealer or wholesaler the change of ownership. A certificate of registration may not be transferred unless the entire business of the dealer or wholesaler holding the certificate of registration is sold and disposed of, and a certificate of registration may not be transferred to any person other than the purchasers of the business."

Section 1941. Section 61-4-132, MCA, is amended to read:

"61-4-132. Right of designated family member to succeed in dealership ownership. (1) Any designated family member of a deceased or incapacitated dealer may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement ~~provided he~~ if the family member gives the manufacturer, factory branch, distributor, or importer of new motor vehicles written notice of ~~his~~ the intention to do so within 120 days of the dealer's death or incapacity and unless there exists good cause for refusal to honor ~~such~~ the succession on the part of the manufacturer, factory branch, distributor, or importer.

(2) The manufacturer, factory branch, distributor, or importer may request, and the designated family member shall provide, upon request, personal and financial data that is reasonably necessary to determine whether the succession should be honored."

Section 1942. Section 61-4-209, MCA, is amended to read:

"61-4-209. Cease and desist orders. When the department has reasonable cause to believe, from information furnished to or from an investigation made by it, that any person is engaged in any business regulated by this part without being licensed as required, it shall immediately issue and serve upon ~~such~~ the person, by certified mail, a cease and desist order, requiring ~~him~~ the person to cease and desist from further engaging in that business. Upon failure of that person to comply with the order, the department shall file an action in the district court of Lewis and Clark County to restrain and enjoin the person from engaging in the business. The court in the action shall proceed as in other actions for injunctions."

Section 1943. Section 61-4-406, MCA, is amended to read:

"61-4-406. Suit for injury to business or property. In addition to the criminal and civil penalties ~~herein~~ provided ~~in this part~~, any person who ~~shall be~~ is injured in ~~his~~ the person's business or property by any other person or corporation or association or partnership by reason of anything forbidden or declared to be unlawful by this part may sue ~~therefor~~ for damages in any court having jurisdiction ~~thereof~~ in the county where the defendant resides or is found or any agent resides or is found or where service may be obtained, without respect to the amount in controversy, and recover ~~twofold~~ twice the amount of damages ~~by him~~ sustained and the costs of suit. Whenever it ~~shall appear~~ appears to the court before which any proceedings under this part may be pending that the ends of justice require that other parties ~~shall~~ must be brought before the court, the court may cause them to be made parties defendant and summoned, whether or not they reside in the county where ~~such~~ the action is pending ~~or not~~."

Section 1944. Section 61-5-116, MCA, is amended to read:

"61-5-116. License to be carried and exhibited on demand. Every A licensee ~~shall~~ must have ~~his~~ the licensee's driver's license in ~~his~~ the licensee's immediate possession at all times when operating a motor vehicle and shall display the ~~same~~ license upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department. However, ~~no~~ a person charged with violating this section ~~shall~~ may not be convicted if ~~he~~ the person produces in court or the office of the arresting officer a driver's license ~~theretofore~~ thereof issued to ~~him~~ person and valid at the time of ~~his~~ the person's arrest."

Section 1945. Section 61-5-304, MCA, is amended to read:

"61-5-304. Permitting unauthorized minor to drive. ~~No~~ A person ~~shall~~ may not cause or knowingly permit ~~his~~ the person's child or ward under ~~the age of~~ 18 years of age to drive a motor vehicle upon any highway when ~~such~~ the minor is not authorized ~~hereunder~~ to drive or in violation of any of the provisions of parts 1 through 3 of this chapter."

Section 1946. Section 61-5-401, MCA, is amended to read:

"61-5-401. Driver License Compact. This part shall be known and may be cited as the "Driver License Compact".

Article I. Findings and Declaration of Policy

(1) The party states find that:

(a) the safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles;

(b) violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property;

(c) the continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles in whichever jurisdiction the vehicle is operated.

(2) It is the policy of each of the party states to:

(a) promote compliance with the laws, ordinances, and administrative rules relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles;

(b) make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the overall compliance with motor vehicle laws, ordinances, and administrative rules as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

Article II. Definitions

As used in this compact:

(1) "state" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico;

(2) "home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle;

(3) "conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance, or administrative rule, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

Article III. Reports of Conviction

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code, or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered or the conviction was a result of the forfeiture of bail, bond, or other security; and include any special findings made in connection therewith.

Article IV. Effect of Conviction

(1) The licensing authority in the home state, for the purposes of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

- (a) manslaughter or negligent homicide resulting from the operation of a motor vehicle;
- (b) driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;
- (c) any felony in the commission of which a motor vehicle is used;
- (d) failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(2) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(3) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (1) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (1) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

Article V. Applications for New Licenses

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) the applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated;

(2) the applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of 1 year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) the applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

Article VI. Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance or to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

Article VII. Compact Administrator and Interchange of Information

(1) The head of the licensing authority of each party state shall be the administrator of this compact for ~~his~~ the administrator's state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(2) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

Article VIII. Entry Into Force and Withdrawal

(1) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 6 months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

Article IX. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Section 1947. Section 61-5-403, MCA, is amended to read:

"61-5-403. Reimbursement of compact administrator. The compact administrator provided for in Article VII of the compact ~~shall is~~ not be entitled to any additional compensation on account of ~~his~~ the service as ~~such~~ administrator but ~~shall be~~ is entitled to expenses incurred in connection with ~~his~~ duties and responsibilities

as ~~such~~ administrator in the same manner as for expenses incurred in connection with any other duties or responsibilities of ~~his~~ the administrator's office or employment."

Section 1948. Section 61-6-103, MCA, is amended to read:

"61-6-103. Motor vehicle liability policy defined. (1) A "motor vehicle liability policy", as the term is used in this part, means an owner's or operator's policy of liability insurance, certified as provided in 61-6-133 or 61-6-134 as proof of financial responsibility and issued, except as otherwise provided in 61-6-134, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named ~~therein~~ in the policy as insured.

(2) The owner's policy of liability insurance must:

(a) designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is ~~thereby~~ to be granted by the policy; and

(b) insure the person named ~~therein~~ in the policy and any other person, as insured, using any motor vehicle or motor vehicles with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of the motor vehicle or motor vehicles within the United States of America or ~~the Dominion of~~ Canada, subject to limits exclusive of interest and costs, with respect to each motor vehicle, as follows:

(i) \$25,000 because of bodily injury to or death of one person in any one accident and subject to ~~said~~ that limit for one person;

(ii) \$50,000 because of bodily injury to or death of two or more persons in any one accident; and

(iii) \$10,000 because of injury to or destruction of property of others in any one accident.

(3) An operator's policy of liability insurance must insure the person named as insured ~~therein~~ in the policy against loss from the liability imposed upon ~~him~~ the insured by law for damages arising out of the use by ~~him~~ the insured of any motor vehicle not owned by ~~him~~ the insured, within the same territorial limits and subject to the same limits of liability ~~as that~~ are set forth ~~above~~ in subsection (2) with respect to the operator's policy of liability insurance.

(4) A motor vehicle liability policy must state the name and address of the named insured, the coverage afforded by the policy, the premium charged ~~therefor~~, the policy period, and the limits of liability and contain an agreement or be endorsed that insurance is provided ~~thereunder~~ under the policy in accordance with the coverage defined in this part ~~as respects~~ with respect to bodily injury and death or property damage, or both, and is subject to all the provisions of this part.

(5) A motor vehicle liability policy need not insure any liability under any workers' compensation law or any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured or while engaged in the operation, maintenance, or repair of a motor vehicle or any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

(6) A motor vehicle liability policy is subject to the following provisions, which need not be contained ~~therein~~ in the policy:

(a) The liability of the insurance carrier with respect to the insurance required by this part becomes absolute whenever injury or damage covered by the motor vehicle liability policy occurs. The policy may not be canceled or annulled as to the liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage. ~~No~~ A statement made by the insured or on ~~his~~ the insured's behalf and ~~no~~ a violation of the policy may not defeat or void the policy.

(b) The satisfaction by the insured of a judgment for the injury or damage may not be a condition precedent to the right or duty of the insurance carrier to make payment on account of the injury or damage.

(c) The insurance carrier has the right to settle any claim covered by the policy, and if the settlement is made in good faith, the amount is deductible from the limits of liability specified in subsection (2)(b).

(d) The policy, the written application ~~therefor~~ for the policy, if any, and any rider or endorsement ~~which~~ that does not conflict with the provisions of this part constitute the entire contract between the parties.

(7) A motor vehicle policy is not subject to cancellation, termination, nonrenewal, or premium increase due to injury or damage incurred by the insured or operator unless the insured or operator is found to have violated a traffic law or ordinance of the state or a city, is found negligent or contributorily negligent in a court of law or by the arbitration proceedings contained in chapter 5 of Title 27, or pays damages to another party, whether by settlement or otherwise. ~~In no event may a~~ A premium may not be increased during the term of the policy unless there is a change in exposure.

(8) Any policy ~~which~~ that grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy, and the excess or additional coverage is not subject to the provisions of this part. With respect to a policy ~~which~~ that grants the excess or additional coverage, the term "motor vehicle liability policy" applies only to that part of the coverage ~~which~~ that is required by this section.

(9) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except

for the provisions of this part.

(10) Any motor vehicle liability policy may provide for the prorating of the insurance ~~thereunder~~ under the policy with other valid and collectible insurance.

(11) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers, which policies together meet ~~such~~ the requirements.

(12) Any binder issued pending the issuance of a motor vehicle liability policy fulfills the requirements for ~~such~~ a policy.

(13) A reduced limits endorsement may not be issued by any company to be attached to any policy issued in compliance with this section."

Section 1949. Section 61-6-121, MCA, is amended to read:

"61-6-121. Courts to report nonpayment of judgments. (1) Whenever ~~any~~ a person fails within 60 days to satisfy ~~any~~ a judgment, upon the written request of the judgment creditor or ~~his~~ the creditor's attorney, ~~it shall be the duty of~~ the clerk of the court, or of the judge of a court ~~which has no~~ that does not have a clerk, in which any ~~such~~ judgment is rendered within this state ~~to~~ shall forward to the department immediately after the expiration of ~~said the~~ the 60 days a certified copy of ~~such the~~ the judgment.

(2) If the defendant named in any certified copy of a judgment reported to the department is a nonresident, the department shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the defendant is a resident."

Section 1950. Section 61-6-131, MCA, is amended to read:

"61-6-131. When proof of financial responsibility required. (1) Whenever the department under any of the laws of this state revokes the license of any person, ~~such the~~ the license ~~shall~~ must remain revoked and ~~shall~~ may not ~~at any time thereafter~~ be renewed ~~nor shall any~~ and a license may not be ~~thereafter~~ issued to ~~such the~~ the person until permitted under the motor vehicle laws of this state and not then unless and until ~~he shall give the person~~ and thereafter maintain maintains proof of financial responsibility.

(2) If a person is not licensed, but by the final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the revocation of a license, ~~no a~~ license ~~shall~~ may not be ~~thereafter~~ issued to ~~such the~~ the person until ~~he shall give the person~~ gives and thereafter maintain maintains proof of financial responsibility.

(3) Whenever the department revokes a nonresident's operating privilege by reason of a conviction or

forfeiture of bail, ~~such the~~ privilege ~~shall remain so~~ remains revoked unless ~~such the~~ person ~~shall have~~ has previously given or ~~shall~~ immediately ~~give~~ gives and ~~thereafter maintain~~ maintains proof of financial responsibility."

Section 1951. Section 61-6-132, MCA, is amended to read:

"61-6-132. Alternate methods of giving proof. (1) Proof of financial responsibility when required under this part with respect to a motor vehicle or with respect to a person who is not the owner of a motor vehicle may be given by filing:

(a) a certificate of insurance as provided in 61-6-133 or 61-6-134;

(b) a bond as provided in 61-6-137;

(c) a certificate or deposit of money or securities as provided in 61-6-138; or

(d) a certificate of self-insurance, as provided in 61-6-143, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, ~~he~~ the self-insurer will pay the same judgments and in the same amounts that an insurer would have been obligated to pay under an owner's motor vehicle liability policy if it had issued ~~such~~ a policy to ~~said~~ the self-insurer.

(2) ~~No~~ A motor vehicle ~~shall~~ may not be or continue to be registered in the name of any person required to file proof of financial responsibility unless ~~such the~~ proof ~~shall be~~ is furnished for ~~such the~~ motor vehicle."

Section 1952. Section 61-6-136, MCA, is amended to read:

"61-6-136. Other policies not affected. (1) This part ~~shall not be held to~~ does not apply to or affect policies of automobile insurance against liability ~~which may now or hereafter be~~ that are required by any other law of this state, and ~~such those~~ policies, if they contain an agreement or are endorsed to conform to the requirements of this part, may be certified as proof of financial responsibility under this part.

(2) This part ~~shall not be held to~~ does not apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on ~~his~~ the insured's behalf of motor vehicles not owned by the insured."

Section 1953. Section 61-6-137, MCA, is amended to read:

"61-6-137. Bond as proof of responsibility. (1) Proof of financial responsibility may be furnished by filing with the department the bond of a surety company ~~duly~~ authorized to transact business in the state or a bond with at least two individual sureties each owning real estate within this state and together having equities

equal in value to at least twice the amount of ~~such the~~ bond; ~~which The~~ real estate ~~shall must~~ be scheduled in the bond approved by a judge of a court of record. The bond ~~shall must~~ be conditioned for payments in amounts and under the same circumstances ~~as that~~ would be required in a motor vehicle liability policy and ~~shall may~~ not be cancelable except after 10 days' written notice to the department. Upon the filing of notice to this effect by the department in the office of the county clerk and recorder of the county ~~wherein such~~ in which the real estate is located, the bond ~~shall constitute~~ constitutes a lien in favor of the state upon the scheduled real estate ~~so scheduled~~ of any surety; ~~which The~~ lien ~~shall exist~~ exists in favor of any holder of a judgment against the person who has filed the bond.

(2) The person in whose favor the lien exists may, for ~~his~~ the person's own use and benefit and at ~~his~~ the person's sole expense, bring an action or actions in the name of the state against the company or persons executing the bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of any person who has executed ~~such the~~ bond. The provisions of the Montana Rules of Civil Procedure, except ~~insofar as to the extent that~~ they are inconsistent with the provisions of this part, are applicable to and constitute the rules of practice in the foreclosure actions or proceedings. The provisions of the Montana Rules of Civil Procedure relative to new trials and appeals, except ~~insofar as to the extent that~~ they are inconsistent with the provisions of this part, apply to the actions or proceedings."

Section 1954. Section 61-6-138, MCA, is amended to read:

"61-6-138. Money or securities as proof of responsibility. (1) Proof of financial responsibility may be evidenced by the certificate of the state treasurer that the person named ~~therein~~ in the certificate has deposited with ~~him~~ the treasurer \$55,000 in cash, or securities ~~such as that~~ may legally be purchased by savings banks or for trust funds of a market value of \$55,000. The state treasurer ~~shall may~~ not accept any ~~such~~ deposit and issue a certificate ~~therefor~~ and the department ~~shall may~~ not accept ~~such the~~ certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

(2) ~~Such~~ The deposit ~~shall must~~ be held by the state treasurer to satisfy, in accordance with the provisions of this part, any execution on a judgment issued against ~~such the~~ person making the deposit; for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use ~~thereof~~ of property, resulting from the ownership, maintenance, use, or operation of a motor vehicle after ~~such the~~ deposit was made. Money or securities ~~so~~ deposited ~~shall may~~ not be subject to attachment or execution unless ~~such the~~ attachment

or execution ~~shall arise~~ arises out of a suit for damages as ~~aforsaid~~ described in this subsection."

Section 1955. Section 61-6-142, MCA, is amended to read:

"61-6-142. Duration of proof -- when money or securities may be canceled or returned. (1) The department shall direct and the state treasurer shall return to the person entitled ~~thereto~~ any money or securities deposited pursuant to this part as proof of financial responsibility, or the department shall waive the requirement of filing proof under this part, in any of the following events:

(a) at any time after 3 years from the date ~~such the~~ the proof was required when during the 3-year period preceding the request the department has not received record of a conviction or a forfeiture of bail ~~which that~~ that would require or permit the suspension or revocation of the license or nonresident's operating privilege of the person by or for whom ~~such the~~ the proof was furnished;

(b) in the event of the death of the person on whose behalf ~~such the~~ the proof was filed or the permanent incapacity of ~~such the~~ the person to operate a motor vehicle; or

(c) in the event the person who has given proof surrenders ~~his~~ the person's license to the department.

(2) However, the department ~~shall may~~ may not consent to the return of any money or securities ~~in the event if~~ any action for damages upon a liability covered by ~~such the~~ the proof is then pending or any judgment upon any ~~such~~ such liability is then unsatisfied; or ~~in the event if~~ the person who has deposited ~~such the~~ the money or securities has, within 1 year immediately preceding ~~such the~~ the request, been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of ~~such the~~ the facts; or that ~~he~~ the applicant has been released from all ~~of his~~ his liability; or has been finally adjudicated not to be liable for ~~such the~~ the injury or damage; ~~shall be is~~ is sufficient evidence ~~thereof~~ in the absence of evidence to the contrary in the records of the department.

(3) Whenever any person whose proof has been canceled or returned under subsection (1)(c) ~~of this section~~ applies for a license within a period of 3 years from the date proof was originally required, ~~any such the~~ such the application ~~shall must~~ must be refused unless the applicant complies with the insurance or bond requirements under 61-6-301 and 61-6-302."

Section 1956. Section 61-6-201, MCA, is amended to read:

"61-6-201. Liability of owner for negligence of employee driver. The owner of ~~every a~~ a vehicle running or traveling upon any highway or road for the conveyance of passengers is liable for all damage to person or property done by any person in ~~his~~ the owner's employment as a driver while driving ~~such the~~ the vehicle, whether

done willfully or negligently or otherwise, in the same manner ~~as such~~ that driver would be liable."

Section 1957. Section 61-6-303, MCA, is amended to read:

"61-6-303. Exempt vehicles. The following vehicles and their drivers are exempt from the provisions of 61-6-301:

- (1) a vehicle owned by the United States government or any state or political subdivision;
- (2) a vehicle for which cash, securities, or a bond has been deposited or filed with the department upon ~~such~~ terms and conditions providing the same benefits available under a required motor vehicle liability insurance policy;
- (3) a vehicle owned by a self-insurer certified as provided in 61-6-143;
- (4) an implement of husbandry or special mobile equipment that is only incidentally operated on a highway or property open to use by the public;
- (5) a vehicle operated upon a highway only for the purpose of crossing ~~such~~ the highway from one property to another;
- (6) a commercial vehicle registered or proportionally registered in this and any other jurisdiction, ~~provided that if the~~ vehicle is covered by a motor vehicle liability insurance policy complying with the laws of another jurisdiction in which it is registered;
- (7) a motorcycle or quadricycle;
- (8) a vehicle moved solely by human or animal power;
- (9) a vehicle owned by a nonresident if it is currently registered in the owner's resident jurisdiction and ~~he~~ the owner is in compliance with the motor vehicle liability insurance requirements, if any, of that jurisdiction."

Section 1958. Section 61-7-104, MCA, is amended to read:

"61-7-104. Accident involving damage to vehicle. (1) The driver of any vehicle involved in an accident resulting only in damage to a vehicle ~~which~~ that is driven or attended by any person shall immediately stop ~~such~~ the vehicle at the scene of ~~such~~ the accident or as close ~~thereto~~ to the scene as possible and shall ~~forthwith~~ return to and ~~in every event shall~~ remain at the scene of ~~such~~ the accident until ~~he~~ the person has fulfilled the requirements of 61-7-105. ~~Every such~~ The stop shall must be made without obstructing traffic more than is necessary.

(2) Any person failing to stop or comply with ~~said~~ the requirements ~~under such circumstances of~~ subsection (1) is ~~shall be~~ guilty of a misdemeanor."

Section 1959. Section 61-7-105, MCA, is amended to read:

"61-7-105. Duty to give information and render aid. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle ~~which that~~ is driven or attended by any person shall give ~~his~~ the driver's name, address, and the registration number of the vehicle ~~he~~ the driver is driving and shall upon request and if available ~~exhibit his~~ show a driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with, ~~and~~ The driver shall render to any person injured in ~~such the~~ accident reasonable assistance, including the ~~carrying transporting,~~ or the making of arrangements for the ~~carrying transporting;~~ of ~~such the~~ person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that ~~such the~~ treatment is necessary or if ~~such carrying transportation~~ is requested by the injured person."

Section 1960. Section 61-7-107, MCA, is amended to read:

"61-7-107. Duty upon striking fixtures or other property upon a highway. The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of ~~such the~~ property of ~~such fact~~ the accident, ~~and~~ of ~~his~~ the driver's name and address, and of the registration number of the vehicle ~~he is being~~ driving and shall upon request and if available exhibit ~~his~~ a driver's license and shall ~~make report of~~ such the accident when and as required in 61-7-109."

Section 1961. Section 61-7-112, MCA, is amended to read:

"61-7-112. Coroners and medical examiners to report. Each coroner, medical examiner, or other official performing ~~like~~ similar functions shall, on or before the 10th day of each month, report in writing to the department the deaths of all persons within ~~his~~ the official's respective jurisdiction during the preceding calendar month as the result of traffic accidents, giving the time and place of each accident and the circumstances relating ~~thereto~~ to the accident."

Section 1962. Section 61-8-107, MCA, is amended to read:

"61-8-107. Police vehicles and authorized emergency vehicles. (1) The driver of a police vehicle or authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions ~~herein stated~~ in this section.

- (2) The driver of a police vehicle or authorized emergency vehicle may:
- (a) park or stand, irrespective of the provisions of this chapter;
 - (b) proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
 - (c) exceed the speed limits ~~so~~ as long as he the driver does not endanger life or property;
 - (d) disregard regulations governing direction of movement or turning in specified directions.
- (3) The exemptions granted to a police vehicle or authorized emergency vehicle apply only when the vehicle is making use of an audible or visual signal, or both, meeting the requirements of 61-9-402.
- (4) The ~~foregoing~~ provisions shall of this section do not relieve the driver of a police vehicle or authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, ~~nor shall such and the provisions~~ do not protect the driver from the consequences of ~~his~~ the driver's reckless disregard for the safety of others."

Section 1963. Section 61-8-408, MCA, is amended to read:

"61-8-408. Multiple convictions prohibited. When the same acts may establish the commission of an offense under both 61-8-401 and 61-8-406, a person charged with ~~such~~ the conduct may be prosecuted for a violation of both 61-8-401 and 61-8-406. However, ~~he~~ the person may only be convicted of an offense under either 61-8-401 or 61-8-406."

Section 1964. Section 61-8-604, MCA, is amended to read:

"61-8-604. Clinging to vehicles. ~~No~~ A person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle ~~shall~~ may not attach the ~~same~~ conveyance or ~~himself~~ be attached to any vehicle upon a roadway, but a bicycle trailer or bicycle semitrailer may be attached to a bicycle if that trailer or semitrailer has been designed for ~~such~~ attachment."

Section 1965. Section 61-8-703, MCA, is amended to read:

"61-8-703. Arrest without a warrant in radar cases. (1) The driver of ~~any such~~ a motor vehicle may be arrested without a warrant under this section ~~provided~~ if the arresting officer is in uniform or displays ~~his~~ the officer's badge of authority and has either:

- (a) observed the recording of the speed of the vehicle by radio microwaves or other electrical device;
- or

(b) received, from the officer who has observed the speed of the vehicle recorded by the radio microwaves or other electrical device, a radio message giving the license number or other sufficient identification of the vehicle and the recorded speed, dispatched immediately after the speed of the vehicle was recorded.

(2) The arrest without a warrant of any ~~such~~ driver must be made immediately after ~~such~~ the observation or radio message and as the result of uninterrupted pursuit."

Section 1966. Section 61-8-723, MCA, is amended to read:

"61-8-723. Offenses committed by persons under the 18 years of age of eighteen. A person under 18 years of age who is convicted of an offense under this title ~~shall~~ may not be punished by incarceration, but shall be punished by:

(1) a fine not to exceed the fine that could be imposed on ~~him~~ the person if ~~he~~ the person were an adult, provided that ~~such~~ the person may not be imprisoned for failure to pay ~~such~~ the fine;

(2) revocation of ~~his~~ the person's driver's license by the court or suspension of the license for a period set by the court;

(3) impoundment by a law enforcement officer designated by the court of the motor vehicle operated by the person for a period of time not exceeding 60 days if the court finds that ~~he~~ the person either owns the vehicle or is the only person who uses the vehicle; or

(4) any combination of subsections (1) through (3)."

Section 1967. Section 61-12-202, MCA, is amended to read:

"61-12-202. Training of department peace officers -- rules. (1) The department shall provide ~~such~~ training as required to qualify ~~those~~ employees to competently perform their duties under this part and shall adopt ~~such~~ rules ~~as~~ that are required and necessary for qualification of those employees as peace officers.

(2) An employee may not make arrests until ~~he~~ the employee has successfully completed ~~such~~ the training as required by the department."

Section 1968. Section 61-12-301, MCA, is amended to read:

"61-12-301. Terms defined. ~~The following words and phrases, when As used in this part, shall for the purpose of this part have the meanings respectively ascribed to them in this section, except in those instances where unless the context of the part clearly indicates that they shall have a different meaning requires otherwise, the following definitions apply:~~

(1) "Agent" means ~~whoever~~ a person who solicits the purchase of service contracts, ~~as herein defined,~~ or transmits for another ~~any such~~ a service contract or application ~~therefor~~ for a service contract to or from the company; or who acts or aids in any manner in the delivery or negotiation of any ~~such~~ service contract; or of the renewal or continuance ~~thereof~~ of a service contract.

(2) "Bail bond service" means any act or acts by a company, ~~as herein defined,~~ the purpose of which is to furnish or procure for any person accused of violation of any law of this state a cash deposit, bond, or other undertaking required by law in order that the accused might enjoy ~~his~~ the accused's personal freedom pending trial.

(3) "Buying and selling service" means any act or acts of a company, ~~as herein defined,~~ whereby the holder of a service contract with ~~any such~~ the company is aided in any way in the purchase or sale of an automobile.

(4) "Commissioner" means the commissioner of insurance of the state of Montana or ~~his~~ the commissioner's assistants or deputies or other persons authorized to act for ~~him~~ the commissioner.

(5) "Company" means any person, firm, partnership, company, association, or corporation engaged in selling, furnishing, or procuring, either as principal or agent, for a consideration, motor club service ~~as herein defined.~~

(6) "Discount service" means any act or acts by a company, ~~as herein defined,~~ resulting in the giving of special discounts, rebates, or reductions of price on gasoline, oil, repairs, insurance, parts, accessories, or service for motor vehicles to holders of service contracts with ~~any such~~ the company.

(7) "Emergency road service" means any act or acts by a company, ~~as herein defined,~~ consisting of the adjustment, repair, or replacement of the equipment, tires, or mechanical parts of any automobile so as to permit it to be operated under its own power.

(8) "Financial service" means any act or acts by a company, ~~as herein defined,~~ whereby loans or other advances of money, with or without security, are made to holders of service contracts with ~~any such~~ the company.

(9) "Legal service" means any act or acts by a company, ~~as herein defined,~~ consisting of the hiring, retaining, engaging, or appointing of an attorney or other person to give professional advice to or represent holders of service contracts with ~~any such~~ the company in ~~any~~ court; as the result of liability incurred by the right of action accruing to the holder of a service contract as a result of the ownership, operation, use, or maintenance of a motor vehicle.

(10) "Map service" means any act or acts by a company, ~~as herein defined,~~ by which road maps are furnished without cost to holders of service contracts with ~~any such~~ the company.

(11) "Motor club service" means the rendering, furnishing, or procuring of towing service, emergency road service, insurance service, bail bond service, legal service, discount service, financial service, buying and selling service, theft service, map service, and touring service, or any three or more thereof, ~~as herein defined,~~ enumerated services to any person or persons in connection with the ownership, operation, use, or maintenance of a motor vehicle by ~~such the~~ other person or persons in consideration of ~~such the~~ other person or persons being or becoming a member or members of any company rendering, procuring, or furnishing the ~~same~~ services, or being or becoming in any manner affiliated ~~therewith~~ with the company, or being or becoming entitled to receive membership or other motor club service ~~therefrom~~ from the company by virtue of any agreement or understanding with ~~any such the~~ company.

(12) "Service contract" means any agreement or understanding whereby any company, ~~as herein defined,~~ for a consideration promises to render, furnish, or procure for any other person or persons, whether they be members of ~~such the~~ company or otherwise, motor club service, ~~as herein defined.~~

(13) "Theft service" means any act or acts by a company, ~~as herein defined,~~ the purpose of which is to locate, identify, or recover a motor vehicle owned or controlled by the holder of a service contract with ~~any such the~~ company ~~which that~~ has been or may be stolen or to detect or apprehend the person guilty of ~~such the~~ theft.

(14) "Touring service" means any act or acts by a company, ~~as herein defined,~~ by which touring information is furnished without cost to holders of service contracts with ~~any such the~~ company.

(15) "Towing service" means any act or acts by a company, ~~as herein defined,~~ consisting of the drafting or moving of a motor vehicle from one place to another under other than its own power."

Section 1969. Section 61-12-306, MCA, is amended to read:

"61-12-306. Revocation of license. If the commissioner ~~shall~~, at any time for cause shown and after a hearing, ~~determine~~ determines that a company has violated any provision ~~or provisions~~ of this part, or that it is insolvent or that its assets are less than its liabilities, ~~or~~ that it or its officers refuse to submit to an examination, ~~or~~ that it is transacting business fraudulently, ~~or~~ that its management or business methods are improper or hazardous to the holders of its service contracts, ~~he~~ the commissioner shall ~~thereupon~~ revoke or suspend its license and shall give notice ~~thereof~~ of the suspension or revocation to the public in ~~such a~~ manner ~~as he may deem~~ that the commissioner considers proper."

Section 1970. Section 61-12-307, MCA, is amended to read:

"61-12-307. Financial statement to be filed. Every A company shall annually, on or before February

1 of each year, file with the commissioner a financial statement in ~~such the~~ the form and detail ~~as he that the~~ commissioner may prescribe, executed on oath by its president or other principal officer, showing its financial condition on December 31 of the preceding year."

Section 1971. Section 61-12-308, MCA, is amended to read:

"61-12-308. Service contract to be filed with commissioner. ~~No~~ A service contract ~~shall~~ may not be executed, issued, or delivered in this state until a copy of the form ~~thereof of the contract~~ has been on file for 30 days with the commissioner, unless before the expiration of said 30 days he shall have the commissioner has approved the form in writing; ~~nor shall any~~ A service contract may not be executed, issued, or delivered at any time in this state if the commissioner notified the company in writing within ~~said 30 days~~ the 30-day period that in ~~his~~ the commissioner's opinion the form of the contract does not comply with the laws of this state, specifying the reasons ~~therefor~~ for the opinion."

Section 1972. Section 61-12-314, MCA, is amended to read:

"61-12-314. Applicability. ~~Nothing in this~~ This part shall ~~does not~~ apply to a duly authorized attorney at law acting in the usual course of ~~his~~ the profession or to any insurance company, bonding company, or surety company, ~~now or hereafter duly and regularly~~ licensed and doing business as ~~such~~ the licensed company under the laws of the state."

Section 1973. Section 61-12-407, MCA, is amended to read:

"61-12-407. Transmitting return of sale and balance of proceeds. (1) When any vehicle is sold as provided in 61-12-404, the sheriff or the city police shall transmit to the department and to the county treasurer or to the city treasurer, respectively, a return of sale setting forth a description of the vehicle, the purchase price, the name and address of the purchaser, the costs incurred in the sale, and the costs and expenses incurred in the removal, storage, and custody of the vehicle.

(2) With the return of sale, the sheriff shall transmit to the county treasurer or the city police shall transmit to the city treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale and the costs and expenses incurred in the removal, storage, and custody of the vehicle.

(3) Upon receipt of the return of sale and ~~such the~~ the balance from:

(a) the county sheriff, the county treasurer shall file the return in ~~his~~ the treasurer's office and deposit the balance in the county road fund on all vehicles seized by the sheriff or highway patrol; or

(b) the city police, the city treasurer shall file the return in ~~his~~ the treasurer's office and deposit the balance in the city street fund on all vehicles seized by the city police."

Section 1974. Section 67-1-211, MCA, is amended to read:

"67-1-211. Alcohol concentration standards -- evidence admissible -- administration of tests. (1)

If a person acting or attempting to act as a crewmember of an aircraft has an alcohol concentration of 0.04% by weight or more as defined in 61-8-407, it may be inferred that the person is under the influence of alcohol and is in violation of 67-1-204.

(2) Evidence of any measured amount or detected presence of alcohol in the person at the time of the act alleged under subsection (1) and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a test of ~~his~~ the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in ~~his~~ the person's body if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The test must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which of the ~~aforesaid~~ tests must be administered. A person who is unconscious or who is otherwise in a condition rendering ~~him~~ the person incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

(5) If a person charged with a violation of 67-1-204 refuses to submit to a test of ~~his~~ the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in ~~his~~ the person's body, ~~none a test~~ will not be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(6) The provisions relating to administration of tests provided in 61-8-405 and the definition of alcohol concentration provided in 61-8-407 apply to any testing done to determine any measured amount or detected

presence of alcohol in a person and the alcohol concentration of a person charged with violation of 67-1-204."

Section 1975. Section 67-2-503, MCA, is amended to read:

"67-2-503. Use of reports. The reports of investigations or hearings may not be admitted in evidence or used for any purpose in any suit, action, or proceedings growing out of a matter referred to in the investigation, hearing, or report, except in case of criminal or other proceedings instituted in behalf of the department or this state under this title and other laws of this state relating to aeronautics. An officer or employee of the department may not be required to testify to any facts ascertained in or information gained by reason of ~~his~~ the officer's or employee's official capacity or be required to testify as an expert witness in a suit, action, or proceeding involving an aircraft. The department may, in its discretion, make available to appropriate federal and state agencies information and material developed in the course of its hearings and investigations."

Section 1976. Section 67-3-102, MCA, is amended to read:

"67-3-102. Exceptions. The provisions of ~~subsections (2) and (3) of 67-3-101(2) and (3)~~ do not apply to:

- (1) an aircraft ~~which~~ that has been licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of that licensed aircraft;
- (2) an aircraft ~~which~~ that is owned by a nonresident of this state who is lawfully entitled to operate the aircraft in the state of ~~his~~ residence;
- (3) an aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;
- (4) an aircrew operating military or public aircraft or an aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of that licensed aircraft;
- (5) a person operating model aircraft or a person piloting an aircraft ~~which~~ that is equipped with fully functioning dual controls when a licensed instructor is in full charge of one set of the controls and the flight is solely for instruction or for the demonstration of the aircraft to a prospective purchaser;
- (6) a nonresident operating aircraft in this state who is lawfully entitled to operate aircraft in the state of residence;
- (7) an aircrew while operating or taking part in the operation of an aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce."

Section 1977. Section 67-3-201, MCA, is amended to read:

"67-3-201. Aircraft registration and licensing required. (1) Except as provided in 67-3-102 and in subsection (6) of this section, a person may not operate or cause or authorize to be operated a civil aircraft within this state unless the aircraft has an appropriate effective registration, license, certificate, or permit issued or approved by the United States government ~~which~~ that has been registered with the department and the registration with the department is in force.

(2) Aircraft customarily kept in this state must be registered on or before March 1 of each year with the department, which ~~must~~ shall charge a fee ~~therefor~~ for registration according to the fee schedule in 67-3-206. The registration must be renewed annually on or before March 1 of each year.

(3) Section 67-3-202 and subsections (2) and (4) through (6) of this section do not apply to:

(a) aircraft owned and operated by the federal government, the state, or any political subdivision ~~thereof~~ of the state;

(b) aircraft owned and held by an aircraft dealer solely for the purpose of resale;

(c) aircraft operated by an airline company and regularly scheduled for the primary purpose of carrying persons or property for hire in interstate or international transportation; or

(d) dismantled or otherwise nonflyable aircraft.

(4) An aircraft must be registered in a particular county of the state. This county must be the county of the owner's principal residence; if the owner is a natural person; or the owner's principal place of doing business in the state; if the owner is not a natural person. However, if the owner declares by affidavit that the aircraft is customarily kept at a landing facility in another county within the state, ~~he~~ the owner may register the aircraft as property within ~~such~~ the other county.

(5) Aircraft not registered in the state but entering the state to engage in commercial operations ~~shall~~ must be registered prior to commencing operation.

(6) Owners of ultralight aircraft for which no appropriate effective license, certificate, or permit is issued by the United States government shall pay the fee required in 67-3-206 and file with the department an appropriate registration recognized and approved by the United States government."

Section 1978. Section 67-11-104, MCA, is amended to read:

"67-11-104. Commissioners. (1) The powers of each authority ~~shall be~~ are vested in the commissioners ~~thereof~~ of the authority. A majority of the commissioners of an authority ~~shall~~ constitute a quorum for the purpose of conducting business of the authority and exercising its powers and for all other purposes. Action may be taken

by the authority upon a vote of not less than a majority of the commissioners present.

(2) There ~~shall~~ must be elected a ~~chairman~~ presiding officer and ~~vice-chairman~~ vice presiding officer from among the commissioners. An authority may employ an executive director, secretary, technical experts, and ~~such~~ other officers, agents, and employees, permanent and temporary, ~~as that~~ it may require and shall determine their qualifications, duties, and compensation. An authority may delegate to one or more of its agents or employees ~~such~~ powers or duties ~~as that~~ it may deem considers proper.

(3) A commissioner of an authority ~~shall be~~ is entitled to the necessary ~~expense~~ expenses, including travel expenses, as provided for in 2-18-501 through 2-18-503, incurred in the discharge of ~~his~~ duties. Each commissioner shall hold office until ~~his~~ a successor has been appointed and has qualified. The certificates of the appointment and reappointment of commissioners ~~shall~~ must be filed with the authority."

Section 1979. Section 69-1-106, MCA, is amended to read:

"69-1-106. Vacancies. Any vacancy occurring in the commission ~~shall~~ must be filled by appointment by the governor. ~~Such~~ The appointee shall hold office until the next general election and until ~~his~~ a successor is elected and qualified. At the biennial election following the occurrence of any vacancy in the commission, there ~~shall~~ must be elected one member to fill out the unexpired term for which ~~such~~ the vacancy exists."

Section 1980. Section 69-1-107, MCA, is amended to read:

"69-1-107. Chairman Presiding officer of commission. A ~~chairman~~ shall presiding officer must be selected by the commission from its membership at the first meeting of each year after a general election."

Section 1981. Section 69-1-108, MCA, is amended to read:

"69-1-108. Secretary of commission. (1) The commission shall, immediately after its members have qualified, appoint a secretary to serve ~~during~~ at the pleasure of the commission. The secretary ~~shall~~ must be a qualified elector of the state.

(2) The secretary ~~shall~~:

(a) shall keep a full and complete record of all proceedings of the commission;

(b) ~~be~~ is the custodian of its records and file and shall preserve at the office of the commission all books, maps, documents, and papers entrusted to ~~his~~ the secretary's care and ~~be~~ is responsible to the commission for the ~~same~~ books, maps, documents, and papers; and

(c) shall perform ~~such~~ other duties ~~as that~~ the commission may prescribe."

Section 1982. Section 69-1-111, MCA, is amended to read:

"69-1-111. Reimbursement for expenses. The commission, secretary, and ~~such~~ clerks, experts, and persons ~~as that~~ may be employed ~~shall be~~ are entitled to receive from the state their expenses while traveling on the business of the commission, as provided for in 2-18-501 through 2-18-503. ~~Such~~ The expenditure ~~shall~~ must be sworn to by the person who incurred the expenses and be approved by the ~~chairman~~ presiding officer of the commission or ~~his~~ the presiding officer's designee."

Section 1983. Section 69-1-113, MCA, is amended to read:

"69-1-113. Removal or suspension of commissioner. If ~~any~~ a commissioner fails to perform ~~his~~ the commissioner's duties as provided in this title, ~~he~~ the commissioner may be removed from office as provided by 45-7-401. Upon complaint made and good cause shown, the governor may suspend any commissioner, and if, in ~~his~~ the governor's judgment the exigencies of the case require, the governor may appoint temporarily some competent person to perform the duties of the suspended commissioner during the period of the suspension."

Section 1984. Section 69-1-222, MCA, is amended to read:

"69-1-222. Annual report. The consumer counsel shall prepare and submit a yearly report and ~~such~~ other interim reports ~~he~~ that the consumer counsel determines advisable concerning ~~his~~ the consumer counsel's activities during the year and may recommend appropriate remedial legislation to the committee."

Section 1985. Section 69-2-102, MCA, is amended to read:

"69-2-102. Role of commission when consumer counsel protests. In any case involving an application by a regulated entity to the commission for authority to increase its rates ~~which~~ that is actively contested by the consumer counsel, the commission shall leave representation of the interests of consumers to the consumer counsel when ~~he~~ the consumer counsel timely petitions to become a party to ~~such~~ the case. ~~Nothing contained herein prohibits~~ This section does not prohibit the commission or its staff from investigating and interrogating in any hearing to clarify the case or present an issue. Evidence may be introduced by the commission on an issue that has not been adequately addressed by any party if the commission first requests counsel of record to address ~~such~~ the issue and ~~such~~ counsel fails to introduce sufficient or adequate evidence."

Section 1986. Section 69-2-203, MCA, is amended to read:

"69-2-203. Investigatory powers of counsel. (1) The consumer counsel has all the investigatory

powers necessary to perform ~~his~~ the counsel's duties as provided ~~herein~~ in this section and all discovery powers sanctioned by the Montana Rules of Civil Procedure and the Montana Administrative Procedure Act. It is the specific intent of this section to provide the authority and availability of the process of discovery to the consumer counsel in administrative contested-case procedure. Violations of discovery procedure ~~shall~~ must be heard and administered by the district court. In the event of an appeal to district court for enforcement of discovery procedures, the time limits imposed by 69-3-302 and 69-3-303 ~~shall be~~ are suspended pending order of the district court.

(2) The consumer counsel may examine in any commission proceedings, under oath, any officer, director, manager, or employee of any regulated company and may inspect the business and corporate records of any regulated company in accordance with the law to aid in the exercise of ~~his~~ the consumer counsel's duties."

Section 1987. Section 69-2-204, MCA, is amended to read:

"69-2-204. Representation of consuming public. (1) The consumer counsel shall meet and confer with members or representatives of the consuming public at ~~such~~ times and places ~~as he~~ that the consumer counsel determines appropriate.

(2) The consumer counsel has ~~such~~ other powers necessary to fully represent the interests of the consuming public before the commission as may be granted and promulgated by the committee; in accordance with the provisions of the Montana Administrative Procedure Act."

Section 1988. Section 69-3-106, MCA, is amended to read:

"69-3-106. Supervision of management of public utilities. (1) The commission ~~shall have~~ has the authority to inquire into the management of the business of all public utilities, shall keep itself informed as to the manner and method in which the ~~same~~ business is conducted, and ~~shall have~~ has the right to obtain from any public utility all necessary information to enable the commission to perform its duties.

(2) The commission, any commissioner, or any person or persons employed by the commission for that purpose ~~shall~~, upon demand, ~~have~~ has the right to inspect the books, accounts, papers, records, and memoranda of any public utility and to examine, under oath, any officer, agent, or employee of ~~such~~ the public utility in relation to its business and affairs. Any person, other than one of ~~said~~ the commissioners, who ~~shall make such~~ makes the demand shall produce ~~his~~ the person's authority to make ~~such~~ the inspection.

(3) The commission may require by order or subpoena, to be served on any public utility in the same manner that a summons is served in a civil action in the district court, the production, within this state and at ~~such~~

a time and place ~~as that~~ it may designate, of any books, accounts, papers, or records kept by ~~such a~~ public utility in any office or place ~~without~~ outside of the state or verified copies in lieu ~~thereof of the~~ books, accounts, papers, or records, if the commission ~~shall so order orders, in order so that~~ that an examination ~~thereof of the~~ books, accounts, papers, or records may be made by the commission or under its direction. Any public utility failing or refusing to comply with any ~~such an~~ order or subpoena ~~shall be is~~ subject to the liability ~~named~~ provided for in 69-3-206."

Section 1989. Section 69-3-208, MCA, is amended to read:

"69-3-208. Effect of failure by utility to cooperate with commission. Any An officer, agent, or employee of any public utility ~~shall be is~~ subject to the penalty prescribed in 69-3-206 whenever the officer, agent, or employee ~~shall~~:

- (1) willfully ~~fail fails~~ or ~~refuse refuses~~ to fill out and return any blanks as required by this chapter;
- (2) willfully ~~fail fails~~ or ~~refuse refuses~~ to answer any questions ~~therein propounded~~ contained in blanks as provided in this chapter;
- (3) knowingly or willfully ~~give gives~~ a false answer to any ~~such~~ questions or ~~evade evades~~ the answer to ~~such the~~ questions, where the fact inquired of is within ~~his the~~ officer's, agent's, or employee's knowledge; or
- (4) upon proper demand, willfully ~~fail fails~~ or ~~refuse refuses~~ to exhibit to any commission or any commissioners or any person also authorized to examine the same, any book, paper, or account of ~~such the~~ public utility ~~which that~~ is in ~~his the~~ officer's, agent's, or employee's possession or under ~~his the~~ officer's, agent's, or employee's control."

Section 1990. Section 69-3-326, MCA, is amended to read:

"69-3-326. Conduct of hearing. At the hearing, both the complainant and the public utility ~~shall~~ have the right to appear by counsel or otherwise and to be fully heard. Either party ~~shall be is~~ entitled to an order by the commission for the appearance of witnesses or the production of books, papers, and documents containing material testimony. Witnesses appearing upon the order of the commission ~~shall be are~~ entitled to the same fees and mileage as witnesses in civil cases in the courts of the state, and the ~~same shall~~ fees and mileage must be paid out of the state treasury in the same manner as other claims against the state are paid. ~~No fees~~ Fees or mileage ~~shall may not~~ be allowed unless the ~~chairman~~ presiding officer of the commission ~~shall certify~~ certifies to the correctness of the claim."

Section 1991. Section 69-3-329, MCA, is amended to read:

"69-3-329. Immunity for witnesses. (1) ~~No~~ A person ~~shall~~ may not be excused from testifying or from producing books and papers in any proceedings based upon or growing out of any alleged violation of the provisions of this chapter on the ground of or for the reason that the testimony or evidence, documentary or otherwise, required of ~~him~~ the person may tend to incriminate or subject ~~him~~ the person to penalty or forfeiture. Except as provided in subsection (2), ~~no~~ a person having ~~so~~ testified ~~shall~~ may not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which ~~he~~ the person may have testified or produced any documentary evidence.

(2) ~~No~~ A person ~~so~~ testifying ~~shall be exempted~~ is not exempt from prosecution or punishment for perjury ~~in so testifying."~~

Section 1992. Section 69-3-703, MCA, is amended to read:

"69-3-703. Utility investment in or purchase of conservation -- approval by commission. (1) A utility may:

- (a) purchase conservation from a person or private firm; or
- (b) directly engage in conservation investments.

(2) The conservation purchases or investments provided for in subsection (1) are subject to approval by the commission.

(3) Cost-effective conservation measures approved by the commission may, at the customer's discretion, be installed by ~~either~~:

- (a) a person or a private firm;
- (b) the customer ~~himself~~; or
- (c) the utility."

Section 1993. Section 69-4-203, MCA, is amended to read:

"69-4-203. Scope of law. Section 69-4-201 ~~shall~~ does not apply to:

(1) interstate railroad electrification construction except where the wires of the railroad cross or are crossed by wires belonging to others; ~~and~~ or

(2) any electrical construction of any person using the construction for power wires ~~where~~ if:

(a) the construction and wires and the power plant furnishing electricity ~~therefor~~ to the wires are wholly owned by this person and the electricity conducted ~~thereby~~ is produced and used solely by this person on ~~his~~ the

person's own premises and not sold or delivered to any other person off ~~his~~ the person's premises;

(b) the wires or construction are not over or across any highway or public place or the property of others;
and

(c) these wires have a potential of less than 450 volts between any phases."

Section 1994. Section 69-4-353, MCA, is amended to read:

"69-4-353. Conversion of facilities on public property -- notice to landowners. (1) Upon completion of the conversion of the overhead electric or communication facilities on public lands and right-of-way to underground, the public utility shall file a verified statement of the costs of ~~such~~ the conversion with the governing body.

(2) The governing body shall mail to each landowner and purchaser of property under contract for deed a notice stating that:

(a) service from the underground facilities is available;

(b) the landowner has 60 days after the date of the mailing of ~~such~~ the notice to convert all overhead electric or communication facilities providing service to any structure or improvement located on ~~his~~ the landowner's lot or parcel to underground service facilities; and

(c) after the 60-day period following the date of the mailing of the notice, the governing body will order the public utility to disconnect and remove all overhead electric and communication facilities providing service to any structure or improvement within the area."

Section 1995. Section 69-4-355, MCA, is amended to read:

"69-4-355. Procedure upon failure to effect conversion on private property. If the owner of any structure or improvement served from the overhead electric or communication service facilities within an underground assessment district does not grant the utility a permit or easement referred to in 69-4-354 or if ~~such~~ an owner fails to convert to underground service facilities within 60 days after the mailing to ~~him~~ the owner of the notice provided by 69-4-353, the governing body shall order the public utility to complete the conversion and to disconnect and remove all overhead facilities, including service facilities, providing service to ~~such~~ the structure or improvement."

Section 1996. Section 69-4-1103, MCA, is amended to read:

"69-4-1103. Liability for bypass or tampering. (1) A person who bypasses or tampers, either for ~~his~~

the person's own benefit or the benefit of another, is liable to the affected utility as provided in 69-4-1104 for services actually provided by the utility. Collection under subsection (2) precludes collection under this subsection.

(2) A person who receives utility services, knowing that the measurement of ~~such~~ the services is being affected by bypassing or tampering, is liable to the affected utility as provided in 69-4-1104 for services actually provided by the utility. Collection under subsection (1) precludes collection under this subsection."

Section 1997. Section 69-11-101, MCA, is amended to read:

"69-11-101. Definitions. (1) ~~Everyone~~ A person who offers to the public to carry persons, property, or messages, excepting only telegraphic or telephonic messages, is a "common carrier" of whatever ~~he thus~~ the person offers to carry.

(2) The "contract of carriage" is a contract for the conveyance of property, persons, or messages from one place to another."

Section 1998. Section 69-11-103, MCA, is amended to read:

"69-11-103. Time schedules to be followed. A common carrier ~~must~~ shall start at ~~such~~ the time and place ~~as he~~ that the carrier announces to the public unless detained by accident or the elements or in order to connect with carriers on other lines of travel."

Section 1999. Section 69-11-104, MCA, is amended to read:

"69-11-104. Right to compensation. A common carrier is entitled to a reasonable compensation, and no more, which ~~he~~ the carrier may require to be paid in advance. If payment ~~thereof~~ is refused, ~~he~~ the carrier may refuse to carry."

Section 2000. Section 69-11-105, MCA, is amended to read:

"69-11-105. Effect of agreements on rights and obligations of carrier and other parties. (1) The obligations of a common carrier cannot be limited by general notice on ~~his~~ the carrier's part, but may be limited by special contract.

(2) A common carrier cannot be exonerated, by any agreement made in anticipation ~~thereof~~ of liability, from liability for the gross negligence, fraud, or willful wrong of ~~himself~~ the carrier or ~~his~~ the carrier's servants.

(3) A passenger, consignor, or consignee, by accepting a ticket, bill of lading, or written contract for

carriage, with a knowledge of its terms, assents to the rate of hire and the time, place, and manner of delivery ~~therein~~ stated in the document, but ~~his~~ the passenger's, consignor's, or consignee's assent to any other modification of the carrier's rights or obligations contained in ~~such the~~ instrument can be manifested only by ~~his~~ the passenger's, consignor's, or consignee's signature to the ~~same~~ instrument, except as otherwise provided in the Uniform Commercial Code."

Section 2001. Section 69-11-106, MCA, is amended to read:

"69-11-106. Gratuitous carriers. (1) Carriers without reward are subject to the same rules as employees without reward, except as is otherwise provided by this chapter.

(2) A carrier without reward who has begun to perform ~~his~~ the carrier's undertaking ~~must shall~~ complete it in ~~like the same~~ manner as if ~~he~~ the carrier had received a reward unless ~~he~~ the carrier restores the person or thing carried to as favorable a position as before ~~he commenced his~~ the carriage was commenced.

(3) A carrier of persons without reward ~~must shall~~ use ordinary care and diligence for their safe carriage. A carrier of property without reward ~~must shall~~ use at least slight care and diligence."

Section 2002. Section 69-11-107, MCA, is amended to read:

"69-11-107. General duty of care of carriers for reward. (1) A carrier of persons for reward ~~must shall~~ use the utmost care and diligence for their safe carriage, ~~must shall~~ provide everything necessary for that purpose, and ~~must shall~~ exercise to that end a reasonable degree of skill.

(2) A carrier of property for reward ~~must shall~~ use at least ordinary care and diligence in the performance of all ~~his~~ the carrier's duties.

(3) A carrier of messages for reward ~~must shall~~ use great care and diligence in the transmission and delivery of messages."

Section 2003. Section 69-11-108, MCA, is amended to read:

"69-11-108. Prohibition on confiscation of fuel. (1) It ~~shall be~~ is unlawful for any person, railway company, or common carrier to confiscate or take for ~~his~~ the person's or its own use or for the use of another any coal or other fuel in transit except when ~~such the~~ coal or other fuel is necessary for the preservation of life or property or is required for the moving of trains of ~~such the~~ common carrier. In a suit under this section to recover the penalty and damages, the burden of proof ~~shall be~~ is on the person, railroad company, or common carrier confiscating the coal or other fuel to show that ~~such the~~ coal or other fuel was necessary for the preservation of

life or property or was required for the moving of trains of ~~such the~~ common carrier.

(2) Any person, railroad company, or common carrier who ~~shall confiscate~~ confiscates or ~~take~~ takes any coal or fuel, either for ~~his the person's~~ or its own use or for the use of another, ~~shall be is~~ liable to the consignee or owner of ~~such the~~ coal or fuel in double the value of ~~such the~~ coal or fuel at the point of shipment and ~~such~~ other damages ~~as that~~ may be caused by the confiscation of ~~such the~~ coal or fuel. ~~Such The~~ liability ~~shall be is~~ exclusive of and in addition to any and all charges for the transportation of ~~such the~~ coal or fuel, which charges for the transportation ~~shall must~~ be paid by the party confiscating ~~such the~~ coal or fuel. In every case ~~wherein in~~ which coal or other fuel is taken or used by any ~~such~~ person, railroad company, or common carrier, it ~~shall be is~~ the duty of ~~such the~~ person, railroad company, or common carrier to notify the consignee by telegram or letter, immediately, of the taking of ~~such the~~ coal or fuel and to pay and compensate ~~him therefor~~ the consignee within 30 days from the time of the taking.

(3) Any person, corporation, or common carrier who ~~shall violate~~ violates the provisions of this section ~~shall be is~~ guilty of a misdemeanor and upon conviction ~~thereof~~ shall be fined not less than \$50 or more than \$200."

Section 2004. Section 69-11-109, MCA, is amended to read:

"69-11-109. Provision for transportation of passengers and property for free or reduced rates. (1)

~~(a) No provisions~~ A provision of the laws of this state may not prevent any person, association, company, or corporation engaged as a common carrier of persons or property in this state from carrying, storing, or handling property at free or at reduced rates;

(i) property for the United States, for state or municipal governments, or for charitable institutions;

(ii) property ~~which that~~ is being transported to or from fairs and expositions for exhibit ~~thereat~~ at fairs or expositions; or

(iii) cars used by the government of the United States or the state for the transportation of fish and ~~from carrying free or at reduced rates~~ agents and employees employed in ~~such that~~ transportation;_

~~(b) and nothing therein contained prevents such~~ The laws of this state may not prevent any person, association, company, or corporation from issuing free transportation or selling tickets at reduced rates to the classes of persons listed in 69-11-208.

(2) When free transportation or a ticket at a reduced rate is issued to any officer or any president or member of the faculty of any educational institution referred to in 69-11-208(1)(q), it ~~shall may only~~ be issued only upon the application of the secretary of state and the transportation or ticket ~~shall must~~ be delivered to the

secretary of state for delivery to the person or persons applying ~~therefor~~ for the free or reduced ticket. The secretary of state shall keep record of all transportation and tickets at reduced rates ~~so~~ received and delivered by ~~him~~ the secretary of state. The state officer and the president and faculty of the state educational institutions, when traveling upon any free transportation, may not charge any mileage against the state, or if traveling upon a ticket sold at reduced fare, they may not charge mileage in excess of the cost of the ticket.

(3) The carrying free or at reduced rates of property or persons in any of the classes ~~above~~ specified ~~shall in this section must be held~~ to be a reasonable classification by common carriers for ~~such~~ those purposes and not to be unjust discrimination. The carriage and transportation by any common carrier at free or reduced rates in any of the cases ~~above~~ specified in this section is not a violation of any of the provisions of the laws of Montana and does not subject the common carrier to any penalty ~~therefor~~."

Section 2005. Section 69-11-121, MCA, is amended to read:

"69-11-121. Detriment caused by carrier. (1) The detriment caused by the breach of a carrier's obligation to accept freight, messages, or passengers is ~~deemed~~ considered to be the difference between the amount ~~which he~~ that the carrier had a right to charge for the carriage and the amount ~~which~~ that it would be necessary to pay for the same service when it ought to be performed.

(2) The detriment caused by the breach of a carrier's obligation to deliver freight ~~where he~~ when the carrier has not converted ~~it~~ the freight to ~~his~~ the carrier's own use is ~~deemed~~ considered to be the value ~~thereof~~ of the freight at the place and on the day at which it should have been delivered, deducting the freightage to which ~~he~~ the carrier would have been entitled if ~~he~~ the carrier had completed the delivery.

(3) The detriment caused by a carrier's delay in the delivery of freight is ~~deemed~~ considered to be the depreciation in the intrinsic value of the freight during the delay and also the depreciation, if any, in the market value ~~thereof~~ of the freight, ~~otherwise~~ other than by reason of a depreciation in ~~its~~ the freight's intrinsic value, at the place where it ought to have been delivered and between the day at which it ought to have been delivered and the day of its actual delivery.

(4) The damages prescribed by this section are exclusive of exemplary damages and interest except ~~where~~ when those are expressly mentioned. Notwithstanding the provisions of this section, ~~no~~ a person can ~~may~~ not recover a greater amount in damages for the breach of an obligation than ~~he~~ the person could have gained by the full performance ~~thereof~~ of the obligation on both sides, except as provided in 27-1-303."

Section 2006. Section 69-11-201, MCA, is amended to read:

"69-11-201. Requirements for carriers of persons for reward. (1) A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put and is not excused for default in this respect by any degree of care.

(2) A carrier of persons for reward ~~must~~ may not overcrowd or overload ~~his~~ the carrier's vehicle.

(3) A carrier of persons for reward ~~must~~ shall give to passengers all ~~such~~ accommodations ~~as~~ that are usual and reasonable, ~~must~~ shall treat them with civility, and shall give them a reasonable degree of attention.

(4) A carrier of persons for reward ~~must~~ shall travel at a reasonable rate of speed, without any unreasonable delay or deviation from ~~his~~ the carrier's proper route."

Section 2007. Section 69-11-203, MCA, is amended to read:

"69-11-203. Transport of passengers. (1) A common carrier of persons ~~must~~ shall provide a sufficient number of vehicles to accommodate all the passengers who can be reasonably expected to require carriage at any one time.

(2) A common carrier of persons ~~must~~ shall provide every passenger with a seat. ~~He must~~ The carrier may not overload ~~his~~ the carrier's vehicle by receiving and carrying more passengers than its rated capacity allows.

(3) A common carrier of persons may make rules for the conduct of ~~his~~ the carrier's business and may require passengers to conform to ~~them~~ the rules if they are lawful, public, uniform in their application, and reasonable."

Section 2008. Section 69-11-204, MCA, is amended to read:

"69-11-204. Carriage of baggage by carriers of persons. (1) Baggage may consist of any articles intended for the use of a passenger while traveling or for ~~his~~ the passenger's personal equipment.

(2) A common carrier of persons, unless ~~his~~ the carrier's vehicle is fitted for the reception of persons exclusively, ~~must~~ shall receive and carry a reasonable amount of baggage for each passenger without charge, except for an excess of weight over 100 pounds ~~to a~~ per passenger; ~~but~~ However, if ~~such~~ the carrier is a proprietor of a stage line, ~~he~~ the carrier may not receive and carry for each passenger by ~~such~~ the stage line, without charge, more than 60 pounds of baggage.

(3) The liability of a carrier for baggage received by ~~him~~ the carrier with a passenger is the same as that of a common carrier of property.

(4) A common carrier ~~must~~ shall deliver ~~every~~ a passenger's baggage, whether within the prescribed

weight or not, immediately upon the arrival of the passenger at ~~his~~ the passenger's destination and, unless the vehicle would be overcrowded or overloaded ~~thereby, must~~ shall carry it the baggage on the same vehicle ~~by which he carries~~ carrying the passenger to whom it ~~belonged;~~ belongs. ~~except~~ However, ~~that where~~ when baggage is transported by rail, it must be checked and carried in a regular baggage car, and whenever passengers neglect or refuse to have their baggage ~~so~~ checked and transported, it is carried at their risk."

Section 2009. Section 69-11-206, MCA, is amended to read:

"69-11-206. Lien for payment of fare. A common carrier has a lien upon the baggage of a passenger for the payment of ~~such~~ the fare ~~as he~~ that the carrier is entitled to from ~~him~~ the passenger. This lien is ~~regulated~~ governed by the law on liens."

Section 2010. Section 69-11-208, MCA, is amended to read:

"69-11-208. Classes of persons who may receive free transportation. (1) The persons to whom free tickets, free passes, free transportation, and discriminating reduced rates may be issued, furnished, or given are the following:

- (a) the officers, agents, employees, attorneys, physicians, and surgeons of ~~such~~ the common carriers of passengers and the officers and employees of other common carriers upon the exchange of passes or tickets;
- (b) the families of the persons included in subsection (1)(a);
- (c) the general officers of any ~~such~~ common carriers;
- (d) employees of sleeping car and express car companies and linemen of telegraph and telephone companies, railway mail service employees, post-office inspectors, customs inspectors, ~~and~~ immigration inspectors, ~~newsboys and news girls~~ news salespersons on trains, and baggage agents;
- (e) persons injured in wrecks and physicians and nurses attending ~~such~~ the persons;
- (f) passengers traveling with the object of providing relief in cases of railroad accident, general epidemic, pestilence, or other ~~calamitous visitation~~ calamity;
- (g) necessary caretakers of livestock, vegetables, and fruit, including return transportation to forwarding stations;
- (h) the officers, agents, or regularly accredited representatives of labor organizations composed wholly of employees of railway companies;
- (i) inmates of homes for the reform or rescue of the disadvantaged, including those about to enter and those returning home after discharge, and boards of managers, including officers and superintendents, of ~~such~~

the homes;

(j) superannuated and pensioned employees and members of their families and surviving spouses of ~~such~~ the members;

(k) employees crippled and disabled in the service of the common carrier of passengers;

(l) ~~police~~ police officers and firefighters of any city, wearing the insignia of their office, within the limits of ~~such~~ the city;

(m) ministers of religion, newspaper employees in exchange for advertising, traveling secretaries of ~~Young Men's Christian Associations and Young Women's Christian Associations~~ a YMCA or YWCA, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work;

(n) indigent, destitute, and homeless persons; while being transported by charitable societies or hospitals; and necessary agents and employees in ~~such~~ the transportation;

(o) school children; going to and from public or parochial schools;

(p) military personnel going to or coming from institutions for their keeping;

(q) executive, judicial, or legislative officers of this state, including the members of the faculty of the different educational institutions of this state;

(r) the furloughed employees of common carriers authorized by 69-11-207 to issue free transportation and members of their families;

(s) persons who have become disabled or infirm in the service of a common carrier or members of families of persons who have become disabled or infirm in the service of any ~~such~~ common carrier;

(t) families of persons killed and surviving spouses who have not remarried and minor children during minority of persons who died while in the service of any ~~such~~ common carrier;

(u) witnesses attending any legal investigation in which ~~such~~ the carrier is interested;

(v) the remains of persons who died while in the employment of a common carrier; and

(w) ~~ex-employees~~ former employees traveling for the purpose of entering the service of any ~~such~~ common carrier.

(2) The provisions of ~~this section and 69-11-207 shall~~ and this section may not be construed to prohibit the interchange of passes for the persons to whom free tickets, free passes, or free transportation may be furnished or given under the provisions of this section. ~~Nothing in this~~ The provisions of ~~section or 69-11-207 shall or this section may not~~ be construed to invalidate any existing contract between a street railway company and a city ~~where~~ when a condition of a franchise grant requires the furnishing of transportation to ~~police~~

police officers, firefighters, and officers while in the performance of official duties."

Section 2011. Section 69-11-209, MCA, is amended to read:

"69-11-209. Ejection of passengers. (1) A passenger who refuses to pay ~~his~~ the fare or conform to any lawful regulation of the carrier may be ejected from the vehicle by the carrier. This must be done with as little violence as possible and at any usual stopping place or near some dwelling house.

(2) After having ejected a passenger, a carrier has no right to require the payment of any part of ~~his~~ the passenger's fare."

Section 2012. Section 69-11-301, MCA, is amended to read:

"69-11-301. Requirements for carriers of messages for reward. (1) A carrier of messages for reward, other than by telegraph or telephone, ~~must~~ shall deliver them at the place to which they are addressed or to the person for whom they are intended.

(2) ~~Such~~ the carrier by telegraph or telephone ~~must~~ shall deliver ~~them~~ the messages at ~~such~~ the place and to ~~such~~ the person provided the place of address or the person for whom they are intended is within a distance of 2 miles from the main office of the carrier in the city or town to which the messages are transmitted. The carrier is not required, in making the delivery, to pay on ~~his~~ the carrier's route toll or ferriage, but for any distance beyond 1 mile from ~~such~~ the office, compensation may be charged for a messenger employed by the carrier."

Section 2013. Section 69-11-302, MCA, is amended to read:

"69-11-302. Order of transmission of messages. (1) A carrier of messages by telegraph or telephone ~~must~~ shall, if it is practicable, transmit every ~~such~~ message immediately upon its receipt. If this is not practicable and several messages accumulate ~~upon his hands~~, ~~he~~ must the carrier shall transmit them in the following order:

- (a) messages from public agents of the United States or of this state on public business;
- (b) messages giving information relating to the sickness or death of any person;
- (c) messages intended in good faith for immediate publication in newspapers and not for any secret use;
- (d) other messages in the order in which they were received.

(2) A common carrier of messages, otherwise than by telegraph or telephone, ~~must~~ shall transmit them in the order in which ~~he~~ the carrier receives them, except messages from agents of the United States or of this state on public business, to which ~~he~~ must the carrier shall always give priority."

Section 2014. Section 69-11-303, MCA, is amended to read:

"69-11-303. Damages for refused or delayed message. ~~Every~~ A person whose message is refused or postponed contrary to the provisions of this chapter is entitled to recover from the carrier ~~his~~ the person's actual damages and an additional \$50 ~~in addition thereto.~~"

Section 2015. Section 69-11-304, MCA, is amended to read:

"69-11-304. Loss of valuable letters. A common carrier is not responsible for loss or miscarriage of a letter or package having the form of a letter containing money or notes, bills of exchange, or other papers of value unless ~~he~~ the carrier is informed at the time of its receipt of the value of its contents."

Section 2016. Section 69-11-402, MCA, is amended to read:

"69-11-402. Relationship of carrier to consignor and consignee. (1) A carrier ~~must~~ shall comply with the directions of the consignor or consignee to the same extent as an employee is bound to comply with those of ~~his~~ the employee's employer.

(2) When the directions of a consignor and consignee are conflicting, the carrier ~~must~~ shall comply with those of the consignor in respect to all matters except the delivery of the freight, as to which ~~he~~ the carrier ~~must~~ shall comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with ~~his~~ the consignor's own."

Section 2017. Section 69-11-403, MCA, is amended to read:

"69-11-403. Acceptance of freight. A common carrier ~~must~~ shall, if able to do so, accept and carry whatever is offered to ~~him~~ the carrier, at a reasonable time and place, of a kind that ~~he~~ the carrier undertakes or is accustomed to carry."

Section 2018. Section 69-11-404, MCA, is amended to read:

"69-11-404. Delivery of freight. (1) A carrier of property ~~must~~ shall deliver it the property to the consignee at the place to which it is addressed and in the manner usual at that place.

(2) If there is no usage to the contrary at the place of delivery, freight must be delivered as follows:

(a) If carried on a railway owned or managed by the carrier, it may be delivered at the station nearest to the place to which it is addressed.

(b) If carried by water, it may be delivered at a wharf or other suitable landing, at or within a reasonable

distance from the place of address.

(c) In other cases, it must be delivered to the consignee or ~~his~~ the consignee's agent, personally, if either can be found with reasonable diligence.

(3) If, for any reason, a carrier does not deliver freight to the consignee or ~~his~~ the consignee's agent personally, ~~he must~~ the carrier shall give notice to the consignee of its arrival and keep the ~~same~~ freight in safety, upon ~~his~~ the carrier's responsibility as a ~~warehouseman~~ warehouse agent, until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee ~~be is~~ is unknown to the carrier, ~~he~~ the carrier may give the notice by letter ~~dropped in~~ mailed at the nearest post office."

Section 2019. Section 69-11-405, MCA, is amended to read:

"69-11-405. Procedure to terminate carrier's liability. If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled ~~his~~ the carrier's obligation to deliver or duly offered to fulfill the ~~same~~ obligation, the carrier may ~~exonerate himself~~ be exonerated from further liability by placing the freight in a suitable warehouse on storage, on account of the consignee, and giving notice ~~thereof~~ of that action to ~~him~~ the consignee."

Section 2020. Section 69-11-406, MCA, is amended to read:

"69-11-406. Payment of freightage. (1) A carrier may require ~~his~~ freightage to be paid upon ~~his~~ receiving receipt of the freight, but if ~~he~~ the carrier does not demand it then, ~~he~~ the carrier ~~cannot~~ may not require the payment until ~~he~~ the carrier is ready to deliver the freight to the consignee.

(2) The consignor of freight is presumed to be liable for the freightage, but if the contract between ~~him~~ the consignor and the carrier provides that the consignee shall pay it the freightage and the carrier allows the consignee to take the freight, ~~he~~ the carrier ~~may not~~ cannot afterwards recover the freightage from the consignor.

(3) The consignee of freight is liable for the freightage if ~~he~~ the consignee accepts the freight with notice of the intention of the consignor that ~~he~~ the consignee should pay it."

Section 2021. Section 69-11-408, MCA, is amended to read:

"69-11-408. Apportionment of freightage by contract. (1) If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier, the carrier is entitled to payment, according to the apportionment, for ~~so~~ as much as ~~he~~ the carrier delivers.

(2) If a part of the freight is accepted by a consignee without a specific objection that the rest is not

delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract."

Section 2022. Section 69-11-409, MCA, is amended to read:

"69-11-409. Adjustment of freightage for change in time or place of delivery. (1) If a consignee voluntarily receives freight at a place short of the ~~one place~~ appointed for delivery, the carrier is entitled to a just proportion of the freightage according to distance. If the carrier, ~~being is~~ ready and willing, ~~and~~ offers to complete the transit, ~~he the carrier~~ is entitled to the full freightage. If ~~he the carrier~~ does not ~~thus~~ offer completion and the consignee ~~receive~~ receives the freight only from necessity, the carrier is not entitled to any freightage.

(2) If freight is carried further or more expeditiously than was agreed upon by the parties, the carrier is not entitled to additional compensation and cannot refuse to deliver it the freight, on demand of the consignee, at the place and time of its arrival."

Section 2023. Section 69-11-411, MCA, is amended to read:

"69-11-411. Sale of perishable property for freightage. If, from any cause other than want of ordinary care and diligence on ~~his the carrier's~~ part, a common carrier is unable to deliver perishable property transported by ~~him the carrier~~ and collect ~~his the carrier's~~ charges ~~thereon~~, ~~he the carrier~~ may cause the property to be sold in open market to satisfy ~~his the carrier's~~ lien for freightage."

Section 2024. Section 69-11-421, MCA, is amended to read:

"69-11-421. Liability of inland carriers for loss. (1) Any common carrier, railroad, or transportation company subject to the provisions of 69-11-421 through 69-11-427, receiving property for transportation from a point in Montana to any other point in Montana, shall issue a receipt or bill of lading ~~therefor~~ for the property and ~~shall be is~~ liable to the lawful holder ~~thereof~~ of the bill of lading for any loss, damage, or injury to ~~such the~~ property caused by it or by any common carrier, railroad, or transportation company to which ~~such the~~ property may be delivered or over whose line or lines ~~such the~~ property may pass within the state when transported on a through bill of lading. ~~No A~~ contract, receipt, rule, or other limitation of any character ~~whatsoever shall~~ may not exempt ~~such the~~ common carrier, railroad, or transportation company from the liability ~~hereby~~ imposed by this section.

(2) Except as provided in 69-11-422, ~~any a~~ common carrier, railroad, or transportation company receiving property for transportation from a point in Montana to a point in Montana or any common carrier, railroad, or transportation company delivering property so received and transported is liable to the lawful holder

of ~~said the~~ receipt or bill of lading or to any party entitled to recover ~~thereon on the receipt or bill of lading~~, whether ~~such the~~ receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to ~~such the~~ property caused by it or by any common carrier, railroad, or transportation company to which ~~such the~~ property may be delivered or over whose line or lines ~~such the~~ property may pass within the state when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any ~~such~~ receipt or bill of lading or in any contract or rule or in any tariff filed with the public service commission. Any ~~such~~ limitation, without respect to the manner or form in which it is sought to be made, is unlawful and void, except:

- (a) an inherent defect, vice, or weakness or a spontaneous action of the property itself;
- (b) the act of a public enemy of the United States or of this state;
- (c) the act of the law;
- (d) an irresistible superhuman cause;
- (e) the act or default of the shipper or owner; or
- (f) for natural shrinkage.

(3) Nothing in 69-11-421 through 69-11-426 deprives any holder of ~~such a~~ receipt or bill of lading of any remedy or right of action.

(4) The liability imposed by this section also applies in the case of property reconsigned or diverted in accordance with the applicable tariffs filed as provided in this part.

(5) A common carrier is liable, even in the cases excepted by subsection (2), if ~~his~~ the carrier's ordinary negligence exposes the property to the cause of the loss."

Section 2025. Section 69-11-424, MCA, is amended to read:

"69-11-424. Examination of shipment. (1) ~~The consignee within~~ Within 15 days after delivery, ~~must~~ the consignee shall ask for an inspection of any damaged shipment, and the carrier ~~must~~ shall make an inspection within 5 working days ~~thereafter~~ after being asked.

(2) The consignee ~~shall have~~ must be given the opportunity to examine the condition of the package in which the goods are shipped prior to signing the delivery receipt.

(3) The consignee may detain the driver at the consignee's expense, not to exceed a minimum charge to be fixed by the commission, while ~~he~~ the consignee examines the shipment for possible concealed damage. During ~~such the~~ examination, the freight bill may still be noted as to the extent of the damage or loss, if any. If examination discloses damage, the examination charge may be included in the consignee's claim for damage

in proportion to the amount of the claim."

Section 2026. Section 69-11-428, MCA, is amended to read:

"69-11-428. Liability for delay. A common carrier is liable for delay only when it is caused by ~~his~~ the carrier's want of ordinary care and diligence."

Section 2027. Section 69-11-429, MCA, is amended to read:

"69-11-429. Liability for valuable cargo. ~~(1) A common carrier~~ Unless a common carrier has knowledge of the nature of the freight upon its receipt by mark upon the package or otherwise, a common carrier is not liable for more than \$50 upon the loss or injury of any one package of:

(a) ~~gold, silver, platina, or precious stones or of imitations thereof~~ of those items in a manufactured or unmanufactured state;

(b) ~~of~~ timepieces of any description;

(c) ~~of~~ negotiable paper or other valuable writings;

(d) ~~of~~ pictures, glass, or chinaware;

(e) ~~of~~ statuary, silk, or laces; or

(f) ~~of plated ware of any kind is not liable for more than \$50 upon the loss or injury of any one package of such articles unless he has notice upon his receipt thereof by mark upon the package or otherwise of the nature of the freight;.~~

(2) ~~nor is such~~ A common carrier is not liable upon with regard to any package carried for more than the value of the articles named in the receipt or the bill of lading."

Section 2028. Section 69-12-203, MCA, is amended to read:

"69-12-203. Supervisor of motor carriers. (1) The commission shall appoint a supervisor of motor carriers who ~~shall have~~ has general responsibility to the commission for enforcement of the provisions of this chapter. The supervisor ~~shall~~ must be either an attorney admitted to practice law in Montana or a person qualified by at least 5 years of suitable experience and training in appropriate phases of the motor carrier industry. ~~He~~ the supervisor shall serve at the pleasure of the commission and at an annual salary to be set by the commission.

(2) The supervisor shall direct all enforcement activities ~~in~~ on behalf of the commission, including the investigation and prosecution of violations of this chapter, ~~as amended,~~ or the rules or orders prescribed ~~thereunder~~ under this chapter by the commission.

(3) The supervisor and whatever field inspectors may be employed by the commission to assist ~~him~~ shall be deemed the supervisor are considered peace officers for the purpose of making arrests in connection with violations of this chapter, ~~as amended~~, and issuing summonses, accepting bail, and serving warrants of arrest. The supervisor and field inspectors are empowered to make reasonable inspections of cargoes carried by commercial motor vehicles and require production of manifests, bills of lading, leases, and other documents relating to the cargo, driver, routing, or ownership of ~~such~~ the vehicles. The scope of the inspections is limited to the enforcement of the provisions of Title 69, chapter 12."

Section 2029. Section 69-12-401, MCA, is amended to read:

"69-12-401. Compliance with state law. It ~~shall be~~ is unlawful for any corporation or person; ~~its or his~~ the corporation's or person's officers, agents, employees, or servants; to operate any motor vehicle for the transportation of persons ~~and/or~~ or property for hire on any public highway in this state except in accordance with the provisions of this chapter."

Section 2030. Section 69-14-113, MCA, is amended to read:

"69-14-113. Attendance and examination of witnesses. (1) ~~The commission in~~ In making any examination or investigation provided for in this chapter, ~~the commission~~ may issue subpoenas for the attendance of witnesses as prescribed by ~~such rules as that it may prescribe~~ adopt. Witness fees ~~shall~~ must be the same as those provided for witnesses in civil actions before the district court, as provided in 26-2-501. However, ~~no~~ a witness furnished with free transportation may not receive mileage for the distance ~~he may have~~ the witness traveled on ~~such~~ the free transportation. ~~No~~ A person may not be excused from attending or testifying or producing any books, papers, documents, or any other thing ~~or things~~ before any court, or magistrate, or commissioner, or board upon any investigation, proceeding, or trial under the provisions of this chapter or for any violation of any of ~~them~~ the provisions of this chapter upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of ~~him~~ the person may tend to convict ~~him~~ the person of a crime or subject ~~him~~ the person to a penalty or forfeiture. ~~No~~ A person ~~shall~~ may not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which ~~he~~ the person may ~~so~~ testify or produce evidence, and ~~no~~ testimony or evidence ~~so~~ given or produced ~~shall~~ may not be received against ~~him~~ the person upon any civil or criminal proceeding, action, or investigation.

(2) (a) The process issued by the commission ~~shall~~ must be under seal and extend to all parts of the state. The commission ~~shall have power to~~ may issue process in ~~like~~ the same manner as courts of record. ~~Such~~

The process may be served by any person authorized to serve process of courts of record or by any person appointed by the commission for ~~such~~ that purpose.

(b) ~~In the event~~ If the process issued by the commission is a subpoena for the attendance of a witness and ~~he~~ the witness fails, neglects, or refuses to obey the ~~same~~ subpoena, the commission ~~is hereby authorized to~~ may file a petition with any district court in the state, setting ~~up~~ forth the facts and the necessity of having the witness appear in the trial. The court shall ~~thereupon~~ summarily direct that a subpoena be issued out of the court requiring the attendance of any person as a witness before the court. The commission may ~~thereupon~~ examine ~~such~~ the witness before the court, under oath, respecting any inquiry or investigation being made by the commission pursuant to the provisions of this chapter. The court shall likewise, when any petition is filed stating the necessity ~~therefor~~ for production, order the production by any person or corporation, for examination in the court, of any books, papers, records, or files necessary or pertinent to any inquiry or investigation then being made by the commission."

Section 2031. Section 69-14-131, MCA, is amended to read:

"69-14-131. Enforcement duties of commission. The commission shall see that the provisions of this chapter and all laws of this state concerning railroads are enforced and obeyed and that violations ~~thereof~~ of those laws are promptly prosecuted and penalties due the state ~~therefor~~ are recovered and collected. The commission shall report all ~~such~~ violations, with the facts in its possession, to the attorney general or other officer charged with the enforcement of the laws and request ~~him~~ the officer to institute the proper proceedings. All suits between the state and any railroad ~~shall~~ must have precedence in all courts over all civil causes, except for criminal business and original proceedings in the supreme court ~~excepted~~."

Section 2032. Section 69-14-132, MCA, is amended to read:

"69-14-132. Legal assistance for commission. The attorney general is the attorney of the commission, and the county attorney of ~~every~~ each county in the state shall, on the request and at the direction of the attorney general, assist in all cases, proceedings, and investigations undertaken by the commission under this chapter in ~~his~~ the county attorney's own county. However, the commission may employ special counsel, with the approval of the attorney general, to assist in any case, matter, proceeding, or investigation instituted under this chapter. The attorney general, upon direction of the commission, and the county attorney of each county in this state, upon direction of the attorney general, shall institute and prosecute and appear and defend any action or proceeding arising under this chapter. All suits and proceedings filed in any court of this state under this chapter ~~shall~~ must

have precedence over all other business in the court except criminal business and original proceedings in the supreme court."

Section 2033. Section 69-14-134, MCA, is amended to read:

"69-14-134. Court enforcement of commission actions. (1) The district court has jurisdiction to enforce, by proper decree, injunction, or order, the rates, classifications, rulings, orders, and regulations made or established by the commission under the provisions of this chapter. The proceeding ~~therefor shall~~ must be by equitable action in the name of the state and ~~shall~~ must be instituted by the attorney general or county attorney; whenever advised by the commission that any railroad, railway, or common carrier is violating or refusing to comply with any ~~such~~ rule, order, rate, classification, or regulation made by the commission and applicable to ~~such the~~ railroad, railway, or common carrier. ~~Such The~~ proceedings ~~shall~~ must have precedence over all other business in ~~such the~~ courts except criminal business.

(2) In any action, the burden of proof ~~shall rest~~ rests upon the defendant, who ~~must~~ shall show by clear and satisfactory evidence that the rule, order, regulation, rate, or classification involved is unreasonable and unjust as to ~~it the~~ defendant. If, in ~~such the~~ action, it is the decision of the court that the rule, regulation, order, rate, or classification is not unreasonable or unjust and that in refusing compliance ~~therewith~~ the railroad, railway, or common carrier is ~~thereby~~ failing or omitting the performance of any duty, debt, or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to and compliance with the rule, regulation, order, rate, or classification by the defendant and its officers, agents, servants, and employees and may grant ~~such other relief as that~~ is just and proper. Any violation of ~~such the~~ decree renders the defendant and any officer, agent, servant, or employee of the defendant who is in any manner instrumental in ~~such the~~ violation guilty of contempt, punishable by a fine not exceeding \$1,000 for each offense or by imprisonment of the person guilty of contempt until ~~he the person~~ sufficiently purges ~~himself therefrom the~~ contempt. ~~Such The~~ decree remains in effect until the rule, regulation, order, rate, or classification ~~shall be~~ is modified or vacated by the commission. ~~Nothing contained herein shall~~ This section may not be construed to deprive either party to ~~such the~~ proceedings of the right to trial by jury as provided by the seventh amendment to the constitution of the United States or as provided by the constitution of this state.

(3) An appeal ~~shall be~~ may be made to the supreme court from the decree in ~~such the~~ action, and the cause ~~shall~~ must have precedence over all other civil actions of a different nature pending in the supreme court except original proceedings in the supreme court."

Section 2034. Section 69-14-207, MCA, is amended to read:

"69-14-207. Expulsion of passengers refusing to pay fare. If ~~any a~~ passenger refuses to pay ~~his the~~ passenger's fare or to exhibit or surrender ~~his the passenger's~~ ticket when reasonably requested to do so, the conductor and employees of the corporation may put ~~him the passenger~~ and ~~his the passenger's~~ baggage out of the cars; without using ~~no~~ unnecessary force; at any usual stopping place or near any dwelling house; on stopping the train."

Section 2035. Section 69-14-208, MCA, is amended to read:

"69-14-208. Officers and employees of corporation to wear badges. (1) ~~Every A~~ conductor, baggage master, engineer, ~~brakeman~~ brake tender, or other employee of any railroad corporation employed on a passenger train or at stations for passengers ~~must shall~~ wear, upon ~~his the person's~~ hat or cap or in some conspicuous place on the breast of ~~his the person's~~ coat, a badge indicating ~~his the person's~~ office or station and the initial letters of the name of the corporation by which ~~he the person~~ is employed.

(2) ~~No A~~ collector or conductor without ~~such a~~ badge is not authorized to demand or to receive from any passenger any fare, toll, or ticket or exercise any of the powers of ~~his the person's~~ office or station, and ~~no any~~ other officer or employee without ~~such a~~ badge ~~has does not have~~ any authority to meddle or interfere with any passenger or property."

Section 2036. Section 69-14-210, MCA, is amended to read:

"69-14-210. Baggage checks. A check must be affixed to every package or parcel of baggage when taken for transportation by ~~any an~~ agent or employee of ~~such a~~ railroad corporation, and a duplicate ~~thereof check~~ must be given to the passenger or person delivering the ~~same package or parcel~~ in his the passenger's behalf. If ~~such the~~ check is refused on demand, the railroad corporation ~~must shall~~ pay to ~~such the~~ passenger the sum of \$20, to be recovered in an action for damages, and ~~no a~~ fare or toll ~~must may not~~ be collected or received from ~~such the~~ passenger, and if ~~such the~~ passenger has paid ~~his the~~ fare, the ~~same fare~~ must be returned by the conductor in charge of the train. On producing the check, if ~~his the~~ baggage is not delivered to ~~him the person~~ by the agent or employee of the railroad corporation, ~~he the person~~ may recover the value ~~thereof of the baggage~~ from the corporation."

Section 2037. Section 69-14-211, MCA, is amended to read:

"69-14-211. Certificate of authority for ticket agents. (1) It ~~shall be~~ is the duty of the owners of any

railroad or steamboat for the transportation of passengers to provide each agent who may be authorized to sell, within the state, tickets or other evidence entitling the holder thereof to travel upon their railroad or steamboat with a certificate setting forth the authority of such the agent to make such sales. The certificate ~~shall~~ must be duly attested by the corporate seal of any corporate owner of such the railroad or steamboat and ~~shall~~, for the information of travelers, must be kept posted in a conspicuous place in the office of such the agent.

(2) It ~~shall be~~ is the duty of every an agent residing or acting within this state who ~~shall be~~ is authorized to sell ~~therein~~ tickets or other evidence of the holder's title to travel upon any railroad or steamboat to exhibit to any person desiring to purchase a ticket or to any officer of the law who may request ~~him~~ the agent to do so such the certificate of his authority ~~thus~~ to sell."

Section 2038. Section 69-14-215, MCA, is amended to read:

"69-14-215. Issuance of bills of lading by railroad station agents -- penalty. (1) All railway companies operating in the state ~~which that~~ do not permit bills of lading to be issued by employees other than agents ~~shall be~~ are required to have bills of lading issued by the station agent at the nearest station where a station agent is regularly maintained in the direction toward which the shipment is destined. The conductor of the train ~~which that~~ receives the shipment at its point of origin shall deliver to the agent at the nearest station at which an agent is maintained through which the shipment moves, immediately upon the arrival of the train carrying the shipment at the agency station, all data necessary for the issuance of a bill of lading for the shipment. The agent shall immediately issue the bill of lading and shall deliver the ~~same bill of lading~~ to the shipper or ~~his~~ the shipper's agent or shall, within 24 hours after the receipt of the data from the conductor, for shipment of 20,000 pounds or ~~over more~~, deposit the bill of lading in a United States post office, addressed and ~~registered or~~ certified to the consignor of the shipment or ~~his~~ the consignor's agent or attorney ~~to his~~ at the consignor's, agent's, or attorney's proper post-office address. A bill of lading for shipments of less than 20,000 pounds may be mailed without the use of ~~registered or~~ certified mail.

(2) ~~Any A~~ railway company operating in Montana ~~violating that violates~~ any provisions of this section is guilty of a misdemeanor and liable ~~to~~ for a fine of not less than \$50 or more than \$1,000."

Section 2039. Section 69-14-238, MCA, is amended to read:

"69-14-238. Equipment for track motor cars. (1) ~~Every A~~ person, firm, or corporation operating or controlling ~~any a~~ railroad running through or within this state as a common carrier shall:

(a) equip each of its track motor cars with:

(i) a windshield of safety glass and a device for wiping rain, snow, and other moisture ~~therefrom; such from the windshield, and the device shall~~ must be maintained in good order and ~~so~~ must be constructed as to be controlled by the operator of ~~said~~ the track motor car; and

(ii) upon request of the ~~foreman~~ lead supervisor, a canopy or top of ~~such construction as to~~ constructed so that it adequately protect protects the occupants ~~thereof~~ of the track motor car from the rays of the sun, rain, snow, or other inclement weather;

(b) equip each of its track motor cars used during the period from 30 minutes before sunset to 30 minutes after sunrise with:

(i) an electric headlight ~~of such construction~~ constructed and with sufficient candlepower to be plainly visible at a distance of not less than 300 feet in advance of ~~such~~ the track motor car, any track obstruction, landmark, warning sign, or grade crossing; and

(ii) a red rear electric light of sufficient candlepower to be plainly visible at a distance of not less than 300 feet.

(2) ~~Every~~ Each violation of this section is a misdemeanor."

Section 2040. Section 69-14-502, MCA, is amended to read:

"69-14-502. Organization of board of directors. (1) A majority of ~~said~~ directors shall form a board and ~~be~~ is competent to fill vacancies ~~therein~~ on the board, make bylaws, and transact all business of the corporation. The directors elected at any election shall, ~~so~~ as soon ~~thereafter~~ as may be convenient, choose one of their number to be president and shall appoint a secretary and a treasurer of the corporation. The directors, before entering upon their duties, shall each take an oath or affirmation faithfully to discharge ~~his~~ their duties. They may from time to time make ~~such~~ dividends of the actual net profits of ~~said~~ the corporation ~~as that they may think~~ determine proper and shall hold their offices until their successors are elected and qualified.

(2) A new election ~~shall~~ must be held annually ~~held~~ for directors; at ~~such~~ a time and place ~~as that~~ the stockholders at their first meeting ~~shall~~ determine or ~~as that~~ the bylaws of the corporation may require."

Section 2041. Section 69-14-505, MCA, is amended to read:

"69-14-505. Procedure in case of delinquency in payment of installments. (1) If any installment of stock ~~shall remain~~ remains unpaid for 60 days after the time specified for payment ~~thereof~~, whether ~~such~~ the stock is held by the original subscriber or ~~his~~ the subscriber's assignee, trustee, or successor in interest, the directors may sell the stock ~~so~~ unpaid at public auction for the installment then due ~~thereon~~, first after giving 30

days' public notice of the time and place of sale in some newspaper of general circulation in this state and by written notice sent by mail within 5 days after default ~~made~~ to each stockholder who is in default and whose name appears upon the books of the corporation, ~~directed~~. The written notice must be sent to him the stockholder at his the stockholder's place of residence or if that is not known to the secretary, then to his the stockholder's address as last reported by the secretary of the corporation. ~~Where~~ If any stock shall have belonged to a deceased person deceased, the claim for installments ~~shall is~~ not be liable to sale hereunder until unless there is a failure by the personal representative of the deceased owner to pay the installments due in the regular course of administration.

(2) If any ~~residue of money shall remain~~ remains after paying the amount due on ~~said the~~ stock, the ~~same shall~~ money must, on demand, be paid over to the owner.

(3) After the first election of directors, ~~no a~~ person save other than the personal representatives of deceased persons, ~~as aforesaid, shall may not~~ vote on any share on which any installment is in default by reason of the nonpayment thereof, after the expiration of the 30 days' notice of sale ~~hereinbefore provided for."~~

Section 2042. Section 69-14-709, MCA, is amended to read:

"69-14-709. Allowance of attorney's fee attorney fees. (1) Except as provided in subsection (2), whenever any of the livestock referred to in this part ~~shall be are~~ injured or killed ~~as therein recited~~ and the owner thereof ~~shall thereafter institute~~ brings an action for the recovery of the loss or damage ~~so~~ sustained by him, the court in which ~~such the~~ action ~~shall be is~~ brought shall ~~tax impose~~, as a part of the costs ~~therein~~, a reasonable sum to be fixed by the court as a fee to the attorney of the prevailing or successful party for conducting ~~such the~~ action. ~~Said The fee so fixed and allowed shall must~~ be collected in ~~like the same~~ manner as other costs.

(2) ~~No such A fee shall may not~~ be allowed by the court or collected from the defendant when it ~~shall appear~~ appears from the pleadings or proof in ~~any such an~~ action that the defendant prior to the institution of ~~such the~~ action offered or agreed to pay to the plaintiff ~~therein~~, in settlement of the loss or damages claimed, a sum equal to or in excess of the amount recovered as damages in ~~said the~~ action or unless the plaintiff, at least 40 days prior to the commencement of the action, ~~shall have has~~ made a demand, in writing, upon the defendant, ~~his the defendant's~~ agent, or ~~the defendant's~~ attorney for the ~~sum of~~ money claimed as indemnity for the killing of ~~said the~~ livestock."

Section 2043. Section 69-14-710, MCA, is amended to read:

"69-14-710. Tender or deposit of value of animal. If a corporation, association, company, or person

~~so~~ owning, controlling, or operating a railroad or branch ~~thereof~~ of a railroad kills or injures an animal as ~~aforsaid~~ described in 69-14-707 and tenders to the owner ~~thereof~~ or to ~~his~~ the owner's agent ~~in that behalf~~ the amount ~~which they consider~~ that the corporation, association, company, or person considers to be the value ~~thereof~~ of the animal or the damage ~~thereto~~ to the animal, ~~as the case may be~~ or if the railroad, corporation, association, company, or person deposits with the department of livestock ~~such~~ that amount for the owner ~~thereof~~ of the animal and the owner or ~~his~~ the owner's agent refuses to accept the amount in settlement ~~thereof~~, then the owner shall pay all costs incurred in any action instituted, after the tender or deposit, to recover the value or damage unless ~~he~~ the owner recovers in the action more than the amount ~~so~~ tendered."

Section 2044. Section 69-14-711, MCA, is amended to read:

"69-14-711. Payment of damages to department of livestock. (1) If livestock are killed by railroad corporations in violation of 69-14-701 and if the owner of the livestock does not claim or assert a claim against the railroad or railroad corporation for the value of the livestock killed within 6 months from the date the animal is killed, the department of livestock shall demand from the railroad or railroad corporation payment in damages for livestock. The department shall institute and prosecute, in the name of the state, actions against the railroad or railroad companies in a court of competent jurisdiction to recover damages if the railroad fails, neglects, or refuses to make payment of the amount of the claim filed by the department.

(2) The money recovered ~~shall~~ must be paid to the department and ~~shall~~ must be held by the department for a period of 2 years after the date of its receipt. If the lawful owner of the animal killed does not present and prove ~~his~~ the owner's claim to the net proceeds received from the animal killed within the 2 years, the money ~~shall~~ must be paid to the state treasurer and credited to the stock estray fund. If the owner of the animal killed proves ~~his~~ the owner's claim within the 2 years, the department may pay the claimant the amount of money to which ~~he~~ the claimant is entitled for the animal killed by the railroad or railroad company, the damages for which have been collected by the department.

(3) In actions prosecuted under this section for the recovery of the value of livestock killed ~~under this section~~, the prevailing or successful party shall recover all costs. If the owner of an animal killed has not presented ~~his~~ a claim against the railroad or railroad company ~~which~~ that caused it to be killed, a settlement made by the department constitutes a bar against an action by the owner of the animal."

Section 2045. Section 69-14-901, MCA, is amended to read:

"69-14-901. Authorization to locate and erect grain warehouse or elevator on railroad right-of-way.

(1) Any person, firm, or corporation desirous of erecting and operating at or contiguous to any railway station or siding a warehouse or elevator for the purchase, sale, shipment, or storage of grain, (including flaxseed), for the public for hire may make application in writing, containing a description of that portion of the right-of-way of ~~said~~ the railroad on which ~~such~~ the person, firm, or corporation desires to erect a warehouse or elevator, the size and capacity of the warehouse or elevator proposed to be erected, and the time for which it is desired to maintain ~~such~~ the warehouse or elevator; The application must be made to the person, firm, or corporation owning, leasing, or operating the railroad at ~~such~~ the station or siding, for the right, privilege, and easement of erecting and maintaining for the time stated in ~~such~~ the application and for reasonable compensation for ~~such~~ the warehouse or elevator, ~~as aforesaid~~, upon the right-of-way pertaining to ~~such~~ the railway at ~~such~~ the siding or station and within and between the outside switches of the yard of ~~such~~ the railway station or siding; ~~and upon~~ Upon paying or securing in the manner hereinafter prescribed in this section reasonable compensation for the right, privilege, and easement ~~aforesaid~~, ~~shall~~ the person, firm, or corporation is absolutely and unconditionally ~~be~~ entitled to the same right, privilege, and easement.

(2) The application ~~shall~~ must also state the amount the applicant ~~deems~~ considers reasonable compensation for the right, privilege, and easement ~~he~~ the applicant desires to acquire, and ~~said~~ the applicant shall tender and pay to ~~such~~ the person, firm, or corporation from whom ~~such~~ the easement is sought the sum stated in ~~such~~ the application.

(3) If the person, firm, or corporation owning, leasing, or operating the railroad is not willing to allow that the portion of the right-of-way selected by the applicant ~~should~~ to be appropriated for ~~such~~ the stated purpose and the parties cannot agree as to the quantity and location of the land upon which ~~such~~ the grain warehouse or grain elevator ~~shall~~ is to be erected, the matter ~~shall~~ must be determined by the district court in the same manner and by the same proceeding for determining the amount of compensation to be paid ~~where~~ when the parties cannot agree as to the amount."

Section 2046. Section 69-14-924, MCA, is amended to read:

"69-14-924. Liability of railroad for repairs. Any A person making the repairs upon or cleaning or cooping the cars of any railroad or railway company as herein provided in this part may recover the amounts expended ~~therefor~~ in an action at law upon the refusal of the railroad or railway company to reimburse ~~him~~ the person."

Section 2047. Section 69-14-932, MCA, is amended to read:

"69-14-932. First right to purchase or match offer -- lease preference -- negotiation process -- exception. (1) A person or entity that has a leasehold site between a point 8.5 feet from the centerline of the track nearest the edge of the right-of-way and 300 feet from the track centerline and that uses the leasehold for transporting grain, seed, or related agricultural input commodities, regardless of the status of train operations, has a right of first refusal to purchase the land ~~in the event~~ if the owner seeks to sell the land or transfer the leasehold estate.

(2) The leaseholder of a leasehold site described in subsection (1) must be given the opportunity to match a competing lease offer upon expiration of an existing lease. If the leaseholder matches the new lease offer, the lease must be given to the leaseholder. When a person other than the current leaseholder becomes the lessee of a leasehold site described in subsection (1) or the lease is terminated by the lessor for reasons other than nonpayment or other material breach of the lease, the lessor or new lessee shall compensate the former leaseholder for the fair market value of improvements made by the former leaseholder.

(3) The owner of the land may not sell or offer for sale an interest in the leased land or dispossess the leaseholder for reasons other than nonpayment or other material breach of the lease unless ~~he~~ the owner first extends to the leaseholder a written offer to sell the leased land to the leaseholder at fair market value. The leaseholder shall respond to the offer within 60 days of receipt of the offer.

(4) The owner shall negotiate in good faith with the leaseholder for a period not to exceed 90 days following the leaseholder's response to the written offer provided for in subsection (3). The land may not be sold or transferred during the response and negotiation periods.

(5) (a) If the owner and the leaseholder cannot agree on the fair market value, they shall appoint a certified appraiser to establish the fair market value.

(b) ~~In the event that~~ if the owner and leaseholder cannot agree on an appraiser, each shall appoint a certified appraiser who shall make an independent appraisal. If the appraisals are within 5% of each other, the average of the two appraisals ~~must constitute~~ constitutes the fair market value.

(c) If the two appraisals differ by more than 5%, the two appraisers ~~must~~ shall appoint a third certified appraiser whose appraisal ~~must establish~~ establishes the fair market value.

(d) If the leaseholder fails to close the purchase of the leasehold estate for any reason within 45 days after the fair market value of the land has been established by the appraisal process provided for in this section, the right of first refusal is extinguished and the owner is free to transfer the property to a person or entity other than the leaseholder.

(e) The owner may transfer a title under this section by quitclaim deed rather than warranty deed.

(6) This section does not apply to the sale of an entire operating railroad line by one operating railroad to another entity for the purpose of operating a railroad."

Section 2048. Section 69-14-1002, MCA, is amended to read:

"69-14-1002. Compensation of employees on removal of railroad division point or terminal. (1) Except as provided in subsection (2), when any railroad or railway company operating its line of road in, into, or through the state ~~shall move~~ moves any of its division points or terminals, it ~~shall be~~ is liable to any employee of ~~such the~~ railroad or railway company for any damage sustained by ~~such the~~ employee by reason of any decrease in value of any real property actually occupied by ~~such the~~ employee as ~~his the employee's~~ the employee's place of residence; ~~which decrease in value shall be that is~~ that is caused by reason of the removal of ~~such the~~ division point or terminal; ~~provided However, such the employee shall must have a freehold estate in such the property so damaged an estate of freehold. Such The damages shall be are~~ are collectible in any court of competent jurisdiction.

(2) When any railroad or railway company in good faith determines upon a change or removal of any division point or terminal and in good faith posts prominently ~~about at~~ at its station house, shops, and yards a statement of its intention to do so; in ~~such a manner as to give that gives~~ such a manner as to give that gives reasonable notice thereof to ~~such the~~ employee, it ~~shall is~~ is not be liable, as ~~hereinbefore~~ hereinbefore provided in subsection (1), for any decrease in value of any interest in any property purchased after the time of ~~such the~~ the posting ~~provided that such if the~~ if the division point or terminal ~~shall be is~~ is changed or removed within 6 months after the date of ~~such the~~ the posting."

Section 2049. Section 69-14-1003, MCA, is amended to read:

"69-14-1003. Railroad personnel as law officers. Every A conductor, engineer, or other person in charge of the operation of cars, trains, or locomotives upon any railroad is, while ~~so~~ engaged or employed, ~~constituted~~ constituted a public executive officer of the class of peace officers and of the grade of constable in each county ~~wherein his~~ in which the train, cars, or locomotives ~~may from time to time happen to be~~ are located and has the same authority as other peace officers to, with or without a warrant, arrest and prosecute persons trespassing or illegally obtaining passage on the railroad. The railroad personnel mentioned ~~herein shall in this section are~~ in this section are not be entitled to receive fees for any arrest or prosecution ~~which that~~ that may be made or prosecuted under this section. None of the railroad personnel ~~herein named shall be~~ mentioned in this section are authorized to hold ~~said the~~ the office or exercise its functions unless at the time they are citizens of the United States and have been citizens of this state for at least 1 year preceding their exercising the functions ~~thereof of the office.~~ of the office."

Section 2050. Section 69-14-1005, MCA, is amended to read:

"69-14-1005. Medical aid for injured trainmen. (1) ~~In case any~~ If a railroad trainman train operator or employee of any railroad doing business in this state ~~shall be~~ is injured during ~~his~~ the operator's or employee's regular course of employment, any employee of ~~said~~ the railroad is ~~hereby~~ empowered and authorized to call upon and retain the services of the nearest practicing physician or surgeon to care for and treat ~~any such~~ the injured ~~trainman~~ train operator or employee; during and until ~~such~~ the time ~~as that~~ one of the regularly employed and paid physicians or surgeons of ~~such~~ the railroad corporation is able to render ~~such~~ service.

(2) ~~In cases where~~ If the services of any physician or surgeon other than the regularly employed physician or surgeon of the railroad corporation are retained and hired; as provided in this section, ~~such~~ the physician or surgeon ~~shall~~ must be compensated and paid a reasonable fee for ~~such~~ the services performed by him.

(3) If ~~any~~ a railroad corporation refuses or neglects to pay for the services of ~~any such~~ a physician as ~~hereinbefore~~ provided for in subsection (2) within a reasonable time after ~~such~~ the physician or surgeon has rendered the services ~~therefor~~, ~~such~~ the railroad corporation ~~shall be~~ is guilty of a misdemeanor."

Section 2051. Section 69-14-1006, MCA, is amended to read:

"69-14-1006. Liability for death or injury to railroad employees. (1) ~~Every~~ A person or corporation operating a railroad in this state ~~shall be~~ is liable in damages to any person suffering injury while ~~he~~ the person is employed by ~~such~~ the person or corporation ~~so~~ operating ~~any such~~ the railroad or, in case of the death of ~~such~~ an employee, instantaneously or otherwise, to ~~his or her~~ the employee's personal representative, for the benefit of the surviving ~~widow or husband~~ spouse and children of ~~such~~ the employee and, if none, then of ~~such~~ the employee's parents and, if none, then of the next of kin dependent upon ~~such~~ the employee;. The damages must be for ~~such~~ an injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of ~~such~~ the person or corporation ~~so~~ operating ~~such~~ the railroad, in or about the handling, movement, or operation of any train, engine, or car on or over ~~such~~ the railroad or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

(2) (a) In all actions brought against any ~~such~~ person or corporation ~~so~~ operating ~~such~~ the railroad, under or by virtue of any of the provisions of this section, the fact that the employee may have been guilty of contributory negligence ~~shall~~ may not bar a recovery, but the damages ~~shall~~ must be diminished by the jury in proportion to the amount of negligence attributable to ~~such~~ the employee;. provided However, ~~that no such~~ an employee who

~~may be~~ is injured or killed ~~shall~~ may not be held to have been guilty of contributory negligence in any case ~~where~~ in which the violation by ~~such the~~ person or corporation, ~~so~~ operating ~~such the~~ railroad; of any statute enacted for the safety of employees contributed to the injury or death of ~~such the~~ employee.

(b) An employee of ~~any such a~~ person or corporation ~~so~~ operating ~~such the~~ railroad ~~shall~~ may not be ~~deemed~~ considered to have assumed any risk incident to ~~his the employee's~~ employment when ~~such the~~ risk arises by reason of the negligence of ~~his the~~ employer or of any person in the service of ~~such the~~ employer.

(3) ~~Any A~~ contract, rule, or device ~~whatsoever~~, the purpose or intent of which ~~shall be~~ is to enable ~~any such a~~ person or corporation ~~so~~ operating ~~such a~~ railroad to exempt itself from any liability created by this section, ~~shall is~~, to that extent, be void. In ~~any an~~ action brought against ~~any such a~~ person or corporation ~~so~~ operating ~~such a~~ railroad; under or by virtue of any of the provisions of this section, ~~such the~~ person or corporation may set off ~~therein~~ any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the injured employee or the person entitled ~~thereto~~ to the payment on account of the injury or death for which ~~said the~~ action is brought."

Section 2052. Section 70-1-109, MCA, is amended to read:

"70-1-109. Choice of law as to personal property. If there is no law to the contrary in the place where personal property is situated, it is ~~deemed~~ considered to follow the person of its owner and is governed by the law of ~~his the owner's~~ domicile."

Section 2053. Section 70-1-303, MCA, is amended to read:

"70-1-303. When ownership absolute. The ownership of property is absolute when a single person has the absolute dominion over it and may use it or dispose of it according to ~~his the person's~~ pleasure, subject only to general laws."

Section 2054. Section 70-1-310, MCA, is amended to read:

"70-1-310. Action by or against joint tenants or tenants in common. All persons holding as tenants in common, joint tenants, or any number less than all may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights of ~~such that~~ party. In all cases, one tenant in common or one joint tenant ~~can~~ may sue ~~his a~~ cotenant."

Section 2055. Section 70-1-510, MCA, is amended to read:

"70-1-510. Delivery to grantee necessarily absolute. A grant cannot be delivered to the grantee conditionally. Delivery to ~~him~~ the grantee or to ~~his~~ the grantee's agent ~~as such~~ is necessarily absolute, and the instrument takes effect ~~thereupon~~ upon delivery, discharged of any condition on which the delivery is made."

Section 2056. Section 70-1-512, MCA, is amended to read:

"70-1-512. Constructive delivery. Though a grant ~~be~~ is not actually delivered into the possession of the grantee, it is ~~yet to be deemed~~ considered constructively delivered in the following cases:

- (1) ~~where~~ when the instrument is, by the agreement of the parties at the time of execution, understood to be delivered and under ~~such~~ circumstances that the grantee is entitled to immediate delivery; or
- (2) ~~where~~ when it is delivered to a stranger for the benefit of the grantee, and ~~his~~ the grantee's assent is shown or may be presumed."

Section 2057. Section 70-1-518, MCA, is amended to read:

"70-1-518. Meaning of heirs and issue in certain remainders. ~~Where~~ When a future interest is limited by a grant to take effect on the death of any person without heirs or heirs of ~~his~~ the person's body or without issue or in equivalent words, ~~such~~ the words must be taken to mean successors or issue living at the death of the person named as ancestor."

Section 2058. Section 70-1-704, MCA, is amended to read:

"70-1-704. Creation or exercise of a power to appoint to an estate. A person may be given a power to appoint a legal or equitable interest in property to ~~his~~ the person's own estate by will or deed. The donee of ~~such a~~ the power is considered to have a general power of appointment exercisable in favor of any person. Permissible exercise of the power as created may include but is not limited to:

- (1) direction to the personal representative of the donee to administer the interest as if it were an interest in the property of the donee;
- (2) direction to the personal representative to use the interest to satisfy the donee's debts or claims for debts and taxes; or
- (3) appointment of the interest to any person to whom the donee might give or devise ~~his~~ the donee's own property."

Section 2059. Section 70-2-102, MCA, is amended to read:

"70-2-102. Transfer and succession. A thing in action arising out of the violation of a right of property or out of an obligation may be transferred by the owner. Upon the death of the owner, it passes to ~~his~~ the owner's personal representatives except ~~where~~ when in the cases provided in this ~~code~~ title it passes to ~~his~~ the owner's devisees or successor in office."

Section 2060. Section 70-3-104, MCA, is amended to read:

"70-3-104. Unsolicited goods considered gift. Unless otherwise agreed, ~~where~~ when unsolicited goods are delivered to a person, ~~he~~ the person may refuse delivery of the goods, or if the goods are delivered, the person is not bound to return the goods to the sender. If unsolicited goods are either addressed to or intended for the recipient, they ~~shall~~ must be ~~deemed~~ considered a gift, and the recipient may use or dispose of them in any manner without obligation to the sender."

Section 2061. Section 70-3-202, MCA, is amended to read:

"70-3-202. When gift presumed to be in view of death. A gift made during the last illness of the giver or under circumstances ~~which~~ that would impress ~~him~~ the giver with an expectation of speedy death is presumed to be a gift in view of death."

Section 2062. Section 70-3-203, MCA, is amended to read:

"70-3-203. Revocation. A gift in view of death may be revoked by the giver at any time and is revoked by ~~his~~ the giver's recovery from the illness or escape from the peril under the presence of ~~which~~ that it was made or by the occurrence of any event which would operate as a revocation of a will made at the same time."

Section 2063. Section 70-4-102, MCA, is amended to read:

"70-4-102. Uniting several things -- to whom whole belongs. When things belonging to different owners have been united so as to form a single thing and cannot be separated without injury, the whole belongs to the owner of the thing ~~which~~ that forms the principal part, ~~who must, however~~ However, that person shall reimburse the value of the residue to the other owner or surrender the whole to ~~him~~ the other owner."

Section 2064. Section 70-4-103, MCA, is amended to read:

"70-4-103. Rules for determination of principal part. (1) That part is ~~deemed~~ considered to be the principal to which the other has been united only for the use, ornament, or completion of the ~~former~~ principal part

unless the ~~latter~~ other is the more valuable and has been united without the knowledge of its owner, who may, in ~~the latter~~ that case, require it to be separated and returned to ~~him~~ the owner although some injury ~~should result~~ results to the thing to which it has been united.

(2) If neither part can be considered the principal within the rule prescribed by subsection (1), the more valuable or, if the values are nearly equal, the most considerable in bulk is to be ~~deemed~~ considered the principal part."

Section 2065. Section 70-4-202, MCA, is amended to read:

"70-4-202. Uniting of materials of maker and other. Where ~~one~~ When a person has made use of materials ~~which~~ that in part belong to ~~him~~ the person and in part to another in order to form a thing of a new description; without having destroyed any of the materials but in ~~such~~ a way that they cannot be separated without inconvenience, the thing formed is common to both proprietors in proportion, as respects the one, of the materials belonging to ~~him~~ the person and, as respects the other, of the materials belonging to ~~him~~ the other and the price of ~~his~~ the other's workmanship."

Section 2066. Section 70-4-203, MCA, is amended to read:

"70-4-203. Uniting of materials of several owners. When a thing has been formed by the ~~admixture~~ combination of several materials of different owners and ~~neither~~ none of the materials can be considered the principal substance, an owner without whose consent the ~~admixture~~ combination was made may require a separation if the materials can be separated without inconvenience. If they cannot be ~~thus~~ separated, the owners acquire the thing in common, in proportion to the quantity, quality, and value of their materials, but if the materials of one were far superior to those of the others, both in quantity and value, ~~he~~ the person may claim the thing on reimbursing to the others the value of their materials."

Section 2067. Section 70-4-204, MCA, is amended to read:

"70-4-204. Use of materials without consent -- owner prevails. ~~The foregoing sections of this chapter~~ Title 70, chapter 4, part 1, and 70-4-201 through 70-4-203 are not applicable to cases in which one willfully uses the materials of another without ~~his~~ the other's consent, but in ~~such~~ those cases, the product belongs to the owner of material if its identity can be traced."

Section 2068. Section 70-4-205, MCA, is amended to read:

"70-4-205. Owner of materials wrongfully used -- election of remedies. ~~In all cases where one~~ If a person whose material has been used without ~~his~~ the person's knowledge in order to form a product of a different description can claim an interest in ~~such the~~ the product, ~~he~~ the person has an option to demand either restitution of ~~his the person's~~ the person's material in kind, in the same quantity, weight, measure, and quality, or the value ~~thereof of the~~ thereof ~~of the~~ of the material or, ~~where he~~ if the person is entitled to the product, the value ~~thereof of the product~~ thereof ~~of the product~~ of the product in place of the product."

Section 2069. Section 70-4-206, MCA, is amended to read:

"70-4-206. Wrongdoer liable in damages. One who wrongfully employs materials belonging to another is liable to ~~him~~ the other in damages as well as under the ~~foregoing~~ foregoing provisions of ~~this chapter~~ Title 70, chapter 4, part 1, and 70-4-201 through 70-4-205."

Section 2070. Section 70-5-102, MCA, is amended to read:

"70-5-102. Finder not bound to take charge -- status as depositary. ~~One~~ A person who finds a thing lost is not bound to take charge of it, but if ~~he~~ the person does so, ~~he~~ the person is ~~thenceforth~~ thenceforth a depositary for the owner, with the rights and obligations of a depositary for hire."

Section 2071. Section 70-5-103, MCA, is amended to read:

"70-5-103. Duty to inform owner when known. If ~~any a~~ a person finds ~~any~~ any money, goods, things in action, or other personal property or saves ~~any a~~ a domestic animal from drowning or starvation when the property is of a value of \$10 or more and ~~he~~ the person knows or suspects who the owner is, ~~he must~~ the person shall use reasonable diligence to inform the owner ~~thereof~~ thereof and make restitution without compensation, further than a reasonable charge for saving and taking care ~~thereof of the property.~~ thereof of the property. If ~~he~~ the person fails to do so, ~~he~~ the person is liable in damages to the owner and ~~has no~~ does not have a claim to any reward offered by the owner for the recovery of the thing or to any compensation for ~~his~~ the person's trouble or expenses."

Section 2072. Section 70-5-105, MCA, is amended to read:

"70-5-105. Compensation of finder. The finder of a thing is entitled to compensation for all expenses necessarily incurred by ~~him~~ the finder in its preservation and for any other service necessarily performed by ~~him~~ the finder about it and to a reasonable reward for keeping it."

Section 2073. Section 70-5-106, MCA, is amended to read:

"70-5-106. Exoneration of finder by storage of thing found. The finder of a thing may ~~exonerate himself~~ be exonerated from liability at any time by placing it ~~on~~ in storage with any responsible person of good character at a reasonable expense."

Section 2074. Section 70-5-107, MCA, is amended to read:

"70-5-107. Exoneration of owner by surrender of thing to finder. The owner of a thing found may ~~exonerate himself~~ be exonerated from the claims of the finder by surrendering it to ~~him~~ the finder in satisfaction ~~thereof~~ of the claims."

Section 2075. Section 70-6-102, MCA, is amended to read:

"70-6-102. Voluntary deposit -- how made. A voluntary deposit is made by one giving to another, with ~~his~~ the other's consent, the possession of personal property to keep for the benefit of the former or of a third party. The person giving is called the depositor and the person receiving the depositary."

Section 2076. Section 70-6-108, MCA, is amended to read:

"70-6-108. Deposit for exchange -- title passes. A deposit for exchange transfers to the depositary the title to the thing deposited and creates between ~~him~~ the depositary and the depositor the relation of debtor and creditor ~~merely~~."

Section 2077. Section 70-6-201, MCA, is amended to read:

"70-6-201. Depositary not to use or open thing deposited. A depositary may not use the thing deposited or permit it to be used for any purpose without the consent of the depositor. ~~He~~ A depositary may not, if it is purposely fastened by the depositor, open it without the consent of the ~~latter~~ depositor, except in case of necessity."

Section 2078. Section 70-6-202, MCA, is amended to read:

"70-6-202. Liability for damage from wrongful use. A depositary is liable for any damage happening to the thing deposited during ~~his~~ the depositary's wrongful use ~~thereof~~ of the thing unless ~~such~~ the damage ~~must~~ inevitably would have happened ~~though~~ if the property had not been used."

Section 2079. Section 70-6-203, MCA, is amended to read:

"70-6-203. Loss or injury of thing deposited. If a thing is lost during its deposit and the depository refuses to inform the depositor of the circumstances under which the loss or injury occurred so far as ~~he~~ the depository has information concerning them or willfully misrepresents the circumstances to ~~him~~ the depositor, the depository is presumed to have willfully or by gross negligence permitted the loss or injury to occur."

Section 2080. Section 70-6-204, MCA, is amended to read:

"70-6-204. Extent of depository's liability for negligence. The liability of a depository for negligence cannot exceed the amount ~~which he~~ that the depository is informed by the depositor or has reason to suppose the thing deposited to be worth."

Section 2081. Section 70-6-205, MCA, is amended to read:

"70-6-205. Sale of thing in danger of perishing. If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depository may sell it for the best price obtainable and retain the proceeds as a deposit, giving immediate notice of ~~his~~ the proceedings to the depositor."

Section 2082. Section 70-6-207, MCA, is amended to read:

"70-6-207. Service rendered by depository. So far as any service is rendered by a depository or required from ~~him~~ a depository, ~~his~~ the depository's duties and liabilities are prescribed by the law on employment and service."

Section 2083. Section 70-6-208, MCA, is amended to read:

"70-6-208. Notice to owner of adverse claim. A depository ~~must~~ shall give prompt notice to the person for whose benefit the deposit was made of any proceedings taken adversely to ~~his~~ the person's interest in the thing deposited ~~which~~ that may tend to excuse the depository from delivering the thing to ~~him~~ the person."

Section 2084. Section 70-6-209, MCA, is amended to read:

"70-6-209. Notice to true owner of thing wrongfully detained. A depository, who believes that a thing deposited with ~~him~~ the depository is wrongfully detained from its true owner, may give ~~him~~ the owner notice of the deposit, and if within a reasonable time afterwards ~~he~~ the owner does not claim it and sufficiently establish ~~his~~ a right thereto to the thing and indemnify the depository against the claim of the depositor, the depository is

exonerated from liability to the person to whom ~~he~~ the depositary gave the notice upon returning the thing to the depositor or assuming, in good faith, a new obligation changing ~~his~~ the depositary's position in respect to the thing to ~~his~~ the depositary's prejudice."

Section 2085. Section 70-6-210, MCA, is amended to read:

"70-6-210. Depositor to indemnify depositary -- damage -- expenses. A depositor ~~must~~ shall indemnify the depositary for:

- (1) all damage caused to ~~him~~ the depositary by the defects or vices of the thing deposited; and
- (2) all expenses necessarily incurred by ~~him~~ the depositary about the thing, other than ~~such as are~~ expenses involved in the nature of the undertaking."

Section 2086. Section 70-6-211, MCA, is amended to read:

"70-6-211. Depositary to deliver on demand. A depositary ~~must~~ shall deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless ~~he~~ the depositary has a lien upon the thing deposited or has been forbidden or prevented from doing so by the real owner ~~thereof~~ of the thing or by the act of the law and has given the notice required by 70-6-208."

Section 2087. Section 70-6-213, MCA, is amended to read:

"70-6-213. Place of delivery. A depositary ~~must~~ shall deliver the thing deposited at ~~his~~ the depositary's residence or place of business as may be most convenient for ~~him~~ the depositary."

Section 2088. Section 70-6-214, MCA, is amended to read:

"70-6-214. Delivery of thing owned jointly. If a thing deposited is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each ~~his~~ person a proper share ~~thereof~~ of the thing if it can be done without injury to the thing."

Section 2089. Section 70-6-303, MCA, is amended to read:

"70-6-303. When duties of gratuitous depositary cease. The duties of a gratuitous depositary cease upon ~~his~~ the depositary's:

- (1) restoring the thing deposited to its owner; or
- (2) giving reasonable notice to the owner to remove it and the owner failing to do so within a reasonable

time. ~~But~~ However, an involuntary depository under 70-6-103(2) ~~cannot~~ may not give ~~such~~ notice until the emergency ~~which~~ that gave rise to the deposit is past."

Section 2090. Section 70-6-412, MCA, is amended to read:

"70-6-412. Application of proceeds of sale. (1) After paying the expenses of sale, including the publication of notice, the storage or commission merchant or the carrier ~~shall be~~ is authorized, out of the proceeds arising from the sale of the property, to retain the amount due ~~him~~ the merchant or carrier for storage or freight ~~money~~, or both, due upon any ~~such~~ property, and the excess, if any, must be paid over to the person entitled to the proceeds ~~thereof~~.

(2) All sales under this part ~~shall~~ vest the title to the property sold in the purchaser ~~thereof~~ of the property."

Section 2091. Section 70-6-420, MCA, is amended to read:

"70-6-420. Default in payment of storage space rental fees -- notice -- sale of contents. (1) A person who rents storage space to another may sell at public auction the contents of the storage space if the owner of the contents is more than 30 days in default in paying rental fees on the space.

(2) At the expiration of the period of default provided for in subsection (1), the person renting the storage space shall send written notice by certified mail to the last-known address of the owner of the contents stating that ~~he~~ the owner has 30 days from the date of the certified letter to pay the past due rental fees and to claim the contents of the storage space or the contents will be sold at public auction. The notice must contain the date, time, and place of the auction if the ~~past due~~ past-due rental fees are not paid. If the certified notice is returned undelivered, notice must be given as provided in Rule 4 of the Montana Rules of Civil Procedure.

(3) Prior to an auction provided for in subsection (1), notice of the date, time, place, terms, and description of the property must be published in a newspaper in the county in which the property to be sold is located. The notice must be published once a week for 2 weeks prior to the day of the sale. If there is no newspaper published in the county in which the property to be sold is located, then the notice may be published in a newspaper of general circulation in the county.

(4) (a) Proceeds of the auction must first be applied to the costs of the sale, then to the unpaid storage rental fees, and the excess, if any, must be paid to the owner. If the owner or the person entitled to the proceeds cannot be located, the proceeds escheat to the state as provided in Title 72, chapter 14.

(b) All sales under this section vest title to the property sold in the purchaser of the property."

Section 2092. Section 70-6-501, MCA, is amended to read:

"70-6-501. Innkeeper's liability as to property of guests -- dollar limitation. (1) An innkeeper is liable for all losses of or injuries to personal property placed by ~~his~~ the guests under ~~his~~ the innkeeper's care unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner, or by the act of someone whom ~~he~~ the innkeeper brought into the inn.

(2) The liability provided for in subsection (1) may not exceed \$500 for all personal property of each registered guest unless the innkeeper consents in writing with the guest to assume a greater liability. An innkeeper whose liability is ~~so~~ limited shall notify the guest at the time of registration, in writing, that this limitation applies."

Section 2093. Section 70-6-502, MCA, is amended to read:

"70-6-502. No liability without negligence. ~~No~~ A hotelkeeper or innkeeper ~~shall be~~ is not liable to any guest for the loss of wearing apparel, goods, or personal effects ~~where~~ when it ~~shall appear~~ appears that ~~such~~ the loss occurred without the fault or negligence of ~~such~~ the hotelkeeper or ~~his~~ the innkeeper or the hotelkeeper's or innkeeper's employees."

Section 2094. Section 70-6-504, MCA, is amended to read:

"70-6-504. How exempted from liability -- safe. If an innkeeper keeps a fireproof safe and gives notice to a guest, either personally or by placing a printed notice in a prominent place in the room occupied by the guest, that ~~he~~ the innkeeper keeps ~~such~~ a fireproof safe and will not be liable for any loss of or injury to money, jewelry, documents, or other articles of value and small ~~compass~~ size unless placed ~~therein~~ in the safe, ~~he~~ the innkeeper is not liable, except so far as ~~his~~ the innkeeper's own acts contribute ~~thereto~~, for any to the loss of or injury to ~~such~~ the articles not deposited with ~~him~~ the innkeeper and not required by the guest for present use."

Section 2095. Section 70-6-505, MCA, is amended to read:

"70-6-505. Storage of property in outbuilding -- nonliability. ~~No~~ An innkeeper ~~shall be~~ is not liable for the loss or destruction by fire of the property received by ~~him~~ the innkeeper from a guest; ~~that is~~ stored or being kept; with the knowledge of ~~such~~ the guest; in a barn or other outbuilding, ~~where~~ if it shall appear appears that ~~such~~ the loss or destruction is the work of an incendiary and occurred without the fault or negligence of ~~such~~ the innkeeper or ~~his~~ the innkeeper's servants."

Section 2096. Section 70-7-101, MCA, is amended to read:

"70-7-101. Optional loan -- use or exchange -- applicability of entire chapter. A loan ~~which~~ that the borrower is allowed by the lender to treat as a loan for use or for exchange, at ~~his~~ the borrower's option, is subject to all of the provisions of this chapter."

Section 2097. Section 70-7-102, MCA, is amended to read:

"70-7-102. Loan for use defined. A loan for use is a contract by which one gives to another the temporary use and possession of personal property; and the latter agrees to return the same thing to ~~him~~ the loaning person at a future time; without reward for its use."

Section 2098. Section 70-7-106, MCA, is amended to read:

"70-7-106. Skill required of borrower. A borrower for use is bound to have and to exercise ~~such~~ skill in the care of the thing lent ~~as he~~ that the borrower causes the lender to believe ~~him~~ that the borrower possesses to possess."

Section 2099. Section 70-7-107, MCA, is amended to read:

"70-7-107. Borrower to repair injuries. A borrower for use ~~must~~ shall repair all deteriorations or injuries to the thing lent ~~which~~ that are occasioned by ~~his~~ the borrower's negligence, however slight."

Section 2100. Section 70-7-110, MCA, is amended to read:

"70-7-110. Who to bear expenses. The borrower of a thing for use ~~must~~ shall bear all its expenses during the loan; except ~~such as~~ those that are necessarily incurred by ~~him~~ the borrower to preserve it from unexpected and unusual injury. ~~For such expenses he~~ The borrower is entitled to compensation for those expenses from the lender, who may, however, ~~exonerate himself~~ be exonerated by surrendering the thing to the borrower."

Section 2101. Section 70-7-111, MCA, is amended to read:

"70-7-111. Lender liable for concealed defects. The lender of a thing for use ~~must~~ shall indemnify the borrower for damage caused by defects or vices in ~~it which he~~ the thing that the lender knew at the time of lending and concealed from the borrower."

Section 2102. Section 70-7-112, MCA, is amended to read:

"70-7-112. Right of lender to require return -- indemnification of borrower. The lender of a thing for use may at any time require its return, even though ~~he~~ the lender lent it for a specified time or purpose. ~~But~~ However, if on the faith of ~~such~~ an agreement the borrower has made ~~such~~ arrangements that a return of the thing before the period agreed upon would cause ~~him~~ the borrower loss exceeding the benefit derived by ~~him~~ the borrower from the loan, the lender ~~must~~ shall indemnify ~~him~~ the borrower for ~~such~~ the loss if ~~he~~ the lender compels ~~such~~ a return; and the borrower ~~not having~~ has not in any manner violated ~~his~~ the borrower's duty."

Section 2103. Section 70-7-203, MCA, is amended to read:

"70-7-203. Title to property lent -- expenses -- increase. ~~By a loan for exchange, the~~ The title to the thing lent by a loan for exchange is transferred to the borrower, and ~~he must bear~~ the borrower shall bear all its expenses and is entitled to all its increase."

Section 2104. Section 70-7-204, MCA, is amended to read:

"70-7-204. Contract not to be modified by lender. A lender for exchange cannot require the borrower to fulfill ~~his~~ the borrower's obligations at a time or in a manner different from that which was originally agreed upon."

Section 2105. Section 70-8-201, MCA, is amended to read:

"70-8-201. Contract for letting of ship. The contract by which a ship is let is termed a charter party. ~~By it~~ As part of the contract, the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew, and equipments, or may surrender the entire ship to the charterer, who then provides them ~~himself~~. The master or part owner may be a charterer."

Section 2106. Section 70-9-402, MCA, is amended to read:

"70-9-402. Storage of unclaimed property. When ~~any~~ goods, merchandise, or other property has been received by ~~any~~ a railroad or express company or other common carrier, commission merchants, or ~~warehousemen~~ warehouse operator for transportation or safekeeping and ~~are~~ is not delivered to the owner, consignee, or other authorized person, the carrier, commission merchant, or ~~warehouseman~~ warehouse operator may hold or store the ~~same~~ goods, merchandise, or property with some responsible person until the freight and all just and reasonable charges are paid."

Section 2107. Section 70-9-403, MCA, is amended to read:

"70-9-403. Property unclaimed within 90 days to be sold -- notice -- surplus. (1) ~~If no person calls~~ a person does not call for the property within 90 days from the receipt ~~thereof of the property~~ and ~~pays pay~~ freight and charges ~~thereon on the property~~, the carrier, commission merchant, or ~~warehouseman~~ warehouse operator may sell ~~such the~~ property or ~~so as much thereof of the property~~, at auction to the highest bidder, as will pay freight and charges; ~~first having given~~ after giving 20 days' notice of the time and place of sale to the owner, consignee, or consignor, when known, and by advertisement in a daily paper for 10 days (or if in a weekly paper; for 4 weeks), published where ~~such the~~ sale is to take place.

(2) If any surplus is left after paying freight, storage, cost of advertising, and other reasonable charges, the ~~same surplus~~ must be paid ~~over~~ to the owner of ~~such the~~ property at any time ~~thereafter~~, upon demand being made ~~therefor~~ or within 60 days after the sale."

Section 2108. Section 70-9-404, MCA, is amended to read:

"70-9-404. Surplus proceeds unclaimed -- disposition. If the owner or his the owner's agent fails to demand ~~such the~~ surplus within 60 days of the time of ~~such~~ sale, then it must be paid into the county treasury, subject to the order of the owner."

Section 2109. Section 70-9-405, MCA, is amended to read:

"70-9-405. Responsibility of carrier and bailee after storage. After the storage of goods, merchandise, or property as provided in this part, the responsibility of the carrier ceases; ~~nor is and~~ the person with whom the ~~same~~ goods, merchandise, or property is stored is not liable for any loss or damage on account ~~thereof of the storage~~ unless the ~~same~~ loss or damage results from his the person's negligence or want of proper care."

Section 2110. Section 70-9-406, MCA, is amended to read:

"70-9-406. Sale of property upon which advances are due. When ~~any a~~ a commission merchant or ~~warehouseman~~ warehouse operator receives on consignment produce, merchandise, or other property and makes advances ~~thereon on the produce, merchandise, or property~~, either to the owner or for freight and charges, ~~he the person~~ may, if the ~~same is~~ freight and charges are not paid ~~to him~~ within 90 days from the date of ~~such the~~ advances, cause the produce, merchandise, or property on which the advances were made to be advertised and sold as provided in this part."

Section 2111. Section 70-9-502, MCA, is amended to read:

"70-9-502. Disposition of surplus proceeds. ~~In case~~ If any balance arising from ~~such the~~ the sale ~~shall~~ is not be claimed by the rightful owner within 1 week from the day of ~~said the~~ the sale, the ~~same shall~~ balance must be paid into the treasury of the county in which ~~such the~~ the sale took place, and if the ~~same be the balance is~~ is not claimed by the owner ~~thereof~~ thereof or ~~his~~ the owner's legal representatives within 1 year ~~thereafter~~ after the sale, the ~~same shall~~ balance must be paid into the general fund of ~~said the~~ the county."

Section 2112. Section 70-15-205, MCA, is amended to read:

"70-15-205. Remainder limited upon fee tail valid -- vesting. ~~Where~~ When a remainder in fee is limited upon any estate ~~which that~~ that would by the common law be adjudged a fee tail, ~~such the~~ the remainder is valid as a contingent limitation upon a fee and vests in possession on the death of the first taker without issue living at the time of ~~his~~ the first taker's death."

Section 2113. Section 70-15-210, MCA, is amended to read:

"70-15-210. Reversion. A reversion is the residue of an estate left by operation of law in the grantor or ~~his~~ the grantor's successors or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised."

Section 2114. Section 70-15-301, MCA, is amended to read:

"70-15-301. Power defined. A "power", as the term is used in this part, is an authority to do some act in relation to real property or to the creation or revocation of an estate ~~therein in~~ in or a charge ~~thereon~~ on the real property; ~~which that~~ that the owner granting or reserving ~~such the~~ the power might ~~himself~~ personally perform for any purpose."

Section 2115. Section 70-15-303, MCA, is amended to read:

"70-15-303. Married persons -- execution. (1) A married person may execute a power during marriage without the concurrence of the spouse unless otherwise prescribed by the terms of the power.

(2) ~~No power can be executed by a married woman before she attains her majority which could not be executed by a married man before he attains his majority.~~

Section 2116. Section 70-16-102, MCA, is amended to read:

"70-16-102. Rights of life tenant. The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that ~~he must do no~~ the owner of the life estate may not do an act to the injury of the inheritance."

Section 2117. Section 70-16-104, MCA, is amended to read:

"70-16-104. Rights of tenant for years or at will. (1) A tenant for years or at will, unless ~~he~~ the tenant is a wrongdoer by holding over, may occupy the buildings, take the annual products of the soil, and work mines and quarries open at the commencement of ~~his~~ the tenancy; ~~and a~~ A tenant at will or for an indefinite term may cultivate and harvest the crops growing at the end of ~~his~~ the tenancy.

(2) A tenant for years or at will has no other rights to the property than those given to ~~him~~ the tenant by the agreement or instrument by which ~~his~~ the tenancy is acquired or by subsection (1).

(3) Subsection (2) does not apply to arrangements governed by Title 70, chapter 24 of this title."

Section 2118. Section 70-16-105, MCA, is amended to read:

"70-16-105. Remedy of ~~remainderman or reversioner~~ person having remainder or reversion. A person having an estate in fee; in remainder or reversion; may maintain an action for any injury done to the inheritance, notwithstanding an intervening estate for life or years and although, after its commission, ~~his~~ the person's estate is transferred and ~~he has no~~ the person does not have an interest in the property at the commencement of the action."

Section 2119. Section 70-16-106, MCA, is amended to read:

"70-16-106. Action for waste -- treble damages. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property commits waste ~~thereon~~ of the property, any person aggrieved by the waste may bring an action against ~~him~~ that person, ~~in which action there may be~~ The judgment in the action may be for treble damages."

Section 2120. Section 70-16-203, MCA, is amended to read:

"70-16-203. Adjoining owner's right to lateral and subjacent support -- excavations. Each coterminous owner is entitled to the lateral and subjacent support ~~which his~~ that the owner's land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the ~~same~~ adjoining land for the purposes of construction, on using ordinary care and skill and taking

reasonable precautions to sustain the land of the other and giving previous reasonable notice to the other of ~~his~~ the intention to make ~~such~~ the excavations."

Section 2121. Section 70-16-204, MCA, is amended to read:

"70-16-204. Trees on or near boundary. (1) Trees whose trunks stand partly on the land of two or more coterminous owners belong to them in common.

(2) Trees whose trunks stand wholly upon the land of one owner belong exclusively to ~~him~~ that landowner, although their roots grow into the land of another."

Section 2122. Section 70-16-205, MCA, is amended to read:

"70-16-205. Monuments and fences -- mutual obligation of adjoining owners. (1) Coterminous owners are mutually bound equally to maintain:

(a) the boundaries and monuments between them;

(b) the fences between them, unless one of them chooses to let ~~his~~ that owner's land lie without fencing, in which case if ~~he~~ that owner afterwards encloses it, ~~he~~ that owner ~~must~~ shall refund to the other owner a just proportion of the value, at that time, of any division fence made by the ~~latter~~ other owner. However, using land for grazing or pasturage of any kind ~~whatsoever~~ must be considered a usage of the land, and the land ~~must~~ may not be considered as lying idle under the provisions of this section.

(2) Except as provided by prescription, custom, or agreement between coterminous owners, each coterminous owner shall maintain all fencing to the right of the midpoint of the common boundary line as viewed from ~~his~~ the owner's land. If the land of one owner is entirely surrounded by the land of another, each owner shall maintain all fencing to the right, as viewed from ~~his~~ the owner's land, of the northeastern corner of the surrounded land or, if there is more than one northeastern corner, then from the northernmost northeastern corner to a point midway around the surrounded land. If there is a substantial difference in terrain or topographical features of the land between the coterminous owners, responsibility for maintaining the fence must be determined by mutual agreement with consideration given to factors such as cost and time."

Section 2123. Section 70-16-207, MCA, is amended to read:

"70-16-207. Occupant of land adjoining enclosure of another -- when required to share expense of partition fence. If any occupant of land adjoining the enclosure of another ~~enclose~~ encloses the ~~same~~ land, upon the enclosure of ~~such~~ the other person, ~~he~~ the occupant shall within 3 months ~~thereafter~~ build ~~his~~ the

occupant's proportion of ~~such the~~ partition fence or refund to the owner ~~thereof of the fence~~ an equal proportion of the value, at that time, of any partition fence of ~~such the~~ adjoining occupant."

Section 2124. Section 70-16-208, MCA, is amended to read:

"70-16-208. Partition fence when common occupancy ceases. Whenever any lands belonging to different persons in severalty have been enclosed and occupied in common or without a partition fence between them and one of ~~such the~~ occupants desires to occupy ~~his that occupant's~~ part in severalty, the other occupant ~~must shall~~, within 6 months after being notified in writing, build and maintain ~~his the other occupant's~~ proportion of ~~such the~~ partition fence as may be necessary for that purpose, and in case of neglect or refusal so to do, the person giving ~~such the~~ notice may build ~~such the~~ fence at the expense of the person ~~so~~ neglecting or refusing; ~~the~~ The amount expended ~~to may~~ be recovered in an action, together with all damages ~~he that person~~ may sustain on account of ~~such the~~ neglect or refusal."

Section 2125. Section 70-16-209, MCA, is amended to read:

"70-16-209. Repair or rebuilding of partition fences. ~~In case any~~ If a person neglects or refuses to repair or rebuild any partition fence ~~which that~~ by law ~~he the person~~ ought to build or maintain, the occupant of the adjoining land may, after giving 60 days' notice that a new fence should be erected or 5 days' notice in writing that the repairing of ~~such the~~ fence is necessary, build or repair ~~such the~~ fence at the expense of the party ~~so~~ neglecting or refusing; ~~the~~ The amount ~~so~~ expended ~~to may~~ be recovered from ~~him; and the~~ neglecting or refusing party ~~so neglecting or refusing; after receipt by him of the notice above provided, and the neglecting or refusing party~~ is liable to the party injured for all damages ~~he may sustain thereby~~ sustained by the neglect or refusal."

Section 2126. Section 70-16-210, MCA, is amended to read:

"70-16-210. Removal of partition fence. If the occupants of adjoining lands build their respective portions of a partition fence and either of them at any time desires to ~~suffer~~ let the land occupied by ~~him that person~~ to lie open, ~~he that person~~ may, after having given to the occupants of the adjoining land at least 6 months' notice of ~~his the~~ intention so to do, remove ~~his that person's~~ proportion of the partition fence unless ~~such the~~ adjoining occupant pays or tenders to ~~him that person~~ the value ~~thereof of the fence~~. If ~~such the~~ fence ~~be~~ is removed without notice or after payment or tender of the value ~~as aforesaid~~, the person removing the ~~same fence~~ is liable to the person injured for all damages ~~he the injured person~~ may sustain ~~thereby.~~"

Section 2127. Section 70-17-205, MCA, is amended to read:

"70-17-205. Nonliability for prior or subsequent breach. ~~No one~~ A person, merely by reason of having acquired an estate subject to a covenant running with the land, is not liable for a breach of the covenant before ~~he~~ the person acquired the estate or after ~~he~~ the person has parted with it the estate or ceased to enjoy its benefits."

Section 2128. Section 70-18-101, MCA, is amended to read:

"70-18-101. Fixture attached by other -- accession by owner. When a person affixes ~~his~~ the person's property to the land of another, without an agreement permitting ~~him~~ the person to remove it, the thing affixed, except as provided in 70-18-102 and in the Uniform Commercial Code, belongs to the owner of the land unless ~~he~~ the owner of the land chooses to require the ~~former~~ person to remove it."

Section 2129. Section 70-18-102, MCA, is amended to read:

"70-18-102. Removal of fixture by tenant. A tenant may remove from the demised premises, any time during the continuance of ~~his~~ the tenant's term, anything affixed ~~thereto~~ to the premises for purposes of trade, manufacture, ornament, or domestic use if the removal can be effected without injury to the premises unless the thing has, by the manner in which it is affixed, become an integral part of the premises."

Section 2130. Section 70-19-102, MCA, is amended to read:

"70-19-102. Action affecting title or possession -- filing as constructive notice. (1) In an action affecting the title or right of possession of real property or in an action between husband and wife, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing ~~his~~ the answer, when affirmative relief is claimed in ~~such~~ the answer, or at any time afterward may file in the office of the clerk and recorder of the county in which the property is situated a notice of the pendency of the action containing the names of the parties and the object of the action or defense and a description of the property in that county affected ~~thereby~~ by the action or defense.

(2) From the time of filing of ~~such~~ the notice only ~~shall~~ is a purchaser or encumbrancer of the property affected ~~thereby~~ be deemed considered to have constructive notice of the pendency of the action and only of its pendency against parties designated by their real names."

Section 2131. Section 70-19-202, MCA, is amended to read:

"70-19-202. Abuse of property held jointly or in common -- action -- mining property. If ~~any a~~ any a person ~~shall assume and exercise~~ assumes and exercises exclusive ownership over or ~~take takes~~ takes away, ~~destroy~~ destroys, ~~lessen lessens~~ lessens in value, or otherwise ~~injure injures~~ injures or ~~abuse abuses~~ abuses any property held in joint tenancy or tenancy in common, the party aggrieved ~~shall have his~~ has action for the injury in the same manner as ~~he~~ the aggrieved party would have if ~~such the~~ the joint tenancy or tenancy in common did not exist; ~~provided that nothing herein contained shall~~ However, this section does not prevent one cotenant or joint tenant or any number of cotenants or joint tenants acting together ~~less than all~~ less than all from entering on the common property at any point or points not then in the actual occupancy of the nonjoining cotenants or joint tenants and enjoying all rights of occupancy of the property, without waste and, in the case of mining property, from mining the ~~same~~ property in a minerlike manner and extracting, milling, and disposing of the ore from the common property, paying its or their own expenses and subject to accounting to the nonjoining cotenant or joint tenant for the net profits of ~~such the~~ the mining operations; ~~if any made, and all~~ All liens for labor and materials incurred in ~~such the~~ the mining ~~shall attach~~ shall attach only to the undivided interest or interests of the working cotenants or joint tenants, but nothing ~~herein shall prevent in this section prevents~~ preclude precludes the cotenant or joint tenant, not joining in the operation of ~~such the~~ the mining property, from receiving ~~his, its, or their~~ the cotenant's or joint tenant's proportionate share of all ore or ores on the dump upon payment or tendering payment of the actual cost of mining the ~~same~~ property."

Section 2132. Section 70-19-204, MCA, is amended to read:

"70-19-204. Order for inspection or survey. (1) Whenever ~~any a~~ any a person ~~shall have~~ has any right to or interest in any lead, lode, or mining claim ~~which that~~ which that is in the possession of another person and it ~~shall be~~ is necessary for the ascertainment, enforcement, or protection of ~~such that~~ such that right or interest that an inspection, examination, or survey of ~~such the~~ the lead, mine, lode, or mining claim should be ~~had or~~ made or whenever any inspection, examination, or survey of ~~any such the~~ the lead, mine, lode, or mining claim ~~shall be~~ is necessary to protect, ascertain, or enforce the right or interest of any person in another lead, mine, lode, or mining claim and the person in possession of the ~~same shall refuse~~ other lead, mine, lode, or mining claim refuses for a period of 3 days after demand ~~therefor~~ in writing to allow ~~such the~~ the inspection, examination, or survey to be had or made, the demanding party ~~so desiring the same~~ may present to the district court or a judge thereof of the county wherein in which the lead, mine, lead, lode, or mining claim is ~~situated~~ located a petition under oath setting out ~~his the party's~~ the party's interest in the premises, describing the ~~same~~ premises, setting out that the premises are in the possession of a party, naming ~~him~~ the party, setting out the reason why ~~such the~~ the examination, inspection, or survey is necessary, setting out the demand made on the person in possession ~~so~~ to permit ~~such the~~ the

examination, inspection, or survey; and ~~his~~ the person's refusal ~~so to do~~.

(2) The court or judge shall ~~thereupon~~ appoint a time and place for hearing ~~such a~~ petition and shall order notice ~~thereof~~ to be served upon the adverse party; ~~which~~ The notice shall must be served at least 1 day before the day of hearing. ~~On~~ At the hearing, either party may read affidavits or produce oral testimony, and if the ~~court or~~ judge is satisfied that the facts stated in the petition are true, ~~he~~ the judge shall make an order for an inspection, examination, or survey of the lead, mine, lode, or mining claim in question in ~~such a~~ manner, at ~~such a~~ time, and by ~~such~~ persons as that are mentioned in the order. ~~Such~~ Upon the order the person shall ~~thereupon~~ have free access to ~~such the~~ lead, mine, lead, lode, or mining claim for the purpose of making ~~such the~~ inspection, examination, or survey, and any interference with ~~such the~~ person while acting under ~~such the~~ order ~~shall be~~ is contempt of court.

(3) If the order of the court is made while an action is pending between the parties to the order, the costs of obtaining the order ~~shall abide~~ must await the result of the action, but all costs of making ~~such the~~ examination or survey ~~shall must~~ be paid by the petitioner."

Section 2133. Section 70-19-301, MCA, is amended to read:

"70-19-301. Application to lands conveyed by state. The provisions of parts 3 and 4 ~~shall~~ apply to all lands sold and conveyed before July 1, 1955, by the state of Montana for which a valid consideration was received by the state; ~~provided that the state, at the time of any such the~~ sale or conveyance, was not precluded by the constitution of Montana or by the terms of the grant of ~~such the~~ lands by the United States from selling and disposing of the ~~same; land. and provided further, that no~~ An occupant of a public way or other ground dedicated or appropriated by the state to public use and not subject to sale ~~shall may not~~ acquire by reason of ~~his the~~ occupancy any title ~~thereto~~ to the public way or ground."

Section 2134. Section 70-19-303, MCA, is amended to read:

"70-19-303. Statute of limitations for actions by grantee -- joinder of state. (1) ~~No~~ An action ~~can~~ may not be brought for or in respect to real property by any person claiming under letters patent or grants from this state unless the plaintiff; ~~his~~ or the plaintiff's ancestor, predecessor, or grantor was seized or possessed of the property in question within 10 years before the commencement of the action.

(2) In ~~any such an~~ action described in subsection (1), the state of Montana may be made a party defendant and ~~shall have~~ has only the defenses ~~thereto as that~~ are available to other parties defendant to the action, provided that ~~no a~~ judgment in any ~~such~~ action ~~shall may not~~ include damages, attorney fees, or court

costs against the state of Montana."

Section 2135. Section 70-19-304, MCA, is amended to read:

"70-19-304. Statute of limitations for action for recovery of property under void conveyance from state. When letters patent or grants of real property issued or made by the state are declared void by the determination of a competent court, an action for the recovery of the property ~~so~~ conveyed may be brought, either by the state or by any subsequent patentee or grantee of the property; his or the patentee's or grantee's heirs, or assigns; only within 10 years after ~~such the~~ the determination; ~~but not after that period.~~"

Section 2136. Section 70-19-305, MCA, is amended to read:

"70-19-305. Certificate of purchase from state or United States prima facie evidence of ownership. A certificate of purchase or of location of any lands in this state issued or made in pursuance of any law of the United States or of this state is prima facie evidence that the holder or assignee of ~~such the~~ the certificate is the owner of the land described ~~therein in the certificate~~, but this evidence may be overcome by proof that at the time of the location or time of filing a preemption claim on which the certificate may have been issued, the land was in the adverse possession of the adverse party or those under whom ~~he~~ the adverse party claims or that the adverse party is holding the land for mining purposes."

Section 2137. Section 70-19-401, MCA, is amended to read:

"70-19-401. Action for recovery -- possession within 5 years required. ~~No~~ An action for the recovery of real property or for the possession ~~thereof~~ of real property may not be maintained unless it ~~appear~~ appears that the plaintiff; ~~his~~ or the plaintiff's ancestor, predecessor, or grantor was seized or possessed of the property in question within 5 years before the commencement of the action."

Section 2138. Section 70-19-407, MCA, is amended to read:

"70-19-407. Occupancy under claim founded on instrument or judgment -- when considered adverse. When it appears that the occupant or those under whom ~~he~~ the occupant claims entered into the possession of the property under claim of title, exclusive of other right, founding ~~such the~~ the claim upon a written instrument as being a conveyance of the property in question or upon the decree or judgment of a competent court and that there has been a continued occupation and possession of the property included in ~~such the~~ the instrument, decree, or judgment or of some part of the property under ~~such the~~ the claim for 5 years, the property

so included is ~~deemed~~ considered to have been held adversely, except that when it the property consists of a tract divided into lots, the possession of one lot is not ~~deemed~~ considered a possession of any other lot of the same tract."

Section 2139. Section 70-19-412, MCA, is amended to read:

"70-19-412. Relation of landlord and tenant as affecting adverse possession. When the relation of landlord and tenant has existed between any persons, the possession of the tenant is ~~deemed~~ considered the possession of the landlord until the expiration of 5 years from the termination of the tenancy or, ~~where~~ when there has been no written lease, until the expiration of 5 years from the time of the last payment of rent, notwithstanding ~~such that the~~ tenant may have acquired another title or may have claimed to hold adversely to ~~his~~ the landlord. ~~But such~~ However, the enumerated presumptions ~~cannot~~ may not be made after the periods prescribed in this section."

Section 2140. Section 70-20-101, MCA, is amended to read:

"70-20-101. Transfer to be in writing -- statute of frauds. ~~No~~ An estate or interest in real property, other than an estate at will or for a term not exceeding 1 year, ~~can~~ may not be created, granted, assigned, surrendered, or declared otherwise than by operation of law or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring it or by ~~his~~ the party's lawful agent ~~thereunto~~ authorized by writing."

Section 2141. Section 70-20-102, MCA, is amended to read:

"70-20-102. Exceptions to statute of frauds. Section 70-20-101 ~~must~~ may not be construed to:

- (1) affect the power of a testator in the disposition of ~~his~~ the testator's real property by a last will and testament;
- (2) prevent any trust from arising or being extinguished by implication or operation of law; or
- (3) abridge the power of any court to compel the specific performance of an agreement, in case of ~~part~~ partial performance ~~thereof~~ of the agreement."

Section 2142. Section 70-20-105, MCA, is amended to read:

"70-20-105. Joint tenancy -- how created. (1) A joint tenancy as to any interest in real property may be established by the owner ~~thereof~~ of the interest by designating in the instrument of conveyance or transfer the

names of ~~such~~ the joint tenants, including ~~his~~ the person's own, without the necessity of any transfer or conveyance to or through a third person.

(2) All joint tenancies created in this manner prior to July 1, 1963, are sufficient in law to create a joint tenancy."

Section 2143. Section 70-20-108, MCA, is amended to read:

"70-20-108. Attorney-in-fact -- how must to execute for principal. When an attorney-in-fact executes an instrument transferring an estate in real property, ~~he must~~ the attorney-in-fact shall subscribe the name of ~~his~~ the principal to it and ~~his~~ the attorney-in-fact's own name as attorney-in-fact."

Section 2144. Section 70-20-109, MCA, is amended to read:

"70-20-109. Change of owner's name after acquisition -- later conveyance to include former name. Any A person in whom the title of real estate is vested, who ~~shall~~ afterwards from any cause ~~have his or her~~ has the person's name changed, shall, in any conveyances of ~~said~~ the real estate ~~so held~~, set forth the name in which ~~he or she~~ the person derived title to ~~said~~ the real estate, and a failure to comply with the provisions of this section ~~shall subject any such~~ subjects the person to a penalty of \$50, to be collected by the county attorney of the county in which the real estate is situated and ~~by him~~ paid by the person into the treasury of ~~said~~ the county for the benefit of the common schools ~~thereof~~ of the county."

Section 2145. Section 70-20-113, MCA, is amended to read:

"70-20-113. Definitions -- notice of presence of smoke detectors upon sale of dwelling. (1) In this section, the following definitions apply:

(a) "Dwelling" means a building or portion of a building, including a mobile home or housetrailer, that contains not more than two dwelling units.

(b) "Dwelling unit" means a building or portion of a building that contains living facilities with provision for sleeping, eating, cooking, and sanitation for not more than one family.

(c) "Smoke detector" means a device that detects visible or invisible particles or combustion.

(2) Upon the sale or transfer of ownership of a dwelling not otherwise required to have a smoke detector, the seller shall provide a written notice to the buyer in a buy-sell agreement or at the time of the sale to the buyer that the dwelling is equipped or is not equipped with smoke detectors or other fire detection devices.

(3) Neither the seller nor ~~his~~ the seller's agent is liable in a civil action for failure to comply with; or

negligence in complying with; the requirements of this section. Evidence of failure to comply with; or negligence in complying with; this section is not admissible in a civil action."

Section 2146. Section 70-20-302, MCA, is amended to read:

"70-20-302. After-acquired title to pass by operation of law. ~~Where~~ When a person purports by proper instrument to grant real property in fee simple and subsequently acquires any title or claim of title ~~thereto to the real property~~, the ~~same real property~~ passes by operation of law to the grantee or ~~his~~ the grantee's successors."

Section 2147. Section 70-20-303, MCA, is amended to read:

"70-20-303. Grant conclusive -- exception for good faith purchaser. ~~Every~~ A grant of an estate in real property is conclusive against the grantor; ~~also~~ and against every one subsequently claiming under ~~him~~ the grantor; except a purchaser or encumbrancer who in good faith and for a valuable consideration acquires a title or lien by an instrument that is first duly recorded."

Section 2148. Section 70-20-304, MCA, is amended to read:

"70-20-304. Implied covenants -- free from encumbrance. (1) ~~From the~~ The use of the word "grant" in any conveyance by which an estate of inheritance or fee simple or possessory title is to be passed; implies only the following covenants and none other on the part of the grantor for ~~himself~~ the grantor and ~~his~~ the grantor's heirs to the grantee; ~~his~~ and the grantee's heirs; and assigns ~~are implied~~ unless restrained by express terms contained in ~~such~~ the conveyance:

(a) that ~~previous~~ prior to the time of the execution of ~~such~~ the conveyance the grantor has not conveyed the same estate or any right, title, or interest ~~therein~~ in that estate to any person other than the grantee; and

(b) that ~~such~~ the estate is at the time of the execution of ~~such~~ the conveyance free from encumbrances done, made, or suffered by the grantor or any person claiming under ~~him~~ the grantor.

(2) ~~Such~~ The enumerated covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance."

Section 2149. Section 70-20-311, MCA, is amended to read:

"70-20-311. Grant on condition subsequent. When a grant is made upon condition subsequent and is subsequently defeated by the nonperformance of the condition, the person otherwise entitled to hold under the

grant ~~must~~ shall reconvey the property to the grantor or ~~his~~ the grantor's successors by grant duly acknowledged for the record."

Section 2150. Section 70-20-313, MCA, is amended to read:

"70-20-313. Grant by owner for life or years. A grant made by an owner of an estate for life or years, purporting to transfer a greater estate than ~~he~~ the owner could lawfully transfer, does not work a forfeiture of ~~his~~ the owner's estate but passes to the grantee all the estate ~~which~~ that the grantor could lawfully transfer."

Section 2151. Section 70-20-314, MCA, is amended to read:

"70-20-314. Grant of property occupied by tenant. When real property is occupied by a tenant, a grant of any estate ~~therein~~ in the property by ~~his~~ the tenant's landlord is valid without an ~~attornment of~~ agreement to continue the tenancy by the tenant to the grantee; ~~but~~ However, the payment of rent to ~~such~~ the grantor by ~~his~~ the tenant before notice of the grant is binding upon the grantee, and the tenant is not liable to the grantee for any breach of the condition of the lease until ~~he~~ the tenant has had notice of the grant."

Section 2152. Section 70-20-316, MCA, is amended to read:

"70-20-316. Deeds made prior to 1900 -- presumption grantor had no wife. When a deed to real property has been made, executed, and acknowledged prior to the year 1900 by a grantor without recital in the body of the deed or acknowledgment as to whether or not the grantor is married or single and the wife of ~~such~~ the grantor, if any, not joining in the conveyance or otherwise releasing or conveying ~~her~~ the wife's dower, the presumption ~~shall be~~ is that the person conveying ~~such~~ the land had no wife living at the date of ~~such~~ conveyance and that ~~such~~ the land was conveyed free of all right of dower, inchoate or vested."

Section 2153. Section 70-20-402, MCA, is amended to read:

"70-20-402. Instrument not void as to purchaser with notice -- exception. ~~No~~ An instrument is not to be avoided under 70-20-401 in favor of a subsequent purchaser or encumbrancer having notice ~~thereof~~ at the time ~~his~~ the purchase was made or ~~his~~ the lien was acquired unless the person in whose favor the instrument was made was a privy to the fraud intended."

Section 2154. Section 70-20-403, MCA, is amended to read:

"70-20-403. Grant by person with power to revoke -- power executed. (1) ~~Where~~ When a power to

revoke or modify an instrument affecting the title to or enjoyment of an estate in real property is reserved to the grantor or given to any other person, a subsequent grant of or charge upon the estate by the person having the power of revocation in favor of a purchaser or encumbrancer for value operates as a revocation of the original instrument, to the extent of the power, in favor of ~~such~~ the purchaser or encumbrancer.

(2) ~~Where~~ When a person having a power of revocation within the provisions of subsection (1) is not entitled to execute it until after the time at which ~~he~~ the person makes ~~such a~~ the grant or charge as described in that subsection, the power is ~~deemed~~ considered to be executed as soon as ~~he~~ the person is entitled to execute it."

Section 2155. Section 70-21-210, MCA, is amended to read:

"70-21-210. Clerk to endorse fee. The county clerk ~~must~~ shall in all cases endorse the amount of ~~his~~ the fee for recording on the instrument recorded."

Section 2156. Section 70-21-307, MCA, is amended to read:

"70-21-307. Effect of conveyance to grantee as trustee when no trust conditions provided. Any conveyance of real property ~~hereafter~~ placed of record in any office of ~~any~~ a county clerk and recorder in which the name of the grantee is followed by the word "trustee", "as trustee", or some similar fiduciary term and in which ~~no~~ terms and conditions of ~~such~~ the purported trust or any limitation on the power of the grantee to convey ~~shall~~ be is not set forth so that any person dealing with ~~such~~ the real property could learn ~~therefrom~~ from the conveyance what, if any, limitation exists upon the authority of the grantee with regard to the reconveyance or encumbrance of ~~such~~ the property ~~shall~~ must be considered as though ~~such~~ the property had been conveyed to ~~such~~ the grantee without any limitation upon ~~his~~ the grantee's authority to reconvey or encumber as fully as though the word "trustee", "as trustee", or any equivalent fiduciary expression had not been used in connection with ~~his~~ the grantee's name; ~~and the~~ The use of the word "trustee" or "as trustee" or any equivalent fiduciary expression purporting a trust contained in ~~such~~ the conveyance ~~shall~~ does not have ~~no~~ force or effect in charging any purchaser or encumbrancer ~~thereof~~ with notice of any limitation of power on the part of the person ~~so~~ named as trustee to deal with ~~such~~ the lands as ~~his~~ the person's own."

Section 2157. Section 70-22-104, MCA, is amended to read:

"70-22-104. Filing of corner record required. A surveyor shall complete, sign, stamp with ~~his~~ the surveyor's seal, and file with the county clerk and recorder of the county where the corner is situated a written

record of corner establishment or restoration to be known as a "corner record" for every public land survey corner and accessory to ~~such the~~ corner ~~which that~~ is established, reestablished, monumented, remonumented, restored, rehabilitated, perpetuated, or used as control in any survey by ~~such the~~ surveyor and within 90 days ~~thereafter~~ after the establishment unless the corner and its accessories are substantially as described in an existing corner record filed in accordance with the provisions of this part."

Section 2158. Section 70-22-108, MCA, is amended to read:

"70-22-108. Corner records to be certified. ~~No~~ A corner record ~~shall~~ may not be filed unless the ~~same~~ the record is signed by a registered surveyor and stamped with ~~his~~ the surveyor's seal, or in the case of an agency of the United States government or the state of Montana, the certificate may be signed by the survey party chief making the survey and approved, signed, and sealed by the registered surveyor in responsible charge of the agency."

Section 2159. Section 70-22-110, MCA, is amended to read:

"70-22-110. Surveyor to rehabilitate monument. ~~In every case where~~ If a corner record of a public land survey corner is required to be filed under the provisions of this part, the surveyor ~~must~~ shall reconstruct or rehabilitate the monument of ~~such the~~ corner and accessories to ~~such the~~ corner so that the ~~same shall be~~ monument is left by ~~him~~ the surveyor in ~~such a~~ physical condition so that it remains as permanent a monument as is reasonably possible and so that the ~~same monument~~ monument may be reasonably expected to be located with facility at all times in the future."

Section 2160. Section 70-23-402, MCA, is amended to read:

"70-23-402. Exclusive ownership and possession of unit -- joint ownership. (1) Each unit owner ~~shall be~~ is entitled to the exclusive ownership and possession of ~~his~~ the owner's unit.

(2) A unit may be jointly or commonly owned by more than one person."

Section 2161. Section 70-23-502, MCA, is amended to read:

"70-23-502. Certain work on unit by owner prohibited. A unit owner ~~shall~~ may not make ~~no~~ a repair or alteration or perform any other work on ~~his~~ the owner's unit ~~which that~~ would jeopardize the soundness or safety of the property, reduce the value ~~thereof~~ of the property, or impair any easement or hereditament unless the consent of all the other unit owners affected is first obtained."

Section 2162. Section 70-23-505, MCA, is amended to read:

"70-23-505. Abandonment or waiver of use not to effect exemption. ~~No~~ A unit owner may ~~exempt himself not be exempted~~ from liability for ~~his~~ the owner's contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of ~~his~~ the owner's unit."

Section 2163. Section 70-23-506, MCA, is amended to read:

"70-23-506. Compliance with bylaws, rules, and covenants required -- action. Each unit owner shall comply with the bylaws and with the administrative rules adopted pursuant ~~thereto~~ to the bylaws and with the covenants, conditions, and restrictions in the declaration or in the deed to ~~his~~ the owner's unit. Failure to comply ~~therewith shall be~~ with the bylaws, rules, covenants, conditions, and restrictions is grounds for an action maintainable by the association of unit owners or by an aggrieved unit owner."

Section 2164. Section 70-23-604, MCA, is amended to read:

"70-23-604. Construction or materialman's lien -- no effect on nonconsenting owner -- exception. ~~No labor~~ Labor performed or materials furnished with the consent or at the request of a unit owner; ~~his or the owner's~~ agent, contractor, or subcontractor ~~shall~~ may not be the basis for the filing of a construction or ~~materialman's~~ materialman's lien against the unit of any other unit owner not consenting to or requesting the labor to be performed or the materials to be furnished, except that consent ~~shall~~ must be considered given by the owner of any unit in the case of emergency repairs ~~thereto~~ performed or furnished with the consent or at the request of the manager."

Section 2165. Section 70-23-605, MCA, is amended to read:

"70-23-605. Lien effective against two or more units -- release from. If a lien becomes effective against two or more units, the owner of each unit subject to ~~such a~~ the lien ~~shall have~~ has the right to have ~~his~~ the owner's unit released from the lien by payment of the amount of the lien attributable to ~~his~~ the owner's unit. The amount of the lien attributable to a unit and the payment required to satisfy ~~such~~ a lien, in the absence of agreement, ~~shall~~ must be determined by application of the percentage established in the declaration. ~~Such~~ A partial payment, satisfaction, or discharge ~~shall~~ may not prevent the lienor from proceeding to enforce ~~his~~ the ~~lienor's~~ lienor's rights against any unit and the undivided interest in the common element ~~appertaining thereto~~ pertaining to a unit not ~~so~~ released by a payment, satisfaction, or discharge."

Section 2166. Section 70-23-610, MCA, is amended to read:

"70-23-610. Purchaser at foreclosure sale not totally liable for prior common expenses. ~~Where~~ When the purchaser of a unit obtains title to the unit as a result of foreclosure of the first mortgage or trust indenture, ~~such the purchaser; his and the purchaser's successors; and assigns shall are not be~~ shall be liable for any of the common expenses chargeable to ~~such the unit which that~~ such the unit which ~~that~~ became due prior to the acquisition of title to ~~such the unit by such the purchaser. Such The~~ such the unit by ~~such the purchaser. Such The~~ such the purchaser. ~~Such The~~ Such unpaid share of common expenses ~~shall be is~~ is a common expense of all the unit owners, including ~~such the purchaser; his and the purchaser's successors; and assigns."~~

Section 2167. Section 70-23-611, MCA, is amended to read:

"70-23-611. Joint liability of grantor and grantee for unpaid common expenses. In a voluntary conveyance of a unit, the grantee is jointly and severally liable with the grantor for all unpaid charges against the ~~latter grantor~~ grantor for ~~his the grantor's~~ his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee ~~therefor for the common expenses.~~ However, upon request of a prospective purchaser, the manager shall make and deliver a statement of the unpaid charges against the prospective grantor, and the grantee in that case is not liable for nor is the unit when conveyed subject to a lien filed ~~thereafter~~ thereafter for any unpaid charges against the grantor in excess of the amount ~~therein~~ set forth in the statement."

Section 2168. Section 70-23-612, MCA, is amended to read:

"70-23-612. Insurance of building -- premiums as common expenses. (1) The manager as trustee for the unit owners shall, if required by the declaration, by the bylaws, or by a majority of the unit owners, insure the building against loss or damage by fire and ~~such~~ other hazards as ~~shall be~~ required, without prejudice to the right of each unit owner to insure ~~his the owner's~~ his own unit for ~~his the owner's~~ his own benefit.

(2) The premiums for ~~such~~ insurance on the building are common expenses."

Section 2169. Section 70-23-613, MCA, is amended to read:

"70-23-613. Disclosure by seller -- seller to furnish documents -- delay period. (1) Whenever a person, corporation, or other legal entity constitutes a majority of the unit owners, the seller or ~~his the sellers's~~ his agent, prior to signing any buy-sell agreement, shall give to any person purchasing or expressing a desire to purchase one of the project units notice that:

(a) the seller or other person constitutes a majority of the unit owners;

(b) any bylaws and administrative regulations governing the operation of the development and the association, as adopted by the association, have been adopted by the seller or other person acting as a majority of the unit owners; and

(c) any change in the bylaws or administrative regulations occurring while the seller or other person constitutes a majority of the unit owners may be made only with the approval of the seller or other person constituting a majority of unit owners.

(2) Upon the request of any person purchasing or expressing a desire to purchase one of the project units, the seller or ~~his~~ the seller's agent shall furnish to that buyer or prospective buyer, prior to signing any buy-sell agreement, a copy of the Unit Ownership Act, the bylaws of the association, and any administrative regulations governing the operation of the project or the association.

(3) Any buy-sell agreement ~~shall~~ must provide that it is not effective until 72 hours after the prospective purchaser has received the documents required in subsection (2), and during that delay, the prospective purchaser may withdraw ~~his~~ the offer without penalty."

Section 2170. Section 70-23-902, MCA, is amended to read:

"70-23-902. Change of agent for service of process. If the association of unit owners wishes to designate a person other than the one named in the declaration to receive service of process in the cases provided in 70-23-901, it shall record an amendment to the declaration. The amendment ~~shall~~ must be certified by the presiding officer and the secretary of the association of unit owners and ~~shall~~ must state the name of the successor with ~~his~~ the successor's residence or place of business as required by 70-23-301(7) and that the person named in the amendment was designated by resolution duly adopted by the association of unit owners."

Section 2171. Section 70-24-204, MCA, is amended to read:

"70-24-204. Effect of unsigned or undelivered rental agreement. (1) If the landlord does not sign and deliver a written rental agreement signed and delivered to ~~him~~ the landlord by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

(2) If the tenant does not sign and deliver a written rental agreement signed and delivered to ~~him~~ the tenant by the landlord, acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

(3) If a rental agreement given effect by the operation of this section provides for a term longer than 1

year, it is effective for only 1 year."

Section 2172. Section 70-24-301, MCA, is amended to read:

"70-24-301. Duty to disclose name of person responsible. (1) A landlord or a person authorized to enter into a rental agreement on ~~his~~ the landlord's behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(a) the person authorized to manage the premises; and
(b) the owner of the premises or a person authorized to act for the owner for the purpose of service of process and receiving notices and demands.

(2) The information required to be furnished by this section ~~shall~~ must be kept current and in writing, and this section extends to and is enforceable against any successor landlord, owner, or manager.

(3) A person who fails to comply with subsection (1) becomes an agent of each person who is a landlord for the purpose of:

(a) service of process and receiving notices and demands; and
(b) performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for that purpose all rent collected from the premises."

Section 2173. Section 70-24-304, MCA, is amended to read:

"70-24-304. Transfer of premises or termination of management -- relief from liability. (1) Unless otherwise agreed, a landlord who conveys, in a good faith sale to a bona fide purchaser, premises that include a dwelling unit subject to a rental agreement is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the conveyance. ~~He~~ The landlord remains liable to the tenant for all security recoverable by the tenant pursuant to Title 70, chapter 25, ~~of this title~~ and all prepaid rent.

(2) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of ~~his~~ the manager's management."

Section 2174. Section 70-24-312, MCA, is amended to read:

"70-24-312. Access to premises by landlord. (1) A tenant may not unreasonably withhold consent to the landlord or the landlord's agent to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services,

or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, ~~workmen~~ workers, or contractors.

(2) A landlord may enter the dwelling unit without consent of the tenant in the case of an emergency.

(3) A landlord may not abuse the right of access or use it to harass the tenant. Except in the case of an emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of the intent to enter and may enter only at reasonable times.

(4) A landlord has no other right of access except:

(a) pursuant to court order;

(b) as permitted by 70-24-425 and 70-24-426(2); or

(c) when the tenant has abandoned or surrendered the premises.

(5) A tenant may not remove a lock or replace or add a lock not supplied by the landlord to the premises without the written permission of the landlord. If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises, the tenant shall provide the landlord with a key to ensure that the landlord will have the right of access as provided by this chapter."

Section 2175. Section 70-24-322, MCA, is amended to read:

"70-24-322. Tenant to occupy as dwelling unit only -- extended absence. (1) Unless otherwise agreed, a tenant shall occupy ~~his~~ the tenant's dwelling unit only as a dwelling unit.

(2) The rental agreement may require that the tenant notify the landlord of an anticipated extended absence from the premises in excess of 7 days no later than the first day of the extended absence."

Section 2176. Section 70-24-403, MCA, is amended to read:

"70-24-403. Prohibited provision in rental agreement -- unenforceability -- damages. (1) A provision prohibited by 70-24-202 that is included in a rental agreement is unenforceable.

(2) If a party purposefully uses a rental agreement containing provisions known by ~~him~~ the party to be prohibited, the other party may recover, in addition to ~~his~~ the other party's actual damages, an amount up to 3 months' periodic rent."

Section 2177. Section 70-24-405, MCA, is amended to read:

"70-24-405. Failure of landlord to deliver possession -- tenant's remedies. (1) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in 70-24-302, rent abates until possession is

delivered and the tenant may:

(a) terminate the rental agreement upon at least 5 days' written notice to the landlord, and; upon termination, the landlord shall return all prepaid rent and security; or

(b) demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or a person wrongfully in possession and recover the actual damages sustained by ~~him~~ the tenant.

(2) If a person's failure to deliver possession is purposeful and not in good faith, an aggrieved party may recover from that person an amount not more than 3 months' periodic rent or treble damages, whichever is greater."

Section 2178. Section 70-24-408, MCA, is amended to read:

"70-24-408. Purposeful or negligent failure to provide essential services -- tenant's remedies. (1) If contrary to the rental agreement or 70-24-303 the landlord purposefully or negligently fails to supply heat, running water, hot water, electric, gas, or other essential services, the tenant may give written notice to the landlord specifying the breach and may:

(a) procure reasonable amounts of heat, hot water, running water, electricity, gas, and other essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

(b) recover damages based upon the diminution in the fair rental value of the dwelling unit; or

(c) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) If the tenant proceeds under this section, ~~he~~ the tenant may not proceed under 70-24-406 or 70-24-407 as to that breach.

(3) Rights of the tenant under this section do not arise until ~~he~~ the tenant has given notice to the landlord and the landlord has had a reasonable opportunity to correct the conditions or if the conditions were caused by the act or omission of the tenant, a member of ~~his~~ the tenant's family, or any other person on the premises with ~~his~~ the tenant's consent."

Section 2179. Section 70-24-409, MCA, is amended to read:

"70-24-409. Fire or casualty damage -- rights of tenant. (1) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired,

the tenant may:

(a) immediately vacate the premises and notify the landlord in writing within 14 days ~~thereafter~~ of ~~his~~ the tenant's intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(b) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

(2) This section does not apply when the fire and casualty damage was caused by the purposeful or negligent act of the tenant; or the tenant's family; or guests.

(3) If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to Title 70, chapter 25, of this title and all prepaid rent. Accounting for rent in the event of termination or apportionment ~~shall~~ must be made as of the date of the fire or casualty."

Section 2180. Section 70-24-421, MCA, is amended to read:

"70-24-421. Action for nonpayment of rent -- tenant's counterclaim. (1) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount ~~he~~ the tenant may recover under the rental agreement or this chapter. The court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing and shall determine the amount due to each party. The party to whom a net amount is owed ~~shall~~ must be paid first from the money paid into court and the balance by the other party. The court may at any time release money paid into the court to either party if the parties so agree or if the court finds a party entitled to the sums released. If no rent remains due after application of this section, judgment ~~shall~~ must be entered for the tenant in the action for possession.

(2) In an action for rent when the tenant is not in possession, ~~he~~ the tenant may counterclaim as provided in subsection (1) ~~of this section~~ but is not required to pay any rent into court."

Section 2181. Section 70-25-101, MCA, is amended to read:

"70-25-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Cleaning expenses" means the actual and necessary cost of cleaning done by an owner or ~~his~~ the owner's selected representative for cleaning needs not attributable to normal wear brought about by the tenant's failure to bring the premises to the condition it was at the time of renting.

(2) "Damage" means any and all tangible loss, injury, or deterioration of a leasehold premises caused by the willful or accidental acts of the tenant occupying ~~same~~ the leasehold premises or by the tenant's family, licensees, or invitees, as well as any and all tangible loss, injury, or deterioration resulting from the tenant's omissions or failure to perform any duty imposed upon the tenant by law with respect to the leasehold.

(3) "Leasehold premises" means the premises occupied by the tenant together with all common areas, recreational facilities, parking areas, and storage facilities to which the tenant has access, as well as all personal property owned or controlled by the landlord the use of which is permitted to the tenant.

(4) "Security deposit" means value given, in money or its equivalent, to secure the payment of rent by the tenant under a leasehold agreement or to secure payment for damage to and cleaning of the leasehold premises. If a leasehold agreement or an agreement incident ~~thereto~~ to a leasehold agreement requires the tenant or prospective tenant to provide or maintain in effect any deposit to the landlord for part or all of the term of the leasehold agreement, the deposit ~~shall~~ must be presumed to be a security deposit. A fee or charge for cleaning and damages, no matter how designated, is presumed to be a security deposit."

Section 2182. Section 70-26-101, MCA, is amended to read:

"70-26-101. Letting of parts of rooms prohibited. ~~One~~ A person who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary, and if a landlord lets a room as a dwelling for more than one family, the person to whom ~~he~~ the landlord first lets any part of it is entitled to the possession of the whole room for the term agreed upon, and every tenant in the building under the same landlord is relieved from all obligation to pay rent to ~~him~~ the landlord while ~~such~~ the double letting of any room continues."

Section 2183. Section 70-26-102, MCA, is amended to read:

"70-26-102. Transferee of rental property to have same rights as transferor. A person to whom any real property is transferred or devised, upon which rent has been reserved, or to whom any ~~such~~ rent is transferred is entitled to the same remedies for recovery of rent, for nonperformance of any of the terms of the lease, or of any waste or cause of forfeiture as ~~his~~ the person's grantor or devisor might have had."

Section 2184. Section 70-26-104, MCA, is amended to read:

"70-26-104. Notice of action by third person served on tenant -- duty to inform landlord. Every A tenant who receives notice of ~~any~~ a proceeding to recover the real property occupied by ~~him~~ the tenant or the

possession thereof ~~must~~ of the real property shall immediately inform ~~his~~ the landlord of the ~~same~~ notice and shall also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages ~~which he~~ that the landlord may sustain by reason of any omission to inform ~~him~~ the landlord of the notice or to deliver it to ~~him~~ the landlord if in writing."

Section 2185. Section 70-26-105, MCA, is amended to read:

"70-26-105. Assignee of lessee -- remedies of lessor against. Whatever remedies the lessor of any real property has against ~~his~~ the lessor's immediate lessee for the breach of any agreement in the lease or for recovery of the possession, ~~he~~ the lessor has against the assignees of the lessee for any cause of action accruing while they are ~~such~~ assignees, except ~~where~~ when the assignment is made by way of security for a loan and is not accompanied by possession of the premises."

Section 2186. Section 70-26-106, MCA, is amended to read:

"70-26-106. Rights of lessee and his assignees against lessor and his assignees. Whatever remedies the lessee of any real property may have against ~~his~~ the lessee's immediate lessor for the breach of any agreement in the lease, ~~he~~ the lessee may have against the assigns of the lessor and the assigns of the lessee may have against the lessor and ~~his~~ the lessor's assigns, except upon covenants against encumbrances or relating to the title or possession of the premises."

Section 2187. Section 70-26-108, MCA, is amended to read:

"70-26-108. Rent dependent on life -- recovery. Rent dependent on the life of a person may be recovered after as well as before ~~his~~ the person's death."

Section 2188. Section 70-26-203, MCA, is amended to read:

"70-26-203. Failure of lessor to repair -- lessee's remedies. (1) If within a reasonable time after notice to the lessor of dilapidations ~~which he~~ that the lessor ought to repair, ~~he~~ the lessor neglects to do so; and if the cost of ~~such~~ the repairs does not require an expenditure greater than 1 month's rent of the premises, the lessee may perform ~~such~~ the repairs ~~himself~~ and deduct the expenses of ~~such~~ the repairs from the rent; or the lessee may vacate the premises, in which case ~~he~~ the lessee is discharged from further payment of rent or performance of other conditions.

(2) Subsection (1) does not apply to real property leased under an arrangement governed by Title 70,

chapter 24 of this title."

Section 2189. Section 70-26-204, MCA, is amended to read:

"70-26-204. Renewal of lease by lessee's continued possession. If a lessee of real property leased under an arrangement not governed by Title 70, chapter 24, of this title remains in possession ~~thereof~~ of the property after the expiration of the hiring and the lessor accepts a rent from ~~him~~ the lessee, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding 1 month when the rent is payable monthly, or in any case 1 year."

Section 2190. Section 70-26-205, MCA, is amended to read:

"70-26-205. Notice required to terminate lease. (1) A hiring of real property for a term not specified by the parties is presumed to be renewed as stated in 70-26-204 at the end of the term implied by law unless one of the parties gives notice to the other of ~~his~~ the intention to terminate the hiring at least as long before the expiration ~~thereof~~ of the hiring as the term of the hiring itself, not exceeding 1 month.

(2) Subsection (1) does not apply to real property leased under an arrangement governed by Title 70, chapter 24 of this title."

Section 2191. Section 70-26-206, MCA, is amended to read:

"70-26-206. Rights of tenant for years or at will. (1) A tenant for years or at will, unless ~~he~~ the tenant is a wrongdoer by holding over, may occupy the buildings, take the annual products of the soil, and work mines and quarries open at the commencement of ~~his~~ the tenancy; and ~~a tenant at will or for an indefinite term~~ may cultivate and harvest the crops growing at the end of ~~his~~ the tenancy.

(2) A tenant for years or at will has no other rights to the property than those given to ~~him~~ the tenant by the agreement or instrument by which ~~his~~ the tenancy is acquired or by subsection (1).

(3) Subsection (2) does not apply to arrangements governed by Title 70, chapter 24 of this title."

Section 2192. Section 70-27-108, MCA, is amended to read:

"70-27-108. Unlawful detainer defined. A tenant of real property or mining claim, for a term less than life, is guilty of unlawful detainer:

(1) when ~~he~~ the tenant continues in possession, in person or by subtenant, of the property or any part ~~thereof~~ of the property after the expiration of the term for which it is let to ~~him~~ the tenant without the permission

of the landlord or the successor in estate of ~~his~~ the landlord, if any ~~there be~~, but in case of a tenancy at will, it must first be terminated by notice, as prescribed in 70-27-104;

(2) ~~where he~~ when the tenant continues in possession, in person or by subtenant, without permission of ~~his~~ the landlord or the successor in estate of ~~his~~ the landlord, if any ~~there be~~, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and 3 days' notice in writing requiring its payment, stating the amount ~~which that~~ is due, or possession of the property ~~shall have~~ has been served upon ~~him~~ the tenant and, if there ~~be~~ is a subtenant in actual occupation of the premises, also upon ~~such~~ the subtenant. ~~Such~~ The notice may be served at any time within 1 year after the rent becomes due. In all cases of tenancy upon agricultural lands ~~where~~ when the tenant has held over and retained possession for more than 60 days after the expiration of ~~his~~ the term without any demand of possession or notice to quit by the landlord or the successor in estate of ~~his~~ the landlord, if any ~~there be~~, ~~he shall be deemed~~ the tenant is considered to be holding by permission of the landlord or the successor in estate of ~~his~~ the landlord and ~~shall be~~ is entitled to hold under the terms of the lease for another full year and ~~shall~~ may not be guilty of an unlawful detainer during ~~said~~ the year, and ~~such~~ the holding over ~~for the period aforesaid shall~~ must be taken and construed as a consent on the part of a tenant to hold for another year;.

(3) ~~when he~~ the tenant continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, other than ~~the one~~ for the payment of rent, and 3 days' notice in writing; requiring the performance of ~~such~~ conditions or covenants or the possession of the property; ~~shall have~~ has been served upon ~~him~~ the tenant and, if there ~~be~~ is a subtenant in actual occupation of the premises, also upon ~~such~~ the subtenant. Within 3 days after the serving of the notice, the tenant or any subtenant in actual occupation of the premises or any mortgagee of the term or other person interested in its continuance may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and ~~thereby~~ save the lease from forfeiture. If the covenants and conditions of the lease violated by the lessee cannot afterward be performed, then ~~no~~ notice, as ~~last~~ prescribed herein in this subsection, need not be given to ~~said~~ the lessee or ~~his~~ the subtenant demanding the performance of the violated covenant or conditions of the lease. A tenant may take proceedings similar to those prescribed in this chapter to obtain possession of the premises let to an undertenant in case of ~~his~~ the undertenant's unlawful detention of the premises ~~under let to him~~. Any tenant or subtenant assigning or subletting or committing waste upon the demised premises contrary to the covenants of ~~his~~ the lease thereby terminates the lease, and the landlord or ~~his~~ the landlord's successor in estate ~~shall~~, upon service of 3 days' notice to quit upon the person or persons in possession, ~~be~~ is entitled to restitution of possession of ~~such~~ the

demised premises under the provisions of this chapter."

Section 2193. Section 70-27-110, MCA, is amended to read:

"70-27-110. Service of notice -- how made. (1) The notices required by 70-27-108 may be served; either:

(a) by delivering a copy to the tenant personally;

(b) if ~~he be~~ the tenant is absent from ~~his~~ the tenant's place of residence and from ~~his~~ the tenant's usual place of business, by leaving a copy with some person of suitable age and discretion at either place and sending a copy through the mail addressed to the tenant at ~~his~~ the tenant's place of residence; or

(c) if ~~such~~ the place of residence and business cannot be ascertained or a person of suitable age or discretion ~~there~~ cannot be found there, then by affixing a copy in a conspicuous place on the property and also delivering a copy to a person residing there ~~residing~~ if ~~such~~ a person can be found and also sending a copy through the mail addressed to the tenant at the place where the property is situated.

(2) Service upon a subtenant may be made in the same manner."

Section 2194. Section 70-27-111, MCA, is amended to read:

"70-27-111. Parties defendant. (1) ~~No~~ A person other than the tenant of the premises and subtenant, if there ~~be~~ is one, in the actual occupation of the premises when the complaint is filed need be made parties defendant in the proceeding, nor shall any proceeding abate or the plaintiff be nonsuited for the nonjoinder of any person who might have been made a party defendant; ~~but~~ However, when it appears that any of the parties served with process or appearing in the proceeding is guilty of the offense charged, judgment must be rendered against ~~such~~ that party.

(2) ~~In case~~ If a defendant has become a subtenant of the premises in controversy after the service of the notice provided for by 70-27-108(2) upon the tenant of the premises, the fact that ~~such~~ the notice was not served on each subtenant ~~shall~~ does not constitute ~~no~~ a defense to the action.

(3) ~~In case~~ If a married person is a tenant or subtenant, failure to join ~~such~~ the person's spouse ~~shall~~ does not constitute ~~no~~ a defense; ~~but in case~~ However, if the spouse is not joined, an execution issued upon a personal judgment against the tenant or subtenant ~~can only~~ may be enforced only against property on the premises at the commencement of the action or against property that is owned solely by the tenant or subtenant and not by ~~his~~ the tenant's or subtenant's spouse.

(4) All persons who enter the premises under the tenant after the commencement of the action ~~shall be~~

are bound by the judgment the same as if ~~he or~~ they had been made party to the action."

Section 2195. Section 70-27-203, MCA, is amended to read:

"70-27-203. Showings required on trial. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff ~~shall~~ is only ~~be~~ required to show, in addition to the forcible entry or forcible detainer complained of, that ~~he~~ the plaintiff was peaceably in the actual possession at the time of the forcible entry or was entitled to the possession at the time of the forcible detainer. The defendant may show in ~~his~~ defense that ~~he~~ the defendant or ~~his~~ the defendant's ancestors or those whose interest in ~~such~~ the premises ~~he~~ the defendant claims have been in the quiet possession ~~thereof~~ of the premises for the space of 1 whole year ~~together next~~ before the commencement of the proceedings and that ~~his~~ the defendant's interest ~~therein~~ in the premises is not then ended or determined, and ~~such~~ the showing is a bar to the proceedings."

Section 2196. Section 70-27-205, MCA, is amended to read:

"70-27-205. Verdict, judgment, and execution. (1) If upon the trial the verdict of the jury or, if the case ~~be~~ is tried without a jury, the finding of the court ~~be~~ is in favor of the plaintiff and against the defendant, judgment ~~shall~~ must be entered for the restitution of the premises; ~~and if~~ If the proceeding ~~be~~ is for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held or after default in the payment of rent, the judgment ~~shall~~ must also declare the forfeiture of ~~such~~ the lease or agreement.

(2) The jury, or the court if the proceeding ~~be~~ is tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry or by any forcible or unlawful detainer alleged in the complaint and proved on the trial and find the amount of any rent due if the alleged unlawful detainer ~~be~~ is after default in the payment of rent; ~~and the~~ The judgment ~~shall~~ must be rendered against the defendant, guilty of the forcible entry or forcible or unlawful detainer, for three times the amount of the damages ~~thus~~ assessed and of the rent found due.

(3) When the proceeding is for an unlawful detainer after default in the payment of the rent and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment ~~shall~~ may not be issued until the expiration of 5 days after the entry of the judgment, within which time the tenant or any subtenant or any mortgagee of the term or other party interested in its continuance may pay into court for the landlord the amount found due as rent with interest ~~thereon~~ and the amount of damages found by the jury or the court for the unlawful detainer and the costs of the proceeding, and ~~thereupon~~ upon the payment, the judgment

~~shall be~~ is satisfied and the tenant must be restored to ~~his~~ the tenant's estate; ~~but~~ However, if the payment, ~~as here provided, be~~ is not made within ~~the~~ 5 days, the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately."

Section 2197. Section 70-27-207, MCA, is amended to read:

"70-27-207. Holdover or collusion after notice -- treble rent. If any tenant or any person in collusion with the tenant holds over any lands or tenements after demand made and 1 month's notice given in writing ~~given~~, requiring the possession ~~thereof~~ of the land or tenement, ~~such~~ the person holding over must shall pay to the landlord treble rent during the time ~~he~~ the person continues in possession after ~~such~~ the notice."

Section 2198. Section 70-27-208, MCA, is amended to read:

"70-27-208. Holdover after tenant's notice to quit -- treble rent. If any tenant gives notice of ~~his~~ the intention to quit the premises and does not deliver up the possession at the time specified in the notice, ~~he must~~ the tenant shall pay to the landlord treble rent during the time ~~he~~ the tenant continues in possession after ~~such~~ the notice."

Section 2199. Section 70-27-210, MCA, is amended to read:

"70-27-210. Relief against forfeiture of lease in case of hardship. (1) The court may relieve a tenant against a forfeiture of a lease and restore ~~him~~ the tenant to ~~his~~ the tenant's former estate in the case of hardship ~~where~~ when application for ~~such~~ relief is made within 30 days after the forfeiture is declared by the judgment of the court, as provided in 70-27-205.

(2) The application may be made by a tenant or subtenant or mortgagee of the term or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which relief is sought, and must be verified by the applicant.

(3) Notice of the application with a copy of the petition must be served on the plaintiff in the judgment, who may appear and contest the application.

(4) ~~In no case shall the~~ The application may not be granted except on condition that full payment of rent due or full performance of conditions or covenants stipulated, ~~so as~~ as far as ~~the same~~ is practicable, ~~be~~ is made."

Section 2200. Section 70-28-104, MCA, is amended to read:

"70-28-104. Parties defendant -- unknown claimants. (1) In any action brought under 70-28-101 and

70-28-103, the plaintiff may join as defendants any or all persons, known or unknown, claiming or who might claim any right, title, estate, or interest in or lien or encumbrance upon the real property described in the complaint adverse to plaintiff's ownership or any cloud upon plaintiff's title, whether ~~such the~~ claim or possible claim be present or contingent, including the person or persons in possession if the plaintiff is not in possession.

(2) If the plaintiff ~~shall desire~~ desires to obtain a complete adjudication of the title to the real estate described in the complaint, ~~he the plaintiff~~ may name as defendants all known persons who assert or who might assert any claim as ~~in this section above~~ specified in subsection (1) and may join as defendants all persons unknown who might make any ~~such~~ claim by adding in the caption of the complaint in ~~such the~~ action the words "and all other persons, unknown, claiming or who might claim any right, title, estate, or interest in or lien or encumbrance upon the real property described in the complaint adverse to plaintiff's ownership or any cloud upon plaintiff's title ~~thereto~~, whether ~~such the~~ claim or possible claim ~~be is~~ present or contingent".

Section 2201. Section 70-28-106, MCA, is amended to read:

"70-28-106. Notice of action to be filed with clerk and recorder. Before any order for the publication of summons is granted as provided in Rule 4, M.R.Civ.P., the plaintiff shall file, in the office of the clerk and recorder of each county in which any of the property involved in ~~such the~~ action is situated, a notice of the pendency of ~~such the~~ action, signed by the plaintiff or ~~his the plaintiff's~~ attorney; ~~which The notice shall must~~ contain:

- (1) the title of the court in which ~~such the~~ action is filed;
- (2) the full caption of the cause;
- (3) a complete description of all the property involved in ~~such the~~ action; and
- (4) a statement of the relief sought by the plaintiff."

Section 2202. Section 70-28-108, MCA, is amended to read:

"70-28-108. Prerequisites to decree against defendant not present. Before ~~the~~ plaintiff ~~shall be~~ is entitled to a decree in ~~such an~~ action against any defendant who ~~shall does~~ not appear ~~therein in the action~~, ~~he must the plaintiff shall~~ produce evidence sufficient to prima facie entitle ~~him the plaintiff~~ to relief; ~~and The relief shall may~~ be granted only to the extent to which ~~such the~~ evidence ~~shall~~ prima facie ~~prove him proves the plaintiff~~ to be entitled to the ~~same; relief. but~~ However, this provision ~~shall may~~ not affect the procedure in or manner of trial of ~~such the~~ actions as between the plaintiff and any defendant who ~~shall appear~~ appears in ~~such the~~ action."

Section 2203. Section 70-28-110, MCA, is amended to read:

"70-28-110. When value of improvements may be allowed as setoff. When damages are claimed for withholding the property recovered upon which permanent improvements have been made by a defendant or those under whom ~~he~~ the defendant claims, holding under color of title adversely to the claim of plaintiff, in good faith, the value of ~~such~~ the improvements must be allowed as setoff against ~~such~~ the damage."

Section 2204. Section 70-28-111, MCA, is amended to read:

"70-28-111. Termination of plaintiff's right during action -- damages for withholding. In an action for the recovery of real property ~~where~~ when the plaintiff shows a right to recover at the time the action was commenced but it appears that ~~his~~ the plaintiff's right has terminated during the pendency of the action, the verdict and judgment must be according to the fact and the plaintiff may recover damages for withholding the property."

Section 2205. Section 70-28-112, MCA, is amended to read:

"70-28-112. Costs. If the defendant in ~~such a quiet title action~~ disclaim ~~disclaims~~ in ~~his~~ the answer any interest or estate in the property or ~~suffer~~ allows judgment to be taken against ~~him~~ the defendant without answer, the plaintiff ~~shall~~ may not recover costs. ~~But~~ However, in actions ~~which~~ that the plaintiff has brought under ~~section 2326 of the Revised Statutes of the United States~~ 30 U.S.C. 30 to determine an adverse claim, the plaintiff shall recover costs if the defendant does not relinquish in the proper United States land office or disclaim in writing any interest or estate in the property within 20 days from the filing of ~~said~~ the adverse claim in ~~such~~ the land office."

Section 2206. Section 70-28-113, MCA, is amended to read:

"70-28-113. Order for survey or measurement. (1) The court in which an action is pending for the recovery of real property or mining claims or for damages for an injury or to quiet title or to determine adverse claims ~~thereto~~ to real property or mining claims or a judge ~~thereof~~ in the action may on motion, upon notice by either party, for good cause shown, grant an order allowing to ~~such~~ the party the right to enter into or upon the property or mining claim and make survey or measurement ~~thereof~~ of the property or claim or of any tunnels, shafts, or drifts ~~therein~~ in the property or claim for the purpose of the action even though entry for ~~such~~ that purpose has to be made through other lands or mining claims belonging to parties to the action.

(2) The order must describe the property, and a copy ~~thereof~~ of the order must be served on the owner or occupant, ~~and thereupon~~ such. Upon service, the party may enter the property, with necessary surveyors and

assistants; and make ~~such the~~ survey and measurement; ~~but~~ However, if unnecessary damage ~~be is~~ done to the property, ~~he the party~~ is liable ~~therefor~~ for the damage."

Section 2207. Section 70-28-201, MCA, is amended to read:

"70-28-201. Action authorized. Whenever the government of the United States has granted lands in the state of Montana to the heirs of a deceased entryman, any person who claims an estate of inheritance or interest in ~~such the~~ lands may bring and maintain an action in rem against all the world in the district court for the county in which ~~such the~~ real property is situated to establish ~~his the person's~~ title to ~~such the~~ property and to determine all adverse claims ~~thereto to the title~~. Any number of separate parcels of land claimed by the plaintiff may be included in the same action."

Section 2208. Section 70-28-206, MCA, is amended to read:

"70-28-206. Affidavit to accompany complaint. (1) At the time of filing the complaint, the plaintiff shall file with the ~~same his~~ complaint the plaintiff's affidavit fully and explicitly setting forth and showing:

- (a) the character of ~~his the plaintiff's~~ estate, right, title, interest, or claim in the property;
- (b) whether or not ~~he the plaintiff~~ has ever made any conveyance of ~~his the plaintiff's~~ interest in ~~said the~~ property or any part ~~thereof of the property~~ and, if so, when and to whom; the conveyance was made and also a statement of ~~any and~~ all existing mortgages, deeds of trust, judgments, or other liens ~~thereon on the property~~;
- (c) when and where the deceased entryman of ~~said the~~ property died;
- (d) what kin or relationship the claimant bore to the entryman at the time of ~~his the entryman's~~ death; and
- (e) the names and residences of any other persons who are next of kin or entitled to succeed to any portion of the lands, the subject of ~~said the~~ action, and the names of and residences of all persons who have liens upon the property or any part ~~thereof of the property~~ adversely to the plaintiff if ~~he the plaintiff~~ knows or has been informed or has been able to discover any ~~such~~ adverse person.

(2) If the plaintiff is unable to state any one or more of the matters ~~herein~~ required in subsection (1), ~~he the plaintiff~~ shall set forth and show fully and explicitly the reasons for ~~such the~~ inability.

(3) ~~Such The~~ affidavit ~~shall constitute~~ constitutes a part of the judicial record.

(4) If the plaintiff ~~be is~~ a person under guardianship, the affidavit ~~shall~~ must be made by ~~his the~~ guardian."

Section 2209. Section 70-28-209, MCA, is amended to read:

"70-28-209. Personal service of summons -- service by mail. (1) If the affidavit discloses the name

of any person next of kin or relationship to the deceased entryman or entitled to succeed to any part of ~~said the~~ the property or the name of a person who claims or may claim an interest by mortgage, trust deed, judgment, or other lien, the summons ~~shall~~ must also be personally served upon ~~such that~~ the person, if ~~he~~ the person can be found within the state, together with a copy of the complaint and a copy of ~~said the~~ the affidavit, during the period of the publication of the summons, and there must be attached to the copy of the summons delivered to ~~any such the~~ the person ~~there shall be appended~~ a copy of the memorandum provided in 70-28-208.

(2) If ~~such the~~ the person resides out of the state, a copy of the summons, memorandum, complaint, and affidavit ~~shall~~ must be, within 10 days after the first publication of the summons, deposited in the United States post office, enclosed in a sealed envelope, postage prepaid, addressed to ~~such the~~ the person at the address given in the affidavit or, if ~~no an~~ an address ~~be is not~~ is not given ~~therein in the affidavit~~, then at the county seat of the county in which the action was brought. If ~~such the~~ the person resides within the state and could not with due diligence be found within the state within the period of the publication of the summons, then ~~said the~~ the notice ~~aforsaid shall~~ described in this subsection must be mailed to ~~him the person~~, as ~~above~~ provided in this subsection, ~~forthwith~~ upon the expiration of ~~said the~~ the period of ~~said~~ the publication."

Section 2210. Section 70-28-212, MCA, is amended to read:

"70-28-212. Time for appearance by defendant -- answer. At any time within the first 60 days from the first publication of the summons or within ~~such a~~ a further time, not exceeding 30 days, ~~as that~~ as the court may for good cause grant, any person having or claiming any estate, right, title, or interest in or to or lien upon ~~said the~~ the property or any part ~~thereof of the property~~ of the property may appear and ~~make himself~~ become a party to the action by pleading to the complaint. All answers must be verified and set forth specifically the kin or relationship of the deceased entryman and the estate, right, title, interest, or lien ~~so~~ claimed."

Section 2211. Section 70-28-213, MCA, is amended to read:

"70-28-213. Recording of notice by plaintiff and defendant. (1) The plaintiff ~~must~~ shall, at the time of filing the complaint, and every defendant to claim or claiming any affirmative relief ~~must~~ shall, at the time of filing ~~his an~~ an answer, record in the office of the county clerk and recorder of the county in which the property is situated a notice of the pendency of the action containing the object of the action or the defense and a particular description of the property affected ~~thereby by the action~~.

(2) The clerk and recorder shall record the ~~same~~ filing in a book of the miscellaneous records of ~~his the~~ the clerk's office and shall make a reference as to the date and time of the filing of ~~such the~~ the notice and, when

recorded, to the book and page record thereof."

Section 2212. Section 70-28-215, MCA, is amended to read:

"70-28-215. Judgment -- nature and effect -- recording. (1) The judgment ~~shall~~ must ascertain and determine the heirship of ~~said the~~ deceased entryman and all estates, rights, titles, interests, and claims in and to ~~said the~~ property and every part ~~thereof of the property~~, whether the ~~same be~~ estates, rights, titles, interests, and claims are legal or equitable, present or future, vested or contingent, or whether the ~~same~~ estates, rights, titles, interests, and claims ~~consists~~ consist of mortgages or liens of any description; ~~and shall~~ The judgment must be binding and conclusive upon every person who, at the time of the commencement of the action, had or claimed to have any estate, right, title, or interest in or to ~~said the~~ property or any part ~~thereof of the property~~ and upon every person claiming under ~~him~~ the person by title subsequent to the commencement of the action.

(2) A certified copy of the judgment in ~~such the~~ action ~~shall~~ must be recorded in the office of the clerk and recorder of the county in which ~~said the~~ action was commenced, and any party or the successor in interest of any party to ~~said the~~ action may ~~at his option~~ file for record in the office of the clerk and recorder of ~~such the~~ county the entire judicial record in ~~said the~~ action."

Section 2213. Section 70-28-303, MCA, is amended to read:

"70-28-303. Notice requirements. Upon petition by a claimant for a deed to a lot on entry townsite land, the claimant shall provide published notice of ~~his the~~ claim, notice filed with the county clerk and recorder, and personal service as may be required for quiet title actions under Title 70, chapter 28, part 1."

Section 2214. Section 70-29-102, MCA, is amended to read:

"70-29-102. Action by minor. (1) An action for the partition of real property ~~shall~~ may not be brought by a minor, except by the written authority of the district judge of the county in which the property or a part ~~thereof of the property~~ is situated. The authority ~~shall~~ may not be given unless the district judge is satisfied, by affidavit or other competent evidence, that the interests of the minor will be promoted by bringing the action.

(2) A judgment for a partition ~~shall~~ may not be rendered in ~~such~~ an action unless the court is satisfied that the interests of the minor will be promoted ~~thereby~~ and that fact is expressly recited in the judgment.

(3) A guardian ad litem for a minor party, in an action for partition, ~~can~~ may be appointed only by the court or judge and ~~must~~ shall give an undertaking in a sum fixed by the judge for the faithful discharge of ~~his the~~ guardian ad litem's trust; ~~which~~ The undertaking must be approved by the judge and filed with the clerk."

Section 2215. Section 70-29-105, MCA, is amended to read:

"70-29-105. Who may be joined as defendants. (1) The plaintiff may, ~~at his election,~~ make a tenant in dower, for life or for years, of the entire property or a creditor or other person having a lien or interest ~~which~~ that attaches to the entire property a defendant in the action. In that case the final judgment may either award to ~~such~~ a party ~~his or her~~ the party's entire right and interest or the proceeds ~~thereof~~ of the right or interest or may reserve and leave unaffected ~~his or her~~ the party's right or interest or any portion ~~thereof~~ of the right or interest.

(2) A person specified in this section who is not made a party is not affected by the judgment in the action."

Section 2216. Section 70-29-108, MCA, is amended to read:

"70-29-108. Lienholders of record to be notified. (1) The plaintiff ~~must~~ shall cause a notice to be served a reasonable time ~~previous~~ prior to the day for appearance before the referee appointed, as provided in 70-29-107, on each person having outstanding liens of record who is not a party to the action to appear before the referee at a specified time and place to make proof by ~~his~~ the person's own affidavit or otherwise of the amount due or to become due, contingently or absolutely, ~~thereon~~ on the lien.

(2) ~~In case such~~ If the person be is absent or ~~his~~ the person's residence ~~be~~ is unknown, service may be made by publication or notice to ~~his~~ the person's agents, under the direction of the court, in ~~such~~ a proper manner ~~as may be proper~~.

(3) The report of the referee ~~thereon~~ must be made to the court and must be confirmed, modified, or set aside and a new reference ordered, as the justice of the case may require."

Section 2217. Section 70-29-201, MCA, is amended to read:

"70-29-201. Trial of title or interest of parties. The right of the several parties, plaintiff as well as defendant, may be put in issue, tried, and determined in ~~such~~ the partition action. The title or interest of the plaintiff in the property, as stated in the complaint, may be controverted by the answer. The title or interest of any defendant in the property, as stated in the complaint, may also be controverted by ~~his~~ the defendant's answer or the answer of any other defendant, and the title or interest of any defendant, as stated in ~~his~~ that defendant's answer, may be controverted by the answer of any other defendant and the issues joined as prescribed in Title 25, which may be tried before a jury if the court ~~so direct~~ directs."

Section 2218. Section 70-29-208, MCA, is amended to read:

"70-29-208. Allotment of land to grantee of tenant in common. Whenever it ~~shall appear~~ appears in an action for the partition of lands that one or more of the tenants in common, being the owner of an undivided interest in the tract of land sought to be partitioned, has sold to another person a specific tract by metes and bounds out of the common land and executed to the purchaser a deed of conveyance, purporting to convey the whole title to ~~such the~~ such the specific tract to the purchaser in fee and in severalty, the land described in ~~such the~~ such the deed ~~shall must~~ be allotted and set apart in partition to ~~such the~~ such the purchaser; ~~his or the purchaser's heirs;~~ or assigns or in ~~such other another~~ another manner ~~as shall make such that makes the~~ that makes the deed effectual as a conveyance of the whole title to ~~such the~~ such the segregated parcel if ~~such the~~ such the tract or tracts of land can be ~~so~~ allotted or set apart without material injury to the rights and interests of the other cotenants who may not have joined in ~~such the~~ such the conveyance."

Section 2219. Section 70-29-209, MCA, is amended to read:

"70-29-209. Compensation of one party by another in certain cases of partition. (1) When it appears that a partition cannot be made equal between the parties according to their respective rights without prejudice to the rights and interests of some of them and a partition ~~be is~~ is ordered, the court may adjudge compensation to be made by one party to another on account of the inequality; ~~but such~~ However, the compensation ~~shall may~~ not be required to be made to others by owners unknown or by a minor unless it appears that ~~such the~~ such the minor has personal property sufficient for that purpose and that ~~his the minor's~~ the minor's interest will be promoted ~~thereby~~.

(2) In all cases, ~~the court has power to~~ may make compensatory adjustment between the respective parties according to the ordinary principles of equity."

Section 2220. Section 70-29-212, MCA, is amended to read:

"70-29-212. Judgment upon confirmation of report -- effect. (1) The court may confirm, change, modify, or set aside the report and if necessary appoint new referees.

(2) Upon the report being confirmed, judgment must be rendered that ~~such the~~ such the partition ~~be is~~ is effectual forever; ~~which~~ The judgment is binding and conclusive on all:

(a) persons named as parties to the action and their legal representatives, who have at the time any interest in the property divided or any part ~~thereof~~ of the property, as owners in fee or as tenants for life or for years or as entitled to the reversion, remainder, or the inheritance of ~~such the~~ such the property or any part ~~thereof~~ of the property after the determination of a particular estate ~~therein~~ in the property, and who by any contingency may be entitled to a beneficial interest in the property or who have an interest in any undivided share ~~thereof~~ of the property; as tenants for years or for life;

(b) persons interested in the property, who may be unknown, to whom notice has been given of the action for partition by publication; and

(c) other persons claiming from ~~such the~~ parties or persons or either of them.

(3) ~~No A~~ judgment is not invalidated by reason of the death of any party before final judgment or decree, but ~~such the~~ judgment or decree is as conclusive against the heirs, legal representatives, or assigns of ~~such the~~ decedent as if it had been entered before ~~his the decedent's~~ death."

Section 2221. Section 70-29-216, MCA, is amended to read:

"70-29-216. Abstract of title -- when cost of allowed -- filing and inspection. (1) If it appears to the court that it was necessary to have made an abstract of the title to the property to be partitioned and ~~such the~~ abstract ~~shall have~~ has been procured by the plaintiff or if the plaintiff ~~shall have~~ has failed to have the ~~same~~ abstract made before the commencement of the action and any one of the defendants ~~shall have~~ has had ~~such the~~ abstract ~~afterward~~ made, the cost of the abstract, with interest ~~thereon~~ on the cost from the time the ~~same~~ abstract is subject to the inspection of the respective parties to the action, must be allowed and taxed.

(2) Whenever ~~such the~~ abstract is procured by the plaintiff, before the commencement of the action ~~he~~ must the plaintiff shall file with ~~his the~~ complaint a notice that an abstract of the title has been made and is subject to the inspection and use of all the parties to the action, designating ~~therein in the notice~~ where the abstract will be kept for inspection. ~~But However,~~ if the plaintiff ~~shall have~~ has failed to procure ~~such the~~ abstract before commencing the action and any defendant ~~shall procure~~ procures the ~~same abstract~~ to be made, ~~he the~~ defendant shall, as soon as ~~he the defendant~~ has directed it ~~the abstract~~ to be made, file a notice ~~thereof of the procurement~~ in the action with the clerk of the court, stating who is making the ~~same abstract~~ and where it will be kept when finished.

(3) The court or judge ~~thereof~~ may direct, from time to time during the progress of the action, who ~~shall~~ must have the custody of the abstract."

Section 2222. Section 70-29-217, MCA, is amended to read:

"70-29-217. Abstract -- how made and verified. The abstract mentioned in 70-29-216 may be made by any competent searcher of records and need not be certified by the county clerk and recorder or other officer, but instead ~~thereof of certification~~ it must be verified by the affidavit of the person making it to the effect that ~~he the person~~ believes it to be correct; ~~but However,~~ the ~~same abstract~~ may be corrected from time to time, if found incorrect, under the direction of the court."

Section 2223. Section 70-29-219, MCA, is amended to read:

"70-29-219. Expenses of referees and surveyor. The expenses of the referees, including those of a surveyor and ~~his~~ the surveyor's assistants, when employed, must be ascertained and allowed by the court, and the amount ~~thereof of those expenses~~, together with the fees allowed by the court in its discretion to the referees, must be apportioned among the different parties to the action equitably."

Section 2224. Section 70-29-221, MCA, is amended to read:

"70-29-221. Expenses of previous litigation. If it ~~appear~~ appears that other actions or proceedings have been necessarily prosecuted or defended by any one of the tenants in common for the protection, confirmation, or perfecting of the title or setting the boundaries or making a survey or surveys of the estate partitioned, the court shall allow to the parties to the action who have paid the expense of ~~such~~ the litigation or other proceedings all the expenses necessarily incurred ~~therein in the litigation or proceedings~~, except counsel fees, ~~which shall that~~ have accrued to the common benefit of the other tenants in common, with interest ~~thereon on the expenses~~ from the date of making the expenditures, and the ~~same~~ expenses must be pleaded and allowed by the court and included in the final judgment and ~~shall be~~ are a lien upon the share of each tenant, respectively, in proportion to ~~his~~ the tenant's interest and ~~shall must~~ be enforced in the same manner ~~as that~~ taxable costs of partition are taxed and collected."

Section 2225. Section 70-29-304, MCA, is amended to read:

"70-29-304. Party or encumbrancer as purchaser. When a party entitled to a share of the property or an encumbrancer entitled to have ~~his~~ a lien paid out of the sale becomes a purchaser, the referees may take ~~his~~ the purchaser's receipt for ~~so~~ as much of the proceeds of the sale as belongs to ~~him~~ the purchaser."

Section 2226. Section 70-29-306, MCA, is amended to read:

"70-29-306. Security for sales on credit. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money of ~~such~~ parts of the property ~~as that~~ are directed by the court to be sold on credit for the:

- (1) shares of any known owner of full age, in the name of ~~such~~ the owner;
- (2) shares of a minor, in the name of the guardian of ~~such~~ the minor; and
- (3) other shares, in the name of the clerk of the court of the county and ~~his~~ the clerk's successors in office."

Section 2227. Section 70-29-307, MCA, is amended to read:

"70-29-307. Security taken and investment made in name of clerk. When the security of the proceeds of sale is taken or when an investment of any ~~such~~ proceeds is made, it must be done, except as ~~herein~~ otherwise provided in this part, in the name of the clerk of the court where the papers are filed and ~~his~~ the clerk's successors in office, who must hold the ~~same~~ proceeds for the use and benefit of the persons interested; subject to the order of the court."

Section 2228. Section 70-29-326, MCA, is amended to read:

"70-29-326. Tenant for life or years -- compensation upon sale. (1) The person entitled to a tenancy for life or years or who has a right or inchoate right of dower; and whose estate has been sold; is entitled to receive ~~such a~~ sum as that may be ~~deemed~~ considered a reasonable satisfaction for ~~such the~~ estate and ~~which that~~ the person ~~so~~ entitled may consent to accept instead ~~thereof of the right~~ by an instrument in writing filed with the clerk of the court. Upon the filing of ~~such the~~ consent, the clerk ~~must shall~~ enter the ~~same~~ consent in the minutes of the court.

(2) If ~~such the~~ consent ~~be is~~ not given, filed, and entered, as provided in subsection (1), at or before a judgment of sale is rendered, the court ~~must shall~~ ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of ~~such the~~ estate and ~~must shall~~ order the ~~same~~ sum to be paid to ~~such the~~ party or deposited in court for ~~him or her~~ the party, as the case may require.

(3) If the persons entitled to ~~such the~~ estate for life or years ~~be are~~ unknown, the court ~~must shall~~ provide for the protection of their rights in the same manner, ~~as far as may be~~, as if they were known and had appeared."

Section 2229. Section 70-29-327, MCA, is amended to read:

"70-29-327. Minor's share of proceeds -- payment to guardian. When the share of a minor is sold, the proceeds of the sale may be paid by the referee making the sale to ~~his~~ the minor's general guardian or the special guardian appointed for ~~him~~ the minor in the action upon giving the security required by law or directed by order of the court."

Section 2230. Section 70-29-330, MCA, is amended to read:

"70-29-330. Duty of clerk as to security and investments. The clerk of court in whose name a security is taken or by whom an investment is made and ~~his~~ the clerk's successors in office ~~must~~:

- (1) must receive the interest and principal as it becomes due and shall apply and invest the ~~same~~ interest and principal as the court may direct;
- (2) shall deposit with the county treasurer all securities taken; and
- (3) shall keep an account of investments and ~~moneys~~ money received by him ~~thereon~~ and the disposition ~~thereof~~ of the investments and money in a book provided and kept for that purpose in the clerk's office; that is free for inspection by all persons."

Section 2231. Section 70-31-302, MCA, is amended to read:

"70-31-302. Reimbursement of closing costs and taxes incurred by owner. Any ~~An~~ An agency acquiring real property for a program or project (for which federal financial assistance will be available to pay all or any part of the cost of the program or project) shall, as soon as practicable after the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, reimburse the owner to the extent the acquiring agency ~~deems~~ considers fair and reasonable for:

- (1) expenses ~~he~~ the owner necessarily incurred for recording fees, transfer taxes, and similar expenses incidental to conveying ~~such~~ the real property to the acquiring agency;
- (2) penalty costs for prepayment for any preexisting recorded mortgage or deed of trust entered into in good faith encumbering ~~such~~ the real property; and
- (3) the pro rata portion of real property taxes paid ~~which~~ that are allocable to a period subsequent to the date of vesting title in the acquiring agency or the effective date of possession of ~~such~~ the real property by the acquiring agency, whichever is ~~the~~ earlier."

Section 2232. Section 70-31-303, MCA, is amended to read:

"70-31-303. Inverse condemnation -- reimbursement of expenses of proceeding. ~~Where~~ When an inverse condemnation proceeding is instituted by the owner of any right, title, or interest in real property because of the alleged taking of ~~his~~ the owner's property for any program or project (for which federal financial assistance will be available to pay all or any part of the cost of the program or project), the court rendering a judgment for the plaintiff in ~~such~~ the proceeding and awarding compensation for the taking of property or the attorney for the acquiring agency effecting a settlement of any ~~such~~ proceeding shall determine and award or allow to ~~such~~ the plaintiff as a part of ~~such~~ the judgment or settlement ~~such~~ a sum ~~as~~ that will, in the opinion of the court or ~~such~~ the attorney, reimburse ~~such~~ the plaintiff for ~~his~~ the plaintiff's reasonable costs, disbursements, and expenses

including reasonable attorney, appraisal, and engineering fees actually incurred because of ~~such the~~ proceeding."

Section 2233. Section 70-31-304, MCA, is amended to read:

"70-31-304. Reimbursement of costs when condemnation proceedings dismissed or abandoned.

~~Where~~ When a condemnation proceeding is instituted by an agency to acquire real property for a program or project (for which federal financial assistance is available) and the final judgment is that the real property cannot be acquired by condemnation or that the proceeding is abandoned, the owner of any right, title, or interest in ~~such the~~ real property ~~shall~~ must be paid ~~such a sum as that~~ the sum will, in the opinion of the court, reimburse ~~such the~~ owner for ~~his~~ the owner's reasonable attorney, appraisal, and engineering fees actually incurred because of the condemnation proceedings. The award of ~~such sums will~~ the sum must be paid by the agency ~~which that~~ sought to condemn the property."

Section 2234. Section 70-31-305, MCA, is amended to read:

"70-31-305. Acquisition of buildings and improvements affected. (1) ~~Where~~ When any interest in real property is acquired for a program or project (for which federal assistance will be available to pay all or any part of the cost of the program or project), the acquiring agency shall acquire an equal interest in all buildings, structures, or other improvements that are located upon the real property ~~so~~ acquired and ~~which that~~ are required to be removed from ~~such the~~ real property or ~~which that~~ the acquiring agency determines will be adversely affected by the use to which ~~such the~~ real property will be put.

(2) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (1) ~~of this section, such the~~ building, structure, or other improvement ~~shall be deemed~~ is considered to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove ~~such the~~ building, structure, or improvement at the expiration of ~~his the tenant's term;~~ and the The fair market value ~~which such that the~~ building, structure, or improvement contributes to the fair market value of the real property to be acquired or the fair market value of ~~such the~~ building, structure, or improvement for removal from the real property, whichever is the greater, ~~shall~~ must be paid to the tenant ~~therefor~~.

(3) Payment for ~~such~~ buildings, structures, or improvements as set forth in subsection (2) ~~shall~~ may not result in duplication of any payments otherwise authorized by state law. ~~No such~~ A payment ~~shall~~ may not be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any ~~such~~ payment, the tenant shall assign, transfer, and release all ~~his~~ of the tenant's right, title,

and interest in and to ~~such~~ the improvements. ~~Nothing in this subsection or subsection~~ Subsection (2) shall or this subsection may not be construed to deprive the tenant of any rights to reject payment and to obtain payment for ~~such~~ the property interests in accordance with other laws of the state."

Section 2235. Section 70-32-103, MCA, is amended to read:

"70-32-103. From whose property homestead may be selected. If the claimant ~~be~~ is married, the homestead may be selected from the property of either spouse. When the claimant is not married, the homestead may be selected from any of ~~his or her~~ the claimant's property."

Section 2236. Section 70-32-209, MCA, is amended to read:

"70-32-209. Order dividing land -- execution against remainder over exemption. If from the report it appears to the judge that the land claimed can be divided without material injury, ~~he must~~ the judge shall by an order direct the appraisers to set off to the claimant ~~so~~ as much of the land, including the residence, ~~as~~ that will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land."

Section 2237. Section 70-32-210, MCA, is amended to read:

"70-32-210. Sale when land cannot be divided. If from the report it appears to the judge that the land claimed exceeds in value the amount of the homestead exemption and that it cannot be divided, ~~he must~~ the judge shall make an order directing its sale under execution."

Section 2238. Section 71-1-113, MCA, is amended to read:

"71-1-113. Limit on the amount of funds on reserve. Except as provided in 71-1-114, if a lending institution requires a borrower under a mortgage or trust indenture of real property to include in ~~his~~ the borrower's regular payment additional payment into a reserve fund held by the lending institution for the future payment of property taxes, insurance premiums, and other expenses, the amount of funds on reserve may not exceed 110% of the projected amount needed to pay ~~such~~ those expenses."

Section 2239. Section 71-1-204, MCA, is amended to read:

"71-1-204. Form of mortgage. A mortgage of real property may be made in substantially the following form:

"This mortgage, made the day of, in the year, by A.B., of, mortgagor, to C.D., of, mortgagee, ~~witnesseth~~:

That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to ~~him~~ the mortgagor of dollars, on (or before) the day of, in the year, with interest ~~thereon~~ on that amount (or as security for the payment of an obligation, describing it, etc.).

.....

A.B.""

Section 2240. Section 71-1-207, MCA, is amended to read:

"71-1-207. Recording of mortgages and assignments. (1) Mortgages of real property may be acknowledged or proved, certified, and recorded in ~~like~~ the same manner and with ~~like~~ the same effect as grants ~~thereof of real property~~.

(2) An assignment of a real estate mortgage may be recorded in ~~like~~ the same manner as a real estate mortgage, and the record ~~thereof shall operate~~ operates as ~~due and~~ legal notice to the mortgagor and all persons subsequently deriving title to the mortgage from the assignor as well as to all other persons, including subsequent purchasers, encumbrancers, mortgagees, or other lienholders. ~~Any such~~ An assignment ~~shall~~ must contain the assignee's post-office address at ~~his~~ the assignee's place of residence and ~~shall~~ may not be ~~entitled to be~~ recorded or filed unless it contains ~~such~~ the post-office address."

Section 2241. Section 71-1-209, MCA, is amended to read:

"71-1-209. Recording defeasance necessary to affect grant. When a grant of real property purports to be an absolute conveyance but is intended to be defeasible on the performance of certain conditions, ~~such~~ the grant is not defeated or affected as against any person other than the grantee or ~~his~~ the grantee's heirs or devisees or persons having actual notice unless an instrument of defeasance, duly executed and acknowledged, ~~shall have~~ has been recorded in the office of the county clerk of the county where the property is situated."

Section 2242. Section 71-1-210, MCA, is amended to read:

"71-1-210. Period of mortgage -- renewal. ~~Every~~ A mortgage of real property made, acknowledged, and recorded as provided by the laws of this state ~~shall be~~ is good ~~as~~ against all from the time it is ~~so~~ recorded until 8 years after the maturity of the entire debt or obligation secured ~~thereby~~ and no longer; unless the mortgagee, ~~his~~ or the mortgagee's heirs, executors, administrators, representatives, or assigns ~~shall~~, within 60

days after the expiration of ~~said the~~ 8 years, file in the office of the county clerk where ~~said the~~ mortgage is recorded an affidavit setting forth the date of ~~said the~~ mortgage, when and where recorded, the amount of the debt secured ~~thereby~~, and the amount remaining unpaid and that the mortgage is not renewed for the purpose of hindering, delaying, or defrauding creditors of the mortgagor or owner of the land; ~~and upon~~ Upon the filing of ~~said the~~ affidavit, the mortgage ~~shall be~~ is valid against all persons for ~~a further period of~~ an additional 8 years."

Section 2243. Section 71-1-211, MCA, is amended to read:

"71-1-211. Satisfaction of mortgage -- record thereof. (1) A mortgage ~~shall~~ must be discharged upon the record ~~thereof~~ by the county clerk in whose custody it ~~shall be~~ is recorded whenever there ~~shall be~~ is presented to ~~him~~ the clerk a certificate executed by the mortgagee, ~~his~~ the mortgagee's personal representative or assignee, acknowledged or proved and certified as prescribed in this code ~~prescribed to entitle chapter that entitles~~ a conveyance to be recorded, specifying that ~~such the~~ mortgage has been paid or otherwise satisfied or discharged.

(2) Every ~~such~~ certificate and the proof and acknowledgment ~~thereof shall~~ must be recorded at full length, and a reference ~~shall~~ must be made to the book and page containing ~~such the~~ record in the mortgagor and mortgagee indexes as to the discharge of ~~such the~~ mortgage."

Section 2244. Section 71-1-213, MCA, is amended to read:

"71-1-213. Discharge or release by other than mortgagee. (1) If ~~the~~ a discharge or release is made by the personal representative of the mortgagee, it must be accompanied by a certified copy of ~~his~~ the personal representative's authority unless ~~such the~~ authority is already ~~of record~~ recorded in the office of the county clerk and recorder where the mortgage is recorded.

(2) If the discharge or release is made by an assignee, it must be accompanied by the assignment of the mortgage unless the assignment is already ~~of record~~ recorded in the office of the county clerk and recorder where the mortgage is recorded.

(3) If the discharge or release is executed by an ~~attorney in fact~~ attorney-in-fact, the discharge or release must have attached to it the power of attorney under which it is made unless the power of attorney is already ~~of record~~ recorded in the office of the county clerk and recorder where the mortgage is recorded.

(4) If the discharge or release is executed by the heir or heirs of the mortgagee, the discharge or release must be accompanied by a certified copy of an order or decree of a court of competent jurisdiction showing ~~such the~~ authority unless the order or decree is already ~~of record~~ recorded in the office of the county clerk and recorder

where the mortgage is recorded.

(5) Foreign administrators and executors may discharge or release mortgages of record in Montana if the discharge or release of mortgages is accompanied by an authenticated copy of their letters of administration or letters testamentary, with the certificate of the clerk of the court in which the appointment was made that the ~~same~~ the letters have not been revoked and are in full force; ~~which~~ The certificate and certified copy of letters ~~shall~~ must be recorded with the discharge or release of the mortgage. When presented and recorded, the discharge or release has the same effect as if the mortgage was discharged or released by the mortgagee."

Section 2245. Section 71-1-229, MCA, is amended to read:

"71-1-229. Possession of ~~lands~~ land prior to foreclosure upon default and during period of redemption. The purchaser of ~~lands~~ land at mortgage foreclosure is not entitled to the possession ~~thereof~~ of the land as against the execution debtor during the period of redemption allowed by law while the execution debtor personally occupies the land as a home for ~~himself~~ the execution debtor and ~~his~~ the debtor's family. It is unlawful to insert in any mortgage of real estate any provision intended to constitute a waiver by the owner of real estate personally occupying land as a home for ~~himself~~ the owner and the owner's family of the provision of this section or any provision intended to give the mortgagee possession of the land or premises prior to foreclosure upon default of tax, principal, or interest payments. The intention ~~hereof~~ of this section is to ~~insure~~ ensure to ~~such~~ the owner the possession of ~~his~~ the land prior to foreclosure and during the year of redemption."

Section 2246. Section 71-1-230, MCA, is amended to read:

"71-1-230. Action to redeem mortgage. An action to redeem a mortgage of real property, with or without an account of rents and profits, may be brought by the mortgagor or those claiming under ~~him~~ the mortgagor against the mortgagee in possession or those claiming under ~~him~~ the mortgagee; unless ~~he~~ the mortgagee in possession or ~~they~~ those claiming under the mortgagee have continuously maintained an adverse possession of the mortgaged premises for 10 years after breach of some condition of the mortgage."

Section 2247. Section 71-1-231, MCA, is amended to read:

"71-1-231. Redemption by multiple mortgagors. If there is more than one ~~such~~ mortgagor or more than one person claiming under a mortgagor, some of whom are not entitled to maintain ~~such~~ an action under the provisions of 71-1-230 or Title 27, chapter 2, any one of them who is entitled to maintain ~~such~~ an action may redeem ~~therein~~ in the action a divided or undivided part of the mortgaged premises; ~~according as~~ his the person's

interest ~~may appear~~ appears, and have an accounting for a part of the rents and profits proportionate to ~~his~~ the ~~person's~~ interest in the mortgaged premises; on payment of a part of the mortgage money bearing the same proportion to the whole of ~~such~~ the money as the value of ~~his~~ person's divided or undivided interest in the premises bears to the whole of ~~such~~ the premises."

Section 2248. Section 71-1-232, MCA, is amended to read:

"71-1-232. Deficiency judgment not allowed on foreclosure of purchase price mortgage. Upon the foreclosure of any mortgage, executed to any vendor of real property or to ~~his~~ the vendor's heirs, executors, administrators, or assigns for the balance of the purchase price of ~~such~~ the real property, the mortgagee ~~shall~~ is not be entitled to a deficiency judgment on account of ~~such~~ the mortgage or note or obligation secured by the ~~same~~ the mortgage."

Section 2249. Section 71-1-234, MCA, is amended to read:

"71-1-234. Attorney's Attorney fee -- petition and notice. If the mortgagee ~~shall demand~~ demands ~~attorneys'~~ attorney fees in case of the sale of real estate under and by virtue of the power of sale contained in any mortgage or deed of trust in this state, except in case of the sale of real estate by virtue of a power of sale conferred upon a trustee under a trust indenture as defined in the Small Tract Financing Act of Montana, ~~he~~ the mortgagee shall petition the district court of the county in which ~~said~~ the real estate or any part thereof ~~may be~~ of the real estate is situated to fix the amount of ~~such~~ the ~~attorney's fee,~~ attorney fees. ~~and a~~ A copy of ~~such~~ the petition ~~shall~~ must be served upon all parties having or claiming an interest of record in the property to be sold or ~~such of them as~~ those parties that may be found within the state, ~~which copy of said petition must be served~~ at least 10 days before the day fixed for hearing; ~~and notice~~ Notice of the time and place of ~~such~~ the hearing ~~shall~~ must be served at the same time as the copy of ~~said~~ the petition is served. ~~Such~~ A petition ~~shall~~ must be acted upon by the district court before the notice of sale by publication or posting, as ~~hereinbefore~~ provided for in this part, ~~shall be~~ is given."

Section 2250. Section 71-1-312, MCA, is amended to read:

"71-1-312. Discontinuance of foreclosure proceedings when entire amount of default paid. (1) Whenever all or a portion of any obligation secured by a trust indenture has, prior to the maturity date fixed in ~~such~~ the obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust indenture, including a default in the payment of interest or of any installment

of principal or by reason of failure of the grantor to pay, in accordance with the terms of ~~such the~~ trust indenture, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with the terms of ~~such the~~ obligation or of ~~such the~~ trust indenture, the grantor or ~~his the grantor's~~ successor in interest in the trust property or any part ~~thereof~~ of the trust property or any other person having a subordinate lien or encumbrance of record ~~thereon~~ on the trust property or any beneficiary under a subordinate trust indenture, at any time prior to the time fixed by the trustee for the trustee's sale if the power of sale is to be exercised, may pay to the beneficiary or ~~his the beneficiary's~~ successor in interest the entire amount then due under the terms of ~~such the~~ trust indenture and the obligation secured ~~thereby~~ (by the indenture, including costs and expenses actually incurred and reasonable trustee's fees and attorney's attorney fees), other than ~~such the~~ portion of the principal ~~as that would not then be due had no~~ if a default had not occurred and ~~thereby~~ cure the existing default ~~theretofore existing.~~

(2) ~~Thereupon~~ Upon the payment described in subsection (1), all prior proceedings theretofore had or instituted to foreclose the trust indenture ~~shall~~ must be canceled and the obligation and the trust indenture ~~shall~~ must be reinstated and ~~shall be and remain~~ remains in force and effect the same as if ~~no such an~~ acceleration had not occurred.

(3) If the default is cured and the obligation and the trust indenture reinstated in the manner ~~hereinabove~~ provided, the beneficiary or ~~his the beneficiary's~~ assignee shall, on demand of any person having an interest in the trust property, execute, acknowledge, and deliver to ~~him~~ the person a request that the trustee execute, acknowledge, and deliver a cancellation of the recorded notice of sale under ~~such the~~ trust indenture.

(4) Any beneficiary under a trust indenture or ~~his the beneficiary's~~ assignee who, for a period of 30 days after ~~such the~~ demand, refuses to request the trustee to execute, acknowledge, and deliver ~~such a~~ cancellation ~~shall be~~ is liable to the person entitled to ~~such the~~ request for all damages resulting from ~~such the~~ refusal.

(5) A cancellation of a recorded notice of sale ~~shall~~, when executed and acknowledged, ~~be~~ is entitled to be recorded and ~~shall be~~ is sufficient if it sets forth a reference to the trust indenture and the book and page where the ~~same~~ indenture is recorded, a reference to the notice of sale and to the book and page where the ~~same~~ indenture is recorded, and a statement that ~~such the~~ notice of sale is canceled."

Section 2251. Section 71-1-315, MCA, is amended to read:

"71-1-315. Notice -- sale -- payment. A trust deed may be foreclosed by advertisement and sale in the following manner ~~hereinafter provided~~:

(1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale ~~shall~~ must be mailed by ~~registered or certified~~ mail to:

(i) the grantor, at the grantor's address as set forth in the trust indenture or ~~(in the event no if the grantor's address of the grantor is not set forth in the trust indenture)~~ at the grantor's ~~last known~~ last-known address;

(ii) each person designated in the trust indenture to receive notice of sale whose address is set forth ~~therein in the trust indenture~~, at ~~such that~~ address;

(iii) each person who has filed for record a request for a copy of notice of sale within the time and in the manner ~~hereinafter~~ provided in this section, at the address of ~~such the~~ person as set forth in ~~such the~~ request;

(iv) any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at ~~such that~~ address;

(v) any person ~~having who has~~ a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at ~~such that~~ address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale ~~shall~~ must be posted in some conspicuous place on the property to be sold. Upon request of the trustee, the notice of sale ~~shall~~ must be posted by a sheriff or constable of the county ~~wherein in which~~ the property to be sold is located.

(c) A copy of the notice of sale ~~shall~~ must be published in a newspaper of general circulation published in any county in which the property or some part ~~thereof of the property~~ is situated, at least once each week for 3 successive weeks. If there is no ~~such~~ newspaper of general circulation published in the county, then copies of the notice of sale ~~shall~~ must be posted in at least three public places in each county in which the property or some part ~~thereof of the property~~ is situated. The posting or the last publication ~~shall~~ must be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there ~~shall~~ must be recorded in the office of the clerk and recorder of each county where the property or some part ~~thereof of the property~~ is situated, affidavits of mailing, posting, and publication showing compliance with the requirements of this section.

(3) On the date and at the time and place designated in the notice of sale, the trustee or ~~his~~ the trustee's attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels, and any person, including the beneficiary under the trust indenture but excluding the trustee, may bid at the sale. The person making the sale may, for any cause ~~he deems~~ the person considers expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the

notice of sale. No other notice of the postponed sale need be given. ~~In the event~~ If a sale cannot be held at the scheduled time by reason of the automatic stay provision of the United States Bankruptcy Code, 11 U.S.C. 362, or of a stay order issued by any court of competent jurisdiction, the person making the sale may, as often as ~~he~~ the person considers expedient, postpone the sale. Each postponement may not exceed 30 days, and all postponements, in the aggregate, may not exceed 120 days. Each postponement must be effected by a public proclamation at the time and place fixed in the notice of sale or fixed by previous postponement. No other notice of the postponed sale need be given.

(4) The purchaser at the sale shall pay the price bid in cash, and upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. ~~In the event~~ If the purchaser refuses to pay the purchase price, the person conducting the sale ~~shall have~~ has the right to resell the property at any time to the highest bidder. The party refusing to pay ~~shall be~~ is liable for any loss occasioned ~~thereby~~ by the refusal, and the person making the sale may also, ~~in his discretion, thereafter~~ reject any other bid of ~~such~~ the refusing person."

Section 2252. Section 71-1-317, MCA, is amended to read:

"71-1-317. Deficiency judgment not allowed. When a trust indenture executed in conformity with this part is foreclosed by advertisement and sale, ~~no~~ other or further action, suit, or proceedings ~~shall~~ may not be taken or judgment entered for any deficiency against the grantor or ~~his~~ the grantor's surety, guarantor, or successor in interest, if any, on the note, bond, or other obligation secured by the trust indenture or against any other person obligated on ~~such~~ the note, bond, or other obligation."

Section 2253. Section 71-1-318, MCA, is amended to read:

"71-1-318. Trustee's deed. (1) The trustee's deed to the purchaser at the trustee's sale may contain, in addition to a description of the property conveyed, recitals of compliance with the requirements of this part relating to the exercise of the power of sale and the sale, including recitals of the facts concerning the default, the notice given, the conduct of the sale, and the receipt of the purchase money from the purchaser.

(2) When the trustee's deed is recorded in the deed records of the county or counties where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under 71-1-315(2) ~~shall be~~ are prima facie evidence in any court of the truth of the matters set forth ~~therein~~ in the recitals, except that the ~~same shall be~~ the recitals are conclusive evidence in favor of subsequent bona fide purchasers and encumbrancers for value and without notice.

(3) The trustee's deed ~~shall operate~~ operates to convey to the purchaser, without right of redemption,

the trustee's title and all right, title, interest, and claim of the grantor and ~~his~~ the grantor's successors in interest and of all persons claiming by, through, or under them in and to the property sold, including all ~~such~~ right, title, interest, and claim in and to ~~such~~ the property acquired by the grantor or ~~his~~ the grantor's successors in interest subsequent to the execution of the trust indenture."

Section 2254. Section 71-2-101, MCA, is amended to read:

"71-2-101. Definitions. (1) "Pledge" is a deposit of personal property by way of security for the performance of another's act.

(2) A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged, who, if ~~he~~ the third person accepts the deposit, is called a "pledge holder"."

Section 2255. Section 71-2-106, MCA, is amended to read:

"71-2-106. Obligations of pledge holder. (1) A pledge holder for reward ~~cannot exonerate himself~~ may not be self-exonerated from ~~his~~ the pledge holder's undertaking; ~~and a~~ A gratuitous pledge holder ~~can do so~~ may be self-exonerated only by giving reasonable notice to the pledgor and pledgee to appoint a new pledge holder and, ~~in case of their failure~~ if they to agree, by depositing the property pledged with some impartial person, who will then be entitled to a reasonable compensation for ~~his~~ that person's care of the ~~same~~ property.

(2) A pledge holder ~~must~~ shall enforce all the rights of the pledgee unless authorized by ~~him~~ the pledgee to waive ~~them~~ those rights."

Section 2256. Section 71-2-107, MCA, is amended to read:

"71-2-107. Property pledged to extent of lien. ~~One~~ A person who has a lien upon property may pledge it to the extent of ~~his~~ the person's lien."

Section 2257. Section 71-2-108, MCA, is amended to read:

"71-2-108. When pledge may not be withdrawn. ~~One~~ A person who pledges property as security for the obligation of another cannot withdraw the property pledged ~~otherwise than as~~ except in the manner that a personal pledgor ~~for himself~~ might, and if ~~he~~ the person receives from the debtor a consideration for the pledge, ~~he~~ the person ~~cannot~~ may not withdraw it without ~~his~~ the debtor's consent."

Section 2258. Section 71-2-109, MCA, is amended to read:

"71-2-109. When real owner cannot defeat pledge. ~~One~~ A person who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it ~~cannot~~ may not set up ~~his~~ the person's own title to defeat a pledge of the property made by the other to a pledgee who received the property in good faith in the ordinary course of business and for value."

Section 2259. Section 71-2-110, MCA, is amended to read:

"71-2-110. Debtor's misrepresentation of value of pledge. ~~Where~~ When a debtor has obtained credit or an extension of time by a fraudulent misrepresentation of the value of property pledged by or for ~~him~~ the debtor, the creditor may demand a further pledge to correspond with the value represented and in default ~~thereof~~ of a further pledge may recover ~~his~~ the debt immediately, though it ~~be~~ is not actually due."

Section 2260. Section 71-3-101, MCA, is amended to read:

"71-3-101. Definitions. For purposes of this part, the following definitions apply:

(1) A "general lien" is one which the holder ~~thereof~~ of the lien is entitled to enforce as a security for the performance of all the obligations or all of a particular class of obligations ~~which~~ that exist in ~~his~~ the holder's favor against the owner of the property.

(2) A "lien" is a charge imposed in some mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act. Liens are either general or special.

(3) A "special lien" is one ~~which~~ that the holder ~~thereof~~ of the lien can enforce only as security for the performance of a particular act or obligation and of ~~such~~ the obligations ~~as~~ that may be incidental ~~thereto~~ to the particular act or obligation."

Section 2261. Section 71-3-107, MCA, is amended to read:

"71-3-107. Prior liens. ~~Where~~ When the holder of a special lien is compelled to satisfy a prior lien for ~~his~~ the holder's own protection, ~~he~~ the holder may enforce payment of the amount ~~so~~ paid by him as a part of the claim for which ~~his~~ the holder's own lien exists."

Section 2262. Section 71-3-112, MCA, is amended to read:

"71-3-112. Holder of lien not entitled to compensation. Except as otherwise provided by the Uniform Commercial Code, one who holds property by virtue of a lien ~~thereon~~ on the property is not entitled to compensation from the owner ~~thereof~~ of the property for any trouble or expense ~~which~~ he ~~that~~ the person incurs

respecting ~~it~~ the property, except to the same extent as a borrower under 70-7-110 and 70-7-111."

Section 2263. Section 71-3-115, MCA, is amended to read:

"71-3-115. Order of resort to different funds. ~~Where one~~ When a person has a lien upon several things and other persons have subordinate liens upon or interests in some but not all of the same things, the person having the prior lien, if ~~he~~ the prior lienor can do so without risk of personal loss ~~to himself~~ or of injustice to other persons, ~~must~~ shall resort to the property in the following order, on the demand of any interested party interested:

(1) to the things upon which ~~he~~ the person has an exclusive lien;

(2) to the things ~~which~~ that are subject to the fewest subordinate liens;

(3) in ~~like~~ the same manner inversely to the number of subordinate liens upon the same thing; and

(4) when several things are within one of the ~~foregoing~~ described in subsections (2) and (3) and subject to the same number of liens, resort must be had:

(a) first, to the things ~~which~~ that have not been transferred since the prior lien was created;

(b) second, to the things ~~which~~ that have been ~~so~~ transferred since the prior lien was created without a valuable consideration; and

(c) third, to the things ~~which~~ that have been ~~so~~ transferred for a valuable consideration in the inverse order of the transfer."

Section 2264. Section 71-3-117, MCA, is amended to read:

"71-3-117. Right to redeem. Except as otherwise provided by the Uniform Commercial Code, every a person having an interest in property subject to a lien has a right to redeem it from the lien at any time after the claim is due and before ~~his~~ the person's right of redemption is foreclosed."

Section 2265. Section 71-3-118, MCA, is amended to read:

"71-3-118. Rights of inferior lienor. ~~One~~ A person who has a lien inferior to another upon the same property has a right to:

(1) redeem the property in the same manner as its owner might from the superior lien; and

(2) be subrogated to all the benefits of the superior lien, when necessary for the protection of ~~his~~ the person's interests, upon satisfying the claim secured ~~thereby~~ by the superior lien."

Section 2266. Section 71-3-203, MCA, is amended to read:

"71-3-203. Execution of notices and certificates. Certification by the secretary of the treasury of the United States, ~~or his~~ by the secretary's delegate, or by any official or entity of the United States responsible for filing or certifying ~~of~~ notice of any lien, ~~of~~ notices of liens, certificates, or other notices affecting federal liens entitles them to be filed. No other attestation, certification, or acknowledgment is necessary."

Section 2267. Section 71-3-301, MCA, is amended to read:

"71-3-301. Priority when assignment of property made. In all assignments of property made by any person to trustees or assignees on account of the inability of the person, at the time of the assignment, to pay ~~his~~ the person's debts or in proceedings of insolvency, the wages of the miners, mechanics, ~~salesmen~~ salespersons, servants, clerks, or laborers employed by ~~such~~ the person, to the amount actually owed and for services rendered within the previous 4 months, are preferred claims and must be paid by ~~such~~ the trustees or assignees before any other creditor of the assignor."

Section 2268. Section 71-3-303, MCA, is amended to read:

"71-3-303. Priority in cases of execution or attachment. In case of executions, attachments, and writs of similar nature issued against any person, except for claims for labor done, any miners, mechanics, ~~salesmen~~ salespersons, servants, clerks, or laborers who have claims against the defendant for labor done may give notice of their claims and the amount ~~thereof~~ of their claims, sworn to by the person making the claim, to the parties plaintiff and defendant to the action in which ~~such~~ the execution, attachment, or other writ has been issued and upon the officer executing the ~~same~~ the attachment or writ. Service of notice ~~herein~~ required by this section may be made upon the officer charged with the execution of ~~such~~ the writ in one or more cases that may be pending against ~~such~~ the person, who shall ~~forthwith~~ serve such a copy of the notice and claim, ~~by copy~~, upon the parties plaintiff and defendant; if they are found in the county where ~~such~~ the action is pending; or upon their respective attorneys employed in ~~such~~ the case or cases pending."

Section 2269. Section 71-3-304, MCA, is amended to read:

"71-3-304. Service of notice. (1) The officer serving ~~said~~ the notice and claim described in 71-3-303 shall ~~forthwith~~, after service of ~~the same~~, make return ~~thereof~~ of service showing ~~such~~ the service; and where and how it was made.

(2) Service may be made in any case at any time before the actual sale of the property levied upon in

~~such the~~ pending action, and unless ~~such the~~ claim is disputed by the debtor or a creditor or party plaintiff, ~~such the~~ levying officer ~~must shall~~ pay ~~such the~~ person out of the proceeds of the sale the amount ~~he the person~~ is entitled to receive for services rendered within the 4 months ~~next~~ preceding the levy of the writ, not exceeding the amount actually owed."

Section 2270. Section 71-3-305, MCA, is amended to read:

"71-3-305. Proceeding if claim disputed. (1) If any or all of the claims ~~so~~ presented and claiming preference under this part are disputed by either the debtor or a creditor, the person presenting the ~~same must~~ the claim shall commence an action within 10 days after notice of ~~such the~~ dispute is served upon ~~such the~~ claimant, as provided in subsection (2), for the recovery ~~thereof of the claim~~. The officer ~~must shall~~ retain possession of ~~so as~~ much of the proceeds of the sale as may be necessary to satisfy ~~such the~~ claim and costs until the final determination of ~~such the~~ action. ~~In case if judgment be had is given~~, the costs are a preferred claim, which may include a reasonable ~~attorney's fee~~ attorney fees.

(2) The debtor or creditor intending to dispute any claim presented under the provisions of 71-3-303 shall, within 10 days after receiving notice of ~~such the~~ claim, serve upon the claimant and officer holding ~~such the~~ execution, attachment, or other writ a statement in writing, verified by the oath of the debtor or person disputing ~~such the~~ claim for services, setting forth that no part of ~~said the~~ claim, not exceeding a sum specified, is justly due from the debtor to the claimant for services rendered within the 4 months ~~next~~ preceding the levy of the execution, attachment, or other writ, ~~as the case may be~~.

(3) If the claimant brings suit on a claim ~~which that~~ is disputed in part only and fails to recover a sum exceeding that which was admitted to be due, ~~he shall~~ the claimant may not recover costs, but costs ~~shall must~~ be adjudged against ~~him the claimant~~. ~~Where such~~ If the claimant fails to bring suit upon his a claim; which that is disputed in part only, ~~he shall be deemed~~ the claimant is considered to have waived ~~that the disputed~~ portion of ~~his the~~ claim ~~disputed~~."

Section 2271. Section 71-3-401, MCA, is amended to read:

"71-3-401. Who may have lien -- priority. (1) ~~Any A~~ person who performs services for another in the capacity of a farm or ranch laborer has a lien on all crops of every kind grown, raised, or harvested by the person for whom the services were performed during that time as security for the payment of any wages due or owing to ~~such persons~~ the person for services ~~so~~ performed.

(2) The lien has priority over all other liens, chattel mortgages, or encumbrances except feed sufficient

for 3 months for 1 horse, 2 cows and their calves, 4 hogs, and 50 domestic fowls and seed grain and threshers' liens. The wages for which a lien may be claimed may not be in excess of \$1,000 or for a period of time exceeding 60 days next preceding the date of filing the lien. ~~In case any such~~ If a person without cause quits his ~~the~~ employment before the expiration of the time for which ~~he~~ the person is employed, ~~he~~ the person is not entitled to a lien as ~~herein provided~~ in this part.

(3) If several persons have or obtain liens under the provisions of this part against property of the same employer, they have no priority among themselves but all must be paid pro rata from the proceeds of any foreclosure sale according to the provisions of this part."

Section 2272. Section 71-3-404, MCA, is amended to read:

"71-3-404. Notice to other lienholders. (1) A person intending to foreclose a lien secured under the provisions of this part shall give a written notice to the owner or the person against whom the lien is claimed and all chattel mortgagees, encumbrancers, and all other lienholders who appear on record in the office of the secretary of state that in not less than 10 days from the date of notice ~~he~~ the person will institute proceedings for the foreclosure of ~~his~~ the person's lien. Any other labor lienholder to whom notice is given may join in the foreclosure proceedings and is entitled to a pro rata share of the proceeds of the foreclosure sale; as provided in this part. However, ~~if the~~ a notified labor lienholder who does not join in the proceedings, ~~he~~ is not entitled to share pro rata in the proceeds of the sale.

(2) The lien notice required ~~herein~~ by this section must be given by certified mail and directed to the last-known address of the owner or the person against whom the lien is claimed and to the addresses of the chattel mortgagees, encumbrancers, and all other lienholders as their addresses appear of record. The return of the foreclosure sale must be accompanied by proof of the giving of notice as required to be given in this section."

Section 2273. Section 71-3-523, MCA, is amended to read:

"71-3-523. Who may claim a construction lien -- limitation. A person who furnishes services or materials pursuant to a real estate improvement contract may claim a construction lien, only to the extent provided in this part, to secure the payment of ~~his~~ the person's contract price."

Section 2274. Section 71-3-524, MCA, is amended to read:

"71-3-524. Limitation of lien for materials supplied. (1) A lien for furnishing materials arises only if:

(a) (i) the materials are supplied with the intent that they be used in the course of construction of or incorporated into the improvement in connection with which the lien arises; and

(ii) the intent described in subsection (1)(a)(i) ~~can~~ may be shown by a contract of sale, by a delivery order, by delivery to the site by the lien claimant or at ~~his~~ the lien claimant's direction, or by other evidence; and

(b) the materials are:

(i) incorporated in the improvement or consumed as normal wastage in construction operations;

(ii) specifically fabricated for incorporation into the improvement and not readily resalable in the ordinary course of the fabricator's business, even though the materials are not actually incorporated into the improvement;

(iii) used for the construction or operation of machinery or equipment used in the course of construction and not remaining in the improvement, subject to diminution by the salvage value of those materials; or

(iv) tools, appliances, or machinery used on the particular improvement. However, a lien for supplying tools, appliances, or machinery used on the improvement is limited as provided by subsection (3).

(2) The delivery of materials to the site of the improvement, whether by the lien claimant or by another, creates a presumption that they were used in the course of construction or were incorporated into the improvement.

(3) A lien arising for the supplying of tools, appliances, or machinery under subsection (1)(b)(iv) is limited as follows:

(a) if they are rented, the lien is for the reasonable rental value for the period of actual use, including any reasonable periods of nonuse provided for in the rental contract; and

(b) if they are purchased, the lien is for the price but arises only if they were purchased for use in the course of the particular improvement and have no substantial value after the completion of the improvement on which they were used."

Section 2275. Section 71-3-525, MCA, is amended to read:

"71-3-525. Extent of lien. (1) A construction lien extends to the interest of the contracting owner in the real estate, as the interest exists at the commencement of work or is ~~thereafter~~ subsequently acquired in the real estate, subject to the provisions of this section.

(2) (a) If an improvement is located wholly on one or more platted lots belonging to the contracting owner, the lien applies to the improvement and to the lots on which the improvement is located.

(b) If an improvement is not located wholly on one or more platted lots, the lien applies to the improvement and to the smallest identifiable tract or parcel of land on which the improvement is located.

(3) If the improvement is to leased premises, the lien attaches to the improvement and to the leasehold term. Except as provided in subsection (4), it does not attach to the lessor's interest unless ~~he~~ the lessor contracted for or agreed to the improvement before it was begun.

(4) (a) A construction lien is not impaired to the extent of the value of the work or improvement that is severable from the real estate if the improvement is to premises held by:

- (i) a contracting owner who owns less than a fee simple interest; or
- (ii) a lessee and the lease is forfeited by the lessee.

(b) If the work or improvement may be removed without harm to the rest of the real estate, the lienholder may have the value determined, the work or improvement sold separately, and the proceeds delivered to ~~him~~ the lienholder to satisfy the construction lien. The purchaser shall remove the work or improvement within 45 days of the sale.

(5) If a contracting owner contracts for improvements on real estate not owned by ~~him~~ the contracting owner as part of an improvement on ~~his~~ the contracting owner's real estate or for the purpose of directly benefiting ~~his~~ the contracting owner's real estate, there is a lien against the contracting owner's real estate being improved or directly benefited in favor of persons furnishing services or materials to the same extent as if the improvement had been on the contracting owner's real estate."

Section 2276. Section 71-3-526, MCA, is amended to read:

"71-3-526. Amount of lien. (1) A person who has furnished services or materials pursuant to a real estate improvement contract is entitled to a lien for the unpaid part of ~~his~~ the person's contract price, subject to the provisions of 71-3-524.

(2) A person's lien is reduced by the sum of the liens of persons claiming construction liens through ~~him~~ that person."

Section 2277. Section 71-3-533, MCA, is amended to read:

"71-3-533. Notice of completion. (1) The contracting owner may file a notice of completion at any time after the completion of any work or improvement.

(2) The following acts or events constitute completion of any work or improvement for the purpose of filing a notice of completion:

(a) the written acceptance by the contracting owner, ~~his~~ the contracting owner's agent, or the representative of the building, improvement, or structure. The filing of a notice of completion ~~shall~~ may not be

considered as an acceptance of the building, improvement, or other structure.

(b) the cessation from labor for 30 days upon any building, improvement, or structure; or the alteration, addition to, or repair ~~thereof of the building, improvement, or structure.~~

(3) The notice of completion, together with an affidavit of publication as ~~hereinafter~~ required ~~shall in this section, must~~ be filed in the office of the county clerk and recorder of the county where the property is situated, and the notice ~~shall must~~ set forth:

(a) the date when the work or improvement was completed or the date on which cessation from labor occurred first and the period of its duration;

(b) the contracting owner's name and address and the nature of the title, if any, of the person signing the notice;

(c) a description of the property sufficient for identification;

(d) the name of the contractor, if any.

(4) The notice ~~shall must~~ be verified by the contracting owner or ~~his~~ the owner's agent.

(5) A copy of the notice of completion ~~shall must~~ be published once each week for 3 successive weeks in a newspaper of general circulation in the county where the land on which the work or improvement was performed is situated.

(6) The contracting owner shall give a copy of the notice of completion to any person who has given the contracting owner a notice of a right to claim a lien."

Section 2278. Section 71-3-537, MCA, is amended to read:

"71-3-537. Acknowledgment of satisfaction of lien -- penalty. Whenever any indebtedness ~~which that~~ is a lien upon any ~~such~~ real estate, structure, building, or other improvement is paid and satisfied, it is the duty of the creditors to acknowledge satisfaction ~~thereof as of the indebtedness in case of the same manner as~~ a mortgage; ~~and if any~~ If a creditor fails to acknowledge satisfaction, ~~as aforesaid, he~~ the creditor is liable to any person injured by ~~such the~~ failure to the amount of ~~such the~~ injury and the costs of action."

Section 2279. Section 71-3-541, MCA, is amended to read:

"71-3-541. Priority among holders of construction liens. (1) There is equal priority between or among construction lien claimants who contribute to the same real estate improvement project, regardless of the date on which each lien claimant first contributed services or materials and regardless of the date on which ~~he~~ the claimant filed ~~his~~ the notice of lien. When the proceeds of a foreclosure sale are not sufficient to pay all

construction lien claimants in full, each claimant ~~will~~ must receive a pro rata share of the proceeds based on the amount of ~~his~~ the claimant's respective lien.

(2) Construction liens attaching at different times have priority in the order of attachment."

Section 2280. Section 71-3-542, MCA, is amended to read:

"71-3-542. Priority of construction liens as against claims other than construction lien claims. (1)

A construction lien arising under this part has priority over any other interest, lien, mortgage, or encumbrance that may attach to the building, structure, or improvement or on the real property on which the building, structure, or improvement is located and ~~which~~ that is filed after the construction lien attaches.

(2) An interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches has priority over a construction lien arising under this part, except as provided in subsections (3) and (4).

(3) A construction lien has priority, to the extent of the value of the work or improvement that is severable, over an interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches. If the work or improvement may be removed without harm to the rest of the real property, the lienholder may have the value determined, the work or improvement sold separately on foreclosure, and the proceeds delivered to ~~him~~ the lienholder to satisfy the construction lien.

(4) A construction lien has priority over any interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches if that interest, lien, mortgage, or encumbrance was taken to secure advances made for the purpose of paying for the particular real estate improvement ~~being liened~~ to which the lien was attached."

Section 2281. Section 71-3-601, MCA, is amended to read:

"71-3-601. Definition of lumber -- who may have lien. (1) The term "lumber", as used in this part, ~~shall be held and be construed to mean~~ means all logs or other timber sawed or split for use, including beams, joists, planks, boards, shingles, laths, staves, hoops, and every article of ~~whatsoever~~ any nature or description manufactured from sawlogs or other timber.

(2) ~~Every~~ A person, general partnership, limited partnership, corporation, or association performing labor ~~done upon; or who shall assist~~ that assists in obtaining or securing sawlogs, piling, railroad ties, cordwood, or other timber, has a lien upon the ~~same~~ product and upon all other sawlogs, piling, railroad ties, cordwood, or other timber ~~which that;~~ at the time of the filing of the claim or lien ~~hereinafter~~ provided for in subsection (3); belonged to the person or corporation for whom the labor was performed; for the work or labor done upon or in obtaining

or securing the particular sawlogs, piling, railroad ties, cordwood, or other timber described in ~~said the~~ claim or lien ~~described~~. The lien exists whether ~~such the~~ work or labor was done at the ~~instance~~ request of the owner, ~~of the same or his~~ the owner's agent, or a contractor or subcontractor, or any person in on behalf of ~~such the~~ owner or ~~his~~ the owner's agent or a contractor or subcontractor. The cook in a logging camp ~~shall~~ must be regarded as a person who assists in obtaining or securing any of the timber ~~herein~~ mentioned in this subsection.

(3) ~~Every~~ A person performing work or labor or assisting in manufacturing sawlogs and other timber into lumber and shingles has a lien upon ~~such the~~ lumber while the ~~same~~ lumber remains at the mill where it was manufactured or in the possession or under the control of the manufacturer, whether ~~such the~~ work or labor was done at the ~~instance~~ request of the owner of ~~such the~~ logs, or ~~his~~ the owner's agent, or any contractor or subcontractor of ~~such the~~ owner.

(4) ~~Any~~ A person who ~~shall permit~~ permits another to go upon ~~his~~ the person's timberland and cut ~~thereon~~ sawlogs, piling, railroad ties, cordwood, or other timber has a lien upon the ~~same~~ sawlogs, piling, railroad ties, cordwood, or other timber for the price agreed to be paid for ~~such the~~ privilege or for the price ~~such the~~ privilege would be reasonably worth ~~in case~~ if there was no express agreement fixing the price."

Section 2282. Section 71-3-605, MCA, is amended to read:

"71-3-605. How to obtain lien -- form of claim. (1) ~~Every~~ A person, within 30 days after the close of the rendition of the services or after the close of the work or labor mentioned in 71-3-601, claiming the benefit ~~hereof~~ must of this part shall file for record with the county in which ~~such the~~ sawlogs, piling, railroad ties, cordwood, or other timber ~~were~~ was cut or in which ~~such the~~ lumber or shingles were manufactured a claim containing a statement of ~~his~~ the person's demand and the amount ~~thereof~~, after deducting as nearly as possible all just credits and offsets, with the name of the person by whom ~~he~~ the person was employed; and with a statement of the terms and conditions of ~~his~~ the person's contract, if any. ~~In case~~ If there is no express contract, the claim ~~shall~~ must state what ~~such the~~ service, work, or labor is reasonably worth. It ~~shall~~ must also contain a description of the property to be charged with a lien sufficient for identification with reasonable certainty, ~~which~~ and the claim must be verified by the oath of ~~himself~~ the person or some other person to the effect that the affiant believes the ~~same~~ claim to be true.

(2) The claim ~~shall~~ must be substantially in the following form:

...., Claimant, vs.

Notice is hereby given that of County, state of Montana, claims a lien upon a of, being about in quantity, which were cut or manufactured in County, state of Montana, are marked ~~thus~~, and are now

lying in a for labor performed upon and assistance rendered in ~~said the~~; that the name of the owner or reputed owner is; that employed ~~said~~ to perform ~~such the~~ labor and render ~~such the~~ assistance upon the following terms and conditions, ~~to wit:~~ The ~~said~~ agreed to pay the ~~said~~ for ~~such the~~ labor and assistance; that ~~said the~~ contract has been faithfully performed and fully complied with on the part of ~~said~~, who performed labor upon and assisted in ~~said~~.... for a period of; that ~~said the~~ labor and assistance were ~~so~~ performed and rendered upon ~~said~~ between the day of and the day of, and the rendition of ~~said the~~ service was closed on the day of, and 30 days have not elapsed since that time; that the amount of ~~the~~ claimant's demand for ~~said~~ services is; that no part ~~thereof of the demand~~ has been paid except, and there is now due and remaining unpaid ~~thereon~~, after deducting all just credits and offsets, the sum of, in which amount ~~he~~ the claimant claims a lien upon ~~said~~; that ~~said~~ claimant also claims a lien on all ~~said~~ now owned by ~~said~~ of ~~said the~~ county; to secure payment for the work and labor performed in obtaining or securing the ~~said~~ logs, piling, railroad ties, cordwood, or other timber, lumber, or shingles ~~herein~~ described.

...., Claimant.

State of Montana,

County of

...., being first duly sworn, on oath says that ~~he~~ the claimant is named in the foregoing claim, has heard the ~~same~~ claim read, and knows the contents ~~thereof of the claim~~, and believes the same to be true.

.....

Subscribed and sworn to before me this day of

....."

Section 2283. Section 71-3-608, MCA, is amended to read:

"71-3-608. Duties of county clerk. The county clerk ~~must~~ shall file any claim presented under the provisions of this part, endorse ~~thereon on the claim~~ the time of ~~receiving the same receipt~~, and keep the ~~same~~ claim in his the clerk's office for the inspection of all persons, and ~~shall~~ enter in a book, properly ruled and kept for ~~such that~~ purpose, the names of all the parties, ~~such names to be~~ alphabetically arranged, the amount of the lien, and the time of filing the ~~same~~ lien."

Section 2284. Section 71-3-611, MCA, is amended to read:

"71-3-611. Enforcement of lien. (1) The liens provided for in this part ~~shall~~ must be enforced by a civil action in the district court of the county ~~wherein in which~~ the lien was filed and ~~shall~~ must be governed by the laws

regulating the proceedings in civil actions ~~touching~~ relating to the mode and manner of trial and the proceedings and laws to secure property; so as to hold it for the satisfaction of any lien that may be against it.

(2) ~~Any A~~ person who ~~shall bring~~ brings a civil action to enforce the lien ~~provided for~~, any a person having a lien ~~as provided for~~, or a person who ~~shall be~~ is made a party to any ~~such~~ civil action has the right to demand that ~~such~~ the lien be enforced against the whole or any part of the sawlogs, piling, railroad ties, cordwood, or other timber or manufactured lumber or shingles upon which ~~he~~ the person has performed labor, or which he that the person has assisted in securing or obtaining, or which he that the person has cut on his the person's timberland, any of which occurred during the 3 months ~~next~~ preceding the filing of his the person's lien, for all his the person's labor upon or for all his the person's assistance in obtaining or securing ~~said the~~ sawlogs, piling, railroad ties, cordwood, or other timber or in manufacturing ~~said the~~ lumber into shingles during the whole or any part of the 3 months mentioned in 71-3-603; or for timber cut during the whole or any part of the 3 months ~~above~~ mentioned.

(3) ~~Where~~ When proceedings are commenced against any lot of sawlogs, piling, railroad ties, cordwood, or other timber or lumber or shingles; ~~as herein provided~~, and some of the lienors claim liens against these specific sawlogs, piling, railroad ties, cordwood, or other timber or lumber or shingles proceeded against and others against the same generally to secure their claim for work and labor, the priority of the liens ~~shall~~ must be determined as ~~hereinbefore~~ provided in this part."

Section 2285. Section 71-3-612, MCA, is amended to read:

"71-3-612. Requirements to be bona fide purchaser. It ~~shall~~ must be conclusively presumed by the court that a party purchasing the property subject to the lien within the 30 days given ~~herein~~ in this part to claimants ~~wherein~~ in which to file their liens is not an innocent third party nor that ~~he~~ the party has become a bona fide owner of the property subject to the lien unless it ~~shall appear~~ appears that ~~he~~ the party has paid full value for the property and has seen that the purchase money of the property has been applied to the payment of ~~such~~ bona fide claims ~~as that~~ are entitled to liens upon the same property under the provisions of this part, according to the priorities ~~herein~~ established in this part."

Section 2286. Section 71-3-614, MCA, is amended to read:

"71-3-614. Judgment and execution. In each civil action, judgment must be rendered in favor of each person having a lien for the amount due to ~~him~~ the person, and the court shall order any property subject to the lien to be sold by the sheriff of the proper county in the same manner that personal property is sold on execution;

~~and the.~~ The court shall apportion the proceeds of ~~such~~ the sale to the payment of each judgment according to the priorities established in this part, pro rata in its class, according to the amount of ~~such~~ each judgment."

Section 2287. Section 71-3-616, MCA, is amended to read:

"71-3-616. Penalty for destroying means of identification of property. Any A person who ~~shall~~ remove ~~removes~~, injure ~~injures~~, or destroy ~~destroys~~ or who ~~shall render~~ renders difficult, uncertain, or impossible of identification any sawlogs, piling, railroad ties, cordwood, shingles, or other timber upon which there is a lien as ~~herein provided in this part;~~ without the express consent of the person entitled to ~~such~~ the lien; ~~shall be~~ is liable to a lienholder for the damages to the amount secured by his the lienholder's lien; ~~and if it being~~ damage is shown to the court in a civil action to enforce ~~said~~ the lien, ~~it shall be the duty of the court to~~ shall enter a personal judgment for the amount in ~~such~~ the action against the person, ~~provided he be~~ if the person is a party to ~~such~~ the action, or the damages may be recovered by a civil action against ~~such~~ that person."

Section 2288. Section 71-3-701, MCA, is amended to read:

"71-3-701. Lien for seed or grain. Any A person, company, association, or corporation ~~who~~ that furnishes to another seed to be sown or planted or funds or means with which to purchase seed to be sown or planted or to be used in the production or cultivation of a crop or crops on the lands owned or contracted to be purchased, used, leased, occupied, or rented by ~~him~~ the other person or held under government entry, upon filing the statement provided for in 71-3-703, has a lien not exceeding the purchase price of the seed or grain furnished upon the crop produced from the seed or grain furnished, or any part ~~thereof~~ of the crop, and upon the seed or grain threshed from the crop to secure the payment of the amount or the value of the seed or grain furnished or the funds or means advanced to purchase the seed or grain."

Section 2289. Section 71-3-703, MCA, is amended to read:

"71-3-703. How to obtain lien. Any A person, company, association, or corporation ~~who~~ is entitled to a lien under 71-3-701 shall, within 90 days after the seed or grain is furnished or the funds, means, or money is advanced for the seed or grain, file in the office of the secretary of state a statement of agricultural lien as provided in 71-3-125. Unless the person entitled to a lien files the lien statement within the time required, ~~he~~ the person is considered to have waived the right to a lien."

Section 2290. Section 71-3-712, MCA, is amended to read:

"71-3-712. How lien obtained. Any person, company, association, or corporation ~~who~~ is entitled to a lien under 71-3-711 shall, within 30 days after the insurance is issued, file in the office of the secretary of state a statement of agricultural lien as provided in 71-3-125. A mutual company may file a lien for the largest amount that may become due under its assessment power, and ~~in the event that~~ if the amount assessed is not as large as the amount of the lien claimed, the amount assessed and due is the amount the mutual insurance company is entitled to under this lien. Unless the person, company, association, or corporation entitled to a lien files the agricultural lien statement within the time required, ~~he~~ the person or it entity is considered to have waived the right to a lien."

Section 2291. Section 71-3-801, MCA, is amended to read:

"71-3-801. Who may have lien -- amount. (1) All ~~threshermen~~ threshers or swathers owning or operating threshing or swathing machines and all owners of combine harvesters and threshers ~~shall~~ have a lien upon the grain and other crops swathed or threshed by ~~said the~~ the threshing or swathing machine or cut and threshed by ~~said the~~ the combine harvester and thresher for and on account of the services rendered and the labor performed by them on ~~said the~~ the grain and crops swathed or threshed, ~~and which~~ The lien may be claimed by the owner of ~~said the~~ the grain for the reasonable value of ~~such the~~ such services if ~~same services~~ the services are performed by ~~him~~ the owner. Liens on grain and other crops ~~shall~~ must be charged for at the prevailing price for that particular locality in which ~~such the~~ the grain or other crop is threshed, harvested, or combined; ~~provided if~~ provided notices are given and the lien is filed within the time provided by this part.

(2) If the prevailing price for threshing, harvesting, or combining grain or other ~~crop~~ crops is disputed by the ~~thresherman~~ thresher or swather and the owner of the grain or other crop, the matter may be submitted to arbitration under the provisions of Title 27, chapter 5."

Section 2292. Section 71-3-802, MCA, is amended to read:

"71-3-802. How lien obtained. (1) A person entitled to a lien under 71-3-801 shall file with the office of the secretary of state a statement of agricultural lien, as provided in 71-3-125, within 30 days after the last service was rendered or labor performed in the threshing of grain or other crops or the cutting and harvesting and threshing by the combined harvester and thresher.

(2) If the grain or other crops cut, harvested, and threshed are being hauled from the machine or combine ~~direct~~ directly to the elevator or to any other purchaser, the ~~threshermen~~ thresher, swather, or owner of the combine desiring to claim a lien shall also serve written notices upon the ~~elevatorman~~ elevator operator

or other private purchaser that ~~he~~ the person will claim and file a lien upon the grain or other crops for ~~his~~ the person's services or labor performed in threshing or combining and threshing the grain or crops. A copy of the statement of agricultural lien mailed by certified mail is sufficient notice to the ~~elevatorman~~ elevator operator or other private purchaser."

Section 2293. Section 71-3-1004, MCA, is amended to read:

"71-3-1004. How lien perfected. ~~Every~~ A person, corporation, or partnership claiming a lien under this part shall file with the county clerk of the county in which ~~such~~ the land, leasehold, or pipeline or some part ~~thereof~~ of the land, leasehold, or pipeline is situated a statement verified by affidavit setting forth the amount claimed and the items ~~thereof~~ of the claim, the dates on which labor was performed or material or services furnished, the name of the owner of the leasehold or pipeline, if known, the name of the claimant and ~~his~~ the claimant's mailing address, a description of the leasehold or pipeline, and if the claimant ~~be~~ is a claimant under 71-3-1003, the name of the person for whom the labor was immediately performed or the material or services were immediately furnished. ~~Such~~ The statement must be filed within 6 months after the date upon which ~~said~~ the material or services were last furnished or labor was last performed under contract."

Section 2294. Section 71-3-1009, MCA, is amended to read:

"71-3-1009. Liability fixed. ~~Nothing in this~~ This part shall ~~may not~~ may not be construed to fix a greater liability against the owner of the land or leasehold interest ~~therein in the land~~ than the price or sum stipulated by ~~such~~ the owner to be paid for ~~such~~ the materials or services furnished or labor performed. However, the risk of all payments made to the original contractor ~~shall~~ must be upon ~~such~~ the owner if ~~such~~ the payments ~~be~~ are made after written notice from a person other than an original contractor is received by ~~such~~ the owner at ~~his~~ the owner's residence or principal place of business; ~~which~~ The notice ~~shall~~ must set forth the name and address of the claimant and the amount and nature of ~~his~~ the claim. Payment by the owner to the original contractor of all or any part of the contract price; prior to the receipt of ~~such~~ the notice; ~~shall~~ must operate to discharge and satisfy all liens attaching to the property of ~~such~~ the owner by virtue of this part to the extent of ~~such~~ the payment. The owner ~~shall~~ does not have the right to offset obligations of the original contractor unless ~~such~~ the obligations arise out of the original contract."

Section 2295. Section 71-3-1011, MCA, is amended to read:

"71-3-1011. Notice to purchaser of oil and gas. ~~Anything~~ Notwithstanding any other provision in this

part ~~to the contrary notwithstanding~~, any lien claimed by virtue of this part ~~insofar as it may extend~~ that extends to oil or gas or the proceeds of the sale of oil or gas ~~shall~~ is not be effective against any purchaser of ~~such the~~ oil or gas until written notice of ~~such the~~ claim has been delivered to ~~such the~~ purchaser at ~~his the purchaser's~~ residence or principal place of business. ~~Such The~~ notice ~~shall~~ must state the name of the claimant, ~~his the~~ claimant's address, the amount for which the lien is claimed, and a description of the interest upon which the lien is claimed. ~~Such The~~ notice ~~shall~~ must be delivered personally to the purchaser or by ~~registered or~~ certified letter deposited in the United States mail. Until ~~such a~~ notice is delivered ~~as above provided~~, ~~no such a~~ purchaser ~~shall~~ be is not liable to the claimant for any oil or gas produced from the interest upon which the lien is claimed or the proceeds ~~thereof of the oil and gas~~, except to the extent of ~~such that~~ part of the purchase price of ~~such the~~ oil or gas or the proceeds ~~thereof as of the oil and gas that~~ may be owing by ~~such the~~ purchaser at the time of delivery of ~~such the~~ written notice. ~~Such The~~ purchaser shall withhold payments for ~~such the~~ oil or gas ~~runs~~ to the extent of the lien amount claimed until delivery of notice in writing that the claim has been paid."

Section 2296. Section 71-3-1203, MCA, is amended to read:

"71-3-1203. Enforcement of lien -- sale. If payment for ~~such~~ work, labor, ~~feed~~, or services performed or feed or material furnished is not made within 30 days after the performance ~~or furnishing~~ of the same work, labor, or services or furnishing of the feed or material, the person entitled to a lien under the provisions of this part may enforce ~~said the~~ lien in the following manner:

(1) ~~He The~~ person shall deliver to the sheriff or a constable of the county in which the property is located an affidavit of the amount of ~~his the person's~~ claim against ~~said the~~ property, a description of the property, and the name of the owner ~~thereof of the property~~ or of the person at whose request the work, labor, or services were performed or the ~~materials~~ feed or material was furnished.

(2) Upon receipt of ~~such the~~ affidavit, the sheriff or constable shall proceed to advertise and sell at public auction ~~so as~~ as much of the property covered by ~~said the~~ lien as will satisfy ~~same the~~ the lien.

(3) ~~Such The~~ sale ~~shall~~ must be advertised, conducted, and held in the same manner as prescribed in 25-13-701(1)(b).

(4) Before the sheriff or constable sells the property at public auction, ~~he the sheriff or constable~~ shall give notice of the sale to the owner or person at whose request the work, labor, or services were performed or the ~~materials~~ feed or material was furnished.

(a) Notice to the owner must be given at least 10 days before the sale.

(b) The notice must state:

- (i) the time and place of the sale;
- (ii) the amount of the claim against the property;
- (iii) a description of the property;
- (iv) the name of the owner or person who contracted for the services or materials; and
- (v) the name of the person claiming the lien.

(c) The notice may be given by personal service or by mailing by certified mail a copy of the notice to the last-known ~~post-office~~ post-office address of the owner or person who contracted for the work, labor, or services performed or ~~materials~~ the feed or material furnished.

(d) If the sheriff or constable is not able to effect personal service or service by mail because the location and mailing address of the owner or the contracting person ~~who contracted for the services or materials~~ are unknown, the sheriff or constable may give notice by posting notice of the sale in three public places in the county in which the property is located.

(5) The sheriff shall apply the proceeds of the sale ~~shall be applied by the sheriff~~ to the discharge of the lien and the cost of the proceedings in selling the property and enforcing the lien, and the remainder, if any, or ~~such a part as~~ that is required to discharge the claims, ~~shall~~ must be turned over by the sheriff to the holders, in the order of their precedence, of the chattel mortgages or other lien claimants of record against ~~said~~ the property, and the balance of the proceeds ~~shall~~ must be turned over to the owner of the property.

(6) However, before ~~making seizure of~~ seizing any property under the provisions of this section, the sheriff may require an indemnity bond from the lienor that may not exceed double the amount of the claim against ~~said~~ the property; ~~said~~ The bond and the surety or sureties ~~thereon to~~ on the bond must be approved by ~~said~~ the sheriff."

Section 2297. Section 71-3-1301, MCA, is amended to read:

"71-3-1301. Lien of seller of real property -- waiver. (1) ~~One~~ A person who sells real property has a vendor's lien ~~thereon~~ on the real property, independent of possession, for ~~so~~ as much of the price as remains unpaid and unsecured ~~otherwise~~ other than by the personal obligation of the buyer.

(2) ~~Where~~ When a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of ~~such~~ the contract by the seller waives ~~his~~ the seller's lien to the extent of the sum payable under the contract; ~~but~~ However, a transfer of ~~such~~ the contract in trust to pay debts and return the surplus is not a waiver of the lien."

Section 2298. Section 71-3-1302, MCA, is amended to read:

"71-3-1302. Purchaser's lien on real property. ~~One~~ A person who pays to the owner any part of the price of real property; under an agreement for the sale ~~thereof of real property;~~ has a special lien upon the property, independent of possession, for ~~such the~~ part of the amount paid ~~as he may be~~ that the person is entitled to recover ~~back;~~ in case of a failure of consideration."

Section 2299. Section 71-3-1401, MCA, is amended to read:

"71-3-1401. Lien of hotelkeepers. ~~Hotelmen~~ Hotelkeepers and boardinghouse and lodginghouse keepers ~~shall~~ have a lien upon the baggage and other property of value brought into ~~such the~~ hotel, inn, boardinghouse, or lodginghouse by ~~such a~~ guest, or boarder, or lodger for ~~his~~ the guest's, boarder's, or lodger's accommodation, board, or lodging and room rent and ~~such extras as~~ that are furnished at ~~his~~ the guest's, boarder's, or lodger's request, with the right of the possession of ~~such the~~ baggage or other property of value until all ~~such~~ charges are paid. ~~Nothing herein contained shall~~ This section may not be construed to give a lien upon property sold on the installment plan, title to which is to remain in the vendor until final payment."

Section 2300. Section 71-3-1402, MCA, is amended to read:

"71-3-1402. Enforcement of lien. Any hotelkeeper or innkeeper who ~~shall have~~ has a lien upon any of the goods, baggage, or other chattel property of ~~his~~ the hotelkeeper's or innkeeper's guests may, at the expiration of 6 months from the date of the departure of ~~such the~~ guest from ~~such the~~ hotel or inn, sell and dispose of the ~~same~~ baggage or property at public auction and to the highest bidder for cash or ~~so~~ as much ~~thereof as may be~~ that is necessary to pay the sum due ~~such the~~ hotelkeeper or innkeeper, together with the cost of storage, advertisement, and sale."

Section 2301. Section 71-3-1403, MCA, is amended to read:

"71-3-1403. Notice of sale. Before proceeding to the sale of the property of any guest, as provided in 71-3-1402, ~~such the~~ hotelkeeper or innkeeper shall cause a notice of ~~such the~~ sale, containing a description of the property to be sold and the time and place where ~~such the~~ property will be sold, to be published once each week for 2 successive weeks in a newspaper published in the city or town in which ~~such the~~ hotel or inn is situated ~~but or, if there be none~~ a newspaper is not published in the city or town, then in some a newspaper published nearest ~~such town or~~ to the city or town. ~~and in case~~ If any balance arising from ~~such the~~ sale ~~shall is~~ not ~~be~~ claimed by the rightful owner within 30 days from the day of ~~such the~~ sale, the ~~same shall~~ balance must

be paid into the treasury of the county in which ~~such~~ the sale took place. If ~~such~~ the balance ~~be is~~ not claimed by the owner ~~thereof~~ or ~~his~~ the owner's legal representatives within 1 year ~~thereafter~~, ~~the same shall~~ balance must be paid into the school fund of ~~such~~ the county."

Section 2302. Section 71-3-1501, MCA, is amended to read:

"71-3-1501. Lien of factor. A factor has a general lien, dependent on possession, for all that is due to ~~him as such~~ the factor; upon all articles of commercial value that are entrusted to ~~him~~ the factor by the same principal."

Section 2303. Section 71-3-1502, MCA, is amended to read:

"71-3-1502. Banker's lien. A banker has a general lien, dependent on possession, upon all property in ~~his~~ the banker's hands belonging to a customer; for the balance due to ~~him~~ the banker from ~~such~~ the customer in the course of the business."

Section 2304. Section 71-3-1503, MCA, is amended to read:

"71-3-1503. Officer's lien. An officer who levies an attachment or execution upon personal property acquires a special lien, dependent on possession, upon ~~such~~ that property, which authorizes ~~him~~ the officer to hold it until the process is discharged or satisfied or a judicial sale of the property is had."

Section 2305. Section 71-3-1505, MCA, is amended to read:

"71-3-1505. Lien for rental on frozen food compartments. A person who operates a frozen food plant ~~which~~ that offers individual compartments to the public has a lien on the property in ~~his~~ the person's possession for rentals or other charges due. Liens may be foreclosed in the same way provided for chattel mortgages."

Section 2306. Section 72-1-111, MCA, is amended to read:

"72-1-111. Remedies for fraud -- statute of limitations. (1) Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this code or if fraud is used to avoid or circumvent the provisions or purposes of this code, ~~any a~~ a person injured ~~thereby~~ by the fraud may obtain appropriate relief, including restitution against the perpetrator of the fraud or any person benefiting from the fraud, whether innocent or not, (other than a bona fide purchaser for value and without notice).

(2) Any proceeding must be commenced within 2 years after the discovery of the fraud, but ~~no a~~

proceeding may not be brought against one not a perpetrator of the fraud later than 5 years after the time of commission of the fraud.

(3) This section has no bearing on remedies relating to fraud practiced on a decedent during ~~his~~ the decedent's lifetime ~~which that~~ affects the succession of ~~his~~ the decedent's estate."

Section 2307. Section 72-1-301, MCA, is amended to read:

"72-1-301. Notice -- method and time of giving. (1) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or ~~his~~ the person's attorney if ~~he~~ the person has appeared by attorney or requested that notice be sent to ~~his~~ the person's attorney. Notice ~~shall~~ must be given:

(a) by mailing a copy ~~thereof~~ of the notice at least 14 days before the time set for the hearing by certified, registered, mail or ordinary first-class mail addressed to the person being notified at the post-office address given in ~~his~~ the person's demand for notice, if any, or at ~~his~~ the person's office or place of residence, if known;

(b) by delivering a copy ~~thereof~~ of the notice to the person being notified personally at least 14 days before the time set for the hearing; or

(c) if the address or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing the notice in a weekly paper once a week for 3 consecutive weeks and, if in a newspaper published more often than once a week, by publishing on at least 3 different days of publication, ~~and it shall~~ There must be so published that there must be at least 10 days from the first to the last day of publication, both the first and last day being included.

(2) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(3) Proof of the giving of notice ~~shall~~ must be made on or before the hearing and filed in the proceeding."

Section 2308. Section 72-1-302, MCA, is amended to read:

"72-1-302. Waiver of notice. A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by ~~him~~ the person or ~~his~~ the person's attorney and filed in the proceeding."

Section 2309. Section 72-1-303, MCA, is amended to read:

"72-1-303. Pleadings -- when orders or notice binding one binds another -- representation. In

formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons and in judicially supervised settlements, the following apply:

(1) Interests to be affected ~~shall~~ must be described in pleadings ~~which~~ that give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

(2) Persons are bound by orders binding others in the following cases:

(a) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests, ~~(as objects, takers in default, or otherwise),~~ are subject to the power.

(b) (i) To the extent there is no conflict of interest between them or among persons represented, orders binding a:

(A) conservator bind the person whose estate ~~he~~ the conservator controls;

(B) ~~orders binding a~~ guardian bind the ward if ~~no~~ a conservator of ~~his~~ the ward's estate has not been appointed;

(C) ~~orders binding a~~ trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties; and

(D) ~~orders binding a~~ personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate.

(ii) If there is no conflict of interest and ~~no~~ a conservator or guardian has not been appointed, a parent may represent ~~his~~ the parent's minor child.

(c) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent ~~his~~ the person's interest is adequately represented by another party having a substantially identical interest in the proceeding.

(3) Notice is required as follows:

(a) Notice as prescribed by 72-1-301 ~~shall~~ must be given to every interested person or to one who can bind an interested person as described in subsection (2)(a) or (2)(b) ~~above~~. Notice may be given both to a person and to another who may bind ~~him~~ the person.

(b) Notice is given to unborn or unascertained persons, who are not represented under subsection (2)(a) or (2)(b) ~~above~~, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a

minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown; if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding."

Section 2310. Section 72-2-903, MCA, is amended to read:

"72-2-903. Requirements. (1) An international will must be made in writing. It need not be personally written by the testator ~~himself~~. It may be written in any language, by hand, or by any other means.

(2) The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is ~~his~~ the testator's will and that ~~he~~ the testator knows the contents of the will. The testator need not inform the witnesses or the authorized person of the contents of the will.

(3) In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if ~~he~~ the testator has previously signed it, shall acknowledge ~~his~~ the testator's signature.

(4) If the testator is unable to sign, the absence of ~~his~~ the testator's signature does not affect the validity of the international will if the testator indicates the reason for ~~his~~ the testator's inability to sign and the authorized person makes note of the inability on the will. In that case, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator, to sign the testator's name for ~~him~~ the testator if the authorized person makes note of this on the will, but it is not required that any person sign the testator's name for ~~him~~ the testator.

(5) The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator."

Section 2311. Section 72-2-904, MCA, is amended to read:

"72-2-904. Other points of form. (1) The signatures must be placed at the end of the will. If the will consists of several sheets, each sheet must be signed by the testator or, if ~~he~~ the testator is unable to sign, by the person signing on ~~his~~ the testator's behalf or, if there is no such person, by the authorized person. In addition, each sheet must be numbered.

(2) The date of the will must be the date of its signature by the authorized person.

(3) The authorized person shall ask the testator whether ~~he~~ the testator wished to make a declaration concerning the safekeeping of ~~his~~ the testator's will. If so and at the express request of the testator, the place

where ~~he~~ the testator intends to have ~~his~~ the will kept must be mentioned in the certificate provided for in 72-2-905.

(4) A will executed in compliance with 72-2-903 is not invalid merely because it does not comply with this section."

Section 2312. Section 72-2-905, MCA, is amended to read:

"72-2-905. Certificate. The authorized person shall attach to the will a certificate to be signed by ~~him~~ the authorized person establishing that the requirements of this part for valid execution of an international will have been fulfilled. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate must be substantially in the following form:

CERTIFICATE (Convention of October 26, 1973)

I, _____ (name, address, and capacity), a person authorized to act in connection with international wills, certify that on _____ (date) at _____ (place) (testator) _____ (name, address, date, and place of birth) in my presence and that of the witnesses

(a) _____ (name, address, date, and place of birth)

(b) _____ (name, address, date, and place of birth) has declared that the attached document is ~~his~~ the testator's will and that ~~he~~ the testator knows the contents ~~thereof~~ of the will.

I furthermore certify that:

(a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged ~~his~~ the testator's signature previously affixed;

(2) following a declaration of the testator stating that ~~he~~ the testator was unable to sign ~~his~~ the will for the following reason _____, I have mentioned this declaration on the will, and the signature has been affixed by _____ (name and address);

(b) the witnesses and I have signed the will;

*(c) each page of the will has been signed by _____ and numbered;

(d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

(e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

*(f) the testator has requested me to include the following statement concerning the safekeeping of ~~his~~ the will:

PLACE OF EXECUTION

DATE

SIGNATURE and, if necessary, SEAL

* to be completed if appropriate"

Section 2313. Section 72-2-909, MCA, is amended to read:

"72-2-909. International will information registration. The secretary of state shall establish a registry system by which authorized persons may register in a central information center information regarding the execution of international wills, keeping that information in strictest confidence until the death of the maker and then making it available to any person desiring information about any will who presents a death certificate or other satisfactory evidence of the testator's death to the center. Information that may be received, preserved in confidence until death, and reported as indicated is limited to the name, social security or individual-identifying number established by law, address, and date and place of birth of the testator and the intended place of deposit or safekeeping of the instrument pending the death of the maker. The secretary of state, at the request of the authorized person, may cause the information ~~he~~ that the secretary of state receives about the execution of any international will to be transmitted to the registry system of another jurisdiction as identified by the testator if that other registry system adheres to rules protecting the confidentiality of the information similar to those established in this state."

Section 2314. Section 72-3-101, MCA, is amended to read:

"72-3-101. Devolution of estate at death -- restrictions. (1) The power of a person to leave property by will and the rights of creditors, devisees, and heirs to ~~his~~ the person's property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates.

(2) Upon the death of a person, ~~his~~ the decedent's real and personal property devolves to the persons to whom it is devised by ~~his~~ the decedent's last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates or, in the absence of testamentary disposition, to ~~his~~ the decedent's heirs or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property, and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration."

Section 2315. Section 72-3-106, MCA, is amended to read:

"72-3-106. Interested person's right to demand notice of order or filing. (1) ~~Any~~ A person desiring notice of ~~any~~ an order or filing pertaining to a decedent's estate in which ~~he~~ the person has a financial or property interest may file a demand for notice with the court at any time after the death of the decedent stating:

- (a) the name of the decedent;
- (b) the nature of ~~his~~ the demandant's interest in the estate; and
- (c) the demandant's address or that of ~~his~~ the demandant's attorney.

(2) The clerk shall mail a copy of the demand to the personal representative if one has been appointed.

(3) After filing of a demand, ~~no~~ an order or filing to which the demand relates ~~shall~~ may not be made or accepted without notice as prescribed in 72-1-301 to the demandant or ~~his~~ the demandant's attorney. The validity of an order ~~which~~ that is issued or filing ~~which~~ that is accepted without compliance with this requirement ~~shall~~ may not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice.

(4) The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and ~~shall~~ must cease upon the termination of ~~his~~ the demandant's interest in the estate."

Section 2316. Section 72-3-112, MCA, is amended to read:

"72-3-112. Venue for estate proceedings. (1) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

- (a) in the county where the decedent had ~~his~~ the decedent's domicile at the time of ~~his~~ death; or
- (b) if the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of ~~his~~ death.

(2) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred unless the initial proceeding has been transferred as provided in 72-1-203 or subsection (3) of this section.

(3) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court."

Section 2317. Section 72-3-123, MCA, is amended to read:

"72-3-123. Statutes of limitation on decedent's cause of action -- applicability. ~~No~~ A statute of

limitation running on a cause of action belonging to a decedent, which had not been barred as of the date of ~~his~~ the decedent's death, ~~shall may not~~ apply to bar a cause of action surviving the decedent's death sooner than 4 months after death. A cause of action ~~which that~~, but for this section, would have been barred less than 4 months after death is barred after 4 months unless tolled."

Section 2318. Section 72-3-201, MCA, is amended to read:

"72-3-201. Applications to be verified. Applications for informal probate or informal appointment ~~shall~~ must be directed to the clerk and verified by the applicant to be accurate and complete to the best of ~~his~~ the applicant's knowledge and belief as to the information required by 72-3-202 through 72-3-205."

Section 2319. Section 72-3-202, MCA, is amended to read:

"72-3-202. Required contents of application. Every application for informal probate of a will or for informal appointment of a personal representative, other than a special, ancillary, or successor representative, ~~shall~~ must contain the following:

- (1) a statement of the interest of the applicant;
- (2) the name and date of death of the decedent, ~~his~~ the decedent's age, and the county and state of ~~his~~ the decedent's domicile at the time of death and the names and addresses of the spouse, children, heirs, and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;
- (3) if the decedent was not domiciled in the state at the time of ~~his~~ death, a statement showing venue;
- (4) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;
- (5) a statement indicating whether the applicant has received a demand for notice or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere."

Section 2320. Section 72-3-204, MCA, is amended to read:

"72-3-204. Appointment in intestacy -- additional information required. An application for informal appointment of an administrator in intestacy ~~shall~~ must state in addition to the statements required by 72-3-202:

- (1) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under 72-1-201 or a statement why any

such instrument of which ~~he~~ the applicant may be aware is not being probated;

(2) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under 72-3-501 through 72-3-508."

Section 2321. Section 72-3-211, MCA, is amended to read:

"72-3-211. Informal probate -- notice requirements. (1) The moving party ~~must~~ shall give notice₁ as described by 72-1-301₁ of ~~his~~ the application for informal probate:

- (a) to any person demanding it pursuant to 72-3-106; and
 - (b) to any personal representative of the decedent whose appointment has not been terminated.
- (2) No other notice of informal probate is required."

Section 2322. Section 72-3-214, MCA, is amended to read:

"72-3-214. Power of clerk to deny informal probate -- effect of denial. (1) If the clerk is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of 72-3-212 and 72-3-213 or any other reason, ~~he~~ the clerk may decline the application.

(2) A declination of informal probate is not an adjudication and does not preclude formal probate proceedings."

Section 2323. Section 72-3-221, MCA, is amended to read:

"72-3-221. Informal appointment -- notice requirements. (1) The moving party ~~must~~ shall give notice₁ as described by 72-1-301₁ of ~~his~~ the party's intention to seek an appointment informally:

- (a) to any person demanding it pursuant to 72-3-106; and
- (b) to any person having a prior or equal right to appointment not waived in writing and filed with the court.

(2) No other notice of an informal appointment proceeding is required."

Section 2324. Section 72-3-223, MCA, is amended to read:

"72-3-223. Rules for denial of informal appointment. (1) Unless 72-3-523 controls, the application must be denied if it indicates:

- (a) that a personal representative who has not filed a written statement of resignation₁ as provided in 72-3-525₁ has been appointed in this or another county of this state;

(b) that, ~~(unless the applicant is the domiciliary personal representative or his~~ the domiciliary personal representative's nominee), the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile; or

(c) that other requirements of 72-3-222 have not been met.

(2) If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument ~~which~~ that may relate to property subject to the laws of this state and ~~which~~ that is not filed for probate in this court, the clerk shall decline the application."

Section 2325. Section 72-3-224, MCA, is amended to read:

"72-3-224. Informal appointment -- power of clerk to deny -- effect of denial. (1) If the clerk is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of 72-3-222, 72-3-223, and 72-3-225 or for any other reason, ~~he~~ the clerk may decline the application.

(2) A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings."

Section 2326. Section 72-3-225, MCA, is amended to read:

"72-3-225. Duty of clerk to make appointment -- effect. (1) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in 72-3-701, if at least 120 hours have elapsed since the decedent's death, the clerk, after making the findings required by 72-3-222 and 72-3-223, shall appoint the applicant subject to qualification and acceptance, ~~provided that~~ However, if the decedent was a nonresident, the clerk shall delay the order of appointment until 30 days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant or unless the decedent's will directs that ~~his~~ the decedent's estate be subject to the laws of this state.

(2) The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment and the office of personal representative created ~~thereby~~ by the appointment ~~is~~ are subject to termination, as provided in 72-3-521 through 72-3-526, ~~but is~~ are not subject to retroactive vacation."

Section 2327. Section 72-3-302, MCA, is amended to read:

"72-3-302. Formal testacy proceedings -- nature -- how and when commenced. (1) A formal testacy

proceeding is litigation to determine whether a decedent left a valid will.

(2) A formal testacy proceeding may be commenced by an interested person filing a petition:

(a) as described in 72-3-301(1) in which ~~he~~ the person requests that the court, after notice and hearing, enter an order probating a will;

(b) to set aside an informal probate of a will or to prevent informal probate of a will ~~which~~ that is the subject of a pending application; or

(c) for an order that the decedent died intestate.

(3) A petition may seek formal probate of a will without regard to whether the ~~same~~ will or a conflicting will has been informally probated.

(4) A formal testacy proceeding may but need not involve a request for appointment of a personal representative."

Section 2328. Section 72-3-304, MCA, is amended to read:

"72-3-304. Effect of formal proceeding on power of informally appointed personal representative.

Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, ~~must~~ shall refrain from exercising ~~his~~ the personal representative's power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of ~~his~~ that office and requesting the appointment of a special administrator. In the absence of a request or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution."

Section 2329. Section 72-3-306, MCA, is amended to read:

"72-3-306. Notice and procedure when fact of death in doubt. (1) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt or on the written demand of any interested person, a copy of the notice of the hearing on ~~said~~ the petition ~~shall~~ must be sent by ~~registered or~~ certified mail to the alleged decedent at ~~his~~ the alleged decedent's last-known last-known address. The court shall direct the petitioner to report the results of or make and report back concerning a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any ~~or all~~ of the following methods:

- (a) by inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;
 - (b) by notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;
 - (c) by engaging the services of an investigator.
- (2) The costs of any search ~~so directed shall~~ must be paid by the petitioner if there is no administration or by the estate of the decedent ~~in case~~ if there is administration."

Section 2330. Section 72-3-308, MCA, is amended to read:

"72-3-308. Written objections to probate. Any party to a formal proceeding who opposes the probate of a will for any reason shall state in ~~his~~ the pleadings ~~his~~ the party's objections to probate of the will."

Section 2331. Section 72-3-312, MCA, is amended to read:

"72-3-312. Effect of final order in another state. A final order of a court of another state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this state if it includes or is based upon a finding that the decedent was domiciled at ~~his~~ the decedent's death in the state where the order was made."

Section 2332. Section 72-3-313, MCA, is amended to read:

"72-3-313. Order for formal probate. (1) After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, that venue is proper, and that the proceeding was commenced within the limitation prescribed by 72-3-122, it shall determine the decedent's domicile at death, ~~his~~ the decedent's heirs, and ~~his~~ the decedent's state of testacy. Any will found to be valid and unrevoked ~~shall~~ must be formally probated.

(2) Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by 72-3-523.

(3) The petition ~~shall~~ must be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead."

Section 2333. Section 72-3-403, MCA, is amended to read:

"72-3-403. Effect on other proceedings and previously appointed personal representative. (1) The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or ~~thereafter~~ filed after the pending proceeding.

(2) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by 72-3-303 and 72-3-304.

(3) After ~~he~~ a personal representative has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously ~~shall~~ may not exercise ~~his~~ the power to distribute any estate. The filing of the petition does not affect ~~his~~ the personal representative's other powers and duties unless the court restricts the exercise of any of them pending a full hearing on the petition."

Section 2334. Section 72-3-404, MCA, is amended to read:

"72-3-404. Powers and duties of personal representative. (1) A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party.

(2) Except as otherwise provided in this part or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

(3) Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this code, but ~~he shall~~ the personal representative may not exercise ~~his~~ the power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative ~~which~~ that may be ordered by the court must be endorsed on ~~his~~ the personal representative's letters of appointment and unless so endorsed is ineffective as to persons dealing in good faith with the personal representative."

Section 2335. Section 72-3-504, MCA, is amended to read:

"72-3-504. Renunciation -- nomination of other -- two or more persons sharing priority. (1) A person entitled to letters under ~~(2) through (6)~~ of 72-3-502 (2) through (6) may nominate a qualified person to act as personal representative.

(2) Any person entitled to letters may renounce ~~his~~ the person's right to nominate or to an appointment by appropriate writing filed with the court.

(3) When two or more persons share a priority, those of them who do not renounce ~~must~~ shall concur in nominating another to act for them or in applying for appointment. If they are unable to concur in nominating

another to act for them or in applying for appointment, the court may appoint any qualified person."

Section 2336. Section 72-3-511, MCA, is amended to read:

"72-3-511. Acceptance of appointment -- consent to jurisdiction. By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding ~~shall~~ must be delivered to the personal representative or mailed to ~~him~~ the personal representative by ordinary first-class mail at ~~his~~ the address as listed in the application or petition for appointment or as ~~hereafter~~ reported to the court and to ~~his~~ the personal representative's address as then known to the petitioner."

Section 2337. Section 72-3-513, MCA, is amended to read:

"72-3-513. Bond -- when required. (1) ~~No bond~~ Bond is not required of a personal representative appointed in informal proceedings, except:

(a) upon the appointment of a special administrator;

(b) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond; or

(c) when bond is required under 72-3-514.

(2) Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding, except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond unless bond has been requested by an interested party and the court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the court that it is not necessary.

(3) ~~No bond~~ Bond is not required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this state to secure performance of ~~his~~ the personal representative's duties."

Section 2338. Section 72-3-514, MCA, is amended to read:

"72-3-514. Demand for bond by interested person. (1) Any person apparently having an interest in the estate worth in excess of \$1,000 or any creditor having a claim in excess of \$1,000 may make a written demand that a personal representative give bond. The demand must be filed with the clerk and a copy mailed to the personal representative, if appointment and qualification have occurred. ~~Thereupon~~ Upon filing of the demand, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in

the estate or if bond is excused as provided in 72-3-513 or 72-3-515.

(2) After ~~he~~ the personal representative has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of ~~his~~ the personal representative's office except as necessary to preserve the estate.

(3) Failure of the personal representative to meet a requirement of bond by giving suitable bond within 30 days after receipt of notice is cause for ~~his~~ removal and appointment of a successor personal representative."

Section 2339. Section 72-3-515, MCA, is amended to read:

"72-3-515. Bond amount -- security -- reduction. (1) If bond is required and the provisions of the will or order do not specify the amount, unless stated in ~~his~~ the application or petition, the person qualifying shall file a statement under oath with the clerk indicating ~~his~~ the person's best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and ~~he~~ the person shall execute and file a bond with the clerk or give other suitable security in an amount not less than the estimate.

(2) The clerk shall determine that the bond is duly executed by a corporate surety or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security.

(3) The clerk may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person, the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties."

Section 2340. Section 72-3-516, MCA, is amended to read:

"72-3-516. Terms of bond -- liability of surety. (1) The following requirements and provisions apply to any bond required by this part:

(a) Bonds ~~shall~~ must name the state as obligee for the benefit of the persons interested in the estate and ~~shall~~ must be conditioned upon the faithful discharge by the fiduciary of all duties according to law.

(b) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties ~~shall~~ must be stated in the bond.

(c) By executing an approved bond of a personal representative, the surety consents to the jurisdiction

of the probate court ~~which that~~ issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding ~~shall~~ must be delivered to the surety or mailed to ~~him the surety~~ by registered or certified mail at ~~his the surety's~~ address as listed with the court where the bond is filed and to ~~his the surety's~~ address as then known to the petitioner.

(d) On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.

(e) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation."

Section 2341. Section 72-3-521, MCA, is amended to read:

"72-3-521. Termination of appointment -- general effect. Termination of appointment of a personal representative occurs as indicated in 72-3-522 through 72-3-526, inclusive. Termination ends the right and power pertaining to the office of personal representative as conferred by this code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination or relieve ~~him the personal representative~~ of the duty to preserve assets subject to ~~his the personal representative's~~ control, to account ~~therefor for the assets~~, and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative but terminates ~~his the personal representative's~~ authority to represent the estate in any pending or future proceeding."

Section 2342. Section 72-3-522, MCA, is amended to read:

"72-3-522. Termination of appointment -- death or disability. (1) The death of a personal representative or the appointment of a conservator for the estate of a personal representative terminates ~~his the~~ personal representative's appointment.

(2) Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by ~~his the representative's~~ decedent

or ward at the time ~~his~~ the appointment terminates, has the power to perform acts necessary for protection, and shall account for and deliver the estate assets to a successor or special personal representative upon ~~his~~ that person's appointment and qualification."

Section 2343. Section 72-3-523, MCA, is amended to read:

"72-3-523. Termination of appointment -- change of testacy status. Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will ~~which~~ that is superseded by formal probate of another will or the vacation of an informal probate of a will subsequent to the appointment of the personal representative ~~thereunder~~ under the will does not terminate the appointment of the personal representative although ~~his~~ the personal representative's powers may be reduced as provided in 72-3-304. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If ~~no~~ a request for new appointment is not made within 30 days after expiration of time for appeal from the order in formal testacy proceedings or from the informal probate changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will or as in intestacy, as the case may be."

Section 2344. Section 72-3-525, MCA, is amended to read:

"72-3-525. Termination of appointment -- voluntary. A personal representative may resign ~~his~~ the position by filing a written statement of resignation with the clerk after ~~he~~ the personal representative has given at least 15 days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to ~~him~~ the successor representative."

Section 2345. Section 72-3-526, MCA, is amended to read:

"72-3-526. Termination of appointment -- removal for cause. (1) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice ~~shall~~ must be given by the petitioner to the personal representative and to other persons as the court may order. Except as otherwise ordered as provided in 72-3-617, after receipt of notice of removal proceedings, the personal representative ~~shall~~ may not act except to account, to correct

maladministration, or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of or under the control of the personal representative being removed.

(2) Cause for removal exists:

(a) when removal would be in the best interests of the estate; or

(b) if it is shown that a personal representative or the person seeking ~~his~~ the personal representative's appointment intentionally misrepresented material facts in the proceedings leading to ~~his~~ the appointment or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of ~~his~~ the office, or has mismanaged the estate or failed to perform any duty pertaining to the office.

(3) Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing self-appointment or appointment of ~~himself or his~~ the personal representative's nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer local assets."

Section 2346. Section 72-3-527, MCA, is amended to read:

"72-3-527. Successor personal representative. (1) Parts 2 and 3 of this chapter govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated.

(2) After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and ~~no~~ a notice, process, or claim ~~which that~~ was given or served upon the former personal representative ~~need is not required to~~ be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may ~~thereby~~ have obtained or preserved with reference to the former personal representative.

(3) Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration ~~which that~~ the former personal representative would have had if ~~his~~ the former personal representative's appointment had not been terminated."

Section 2347. Section 72-3-601, MCA, is amended to read:

"72-3-601. Time of accrual of duties and powers -- power of executor prior to appointment -- ratification. (1) The duties and powers of a personal representative commence upon ~~his~~ appointment. The powers of a personal representative relate back in time to give acts by the person appointed ~~which that~~ are beneficial to the estate occurring prior to appointment the same effect as those occurring ~~thereafter~~ after appointment.

(2) Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to ~~his~~ the decedent's body, funeral, and burial arrangements.

(3) A personal representative may ratify and accept acts on behalf of the estate done by others ~~where~~ when the acts would have been proper for a personal representative."

Section 2348. Section 72-3-602, MCA, is amended to read:

"72-3-602. Priority among different letters. A person to whom general letters are issued first has exclusive authority under the letters until ~~his~~ the person's appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the ~~letter~~ subsequent representative done in good faith before notice of the first letters are not void for want of validity of appointment."

Section 2349. Section 72-3-603, MCA, is amended to read:

"72-3-603. Notice of appointment to heirs and devisees. (1) Not later than 30 days after ~~his~~ appointment, every personal representative, except any special administrator, shall give information of ~~his~~ the appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information ~~shall~~ must be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate.

(2) (a) The information must:

(i) include the name and address of the personal representative;

(ii) indicate that it is being sent to persons who have or may have some interest in the estate being administered;

(iii) indicate whether bond has been filed; and

(iv) describe the court where papers relating to the estate are on file.

(b) The information must state that the estate is being administered by the personal representative under the uniform probate code without supervision by the court but that recipients are entitled to information regarding the administration from the personal representative and may petition the court in any matter relating to the estate, including distribution of assets and expenses of administration.

(3) The personal representative's failure to give this information is a breach of ~~his~~ the personal representative's duty to the persons concerned but does not affect the validity of ~~his~~ the personal representative's appointment, ~~his~~ powers, or other duties.

(4) A personal representative may inform other persons of ~~his~~ the appointment by delivery or ordinary first-class mail."

Section 2350. Section 72-3-604, MCA, is amended to read:

"72-3-604. Standing to sue. Except as to proceedings ~~which~~ that do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at ~~his~~ death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as ~~his~~ the decedent had immediately prior to death."

Section 2351. Section 72-3-605, MCA, is amended to read:

"72-3-605. Personal representative to proceed without court order -- power to invoke jurisdiction. A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified under this code or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but ~~he~~ the personal representative may invoke the jurisdiction of the court, in proceedings authorized by this code, to resolve questions concerning the estate or its administration."

Section 2352. Section 72-3-606, MCA, is amended to read:

"72-3-606. Possession and protection of estate. (1) Except as otherwise provided by a decedent's will and subject to the provisions of Title 72, chapter 12, part 7, ~~every~~ a personal representative has a right to and shall take possession or control of the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled ~~thereto~~ to the property unless or until, in the judgment of the personal representative, possession of the property by ~~him~~ the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of ~~any~~ property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession ~~thereof~~ of the property, that the possession of the property by the personal representative is necessary for purposes of administration.

(2) The personal representative shall pay taxes on and take all steps reasonably necessary for the

management, protection, and preservation of the estate in ~~his~~ the personal representative's possession. ~~He~~ The personal representative may maintain an action to recover possession of property or to determine the title ~~thereto~~ to property."

Section 2353. Section 72-3-610, MCA, is amended to read:

"72-3-610. General duties -- fiduciary. A personal representative is a fiduciary who shall observe the standards of care applicable to trustees under the laws of the state of Montana. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code and as expeditiously and efficiently as is consistent with the best interests of the estate. ~~He~~ The personal representative shall use the authority conferred upon ~~him~~ the personal representative by this code, the terms of the will, if any, and any order in proceedings to which ~~he~~ the personal representative is party for the best interests of successors to the estate."

Section 2354. Section 72-3-611, MCA, is amended to read:

"72-3-611. No surcharge for authorized acts generally -- limitation. (1) A personal representative ~~shall~~ may not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration and of this code, an informally probated will is authority to administer and distribute the estate according to its terms. Subject to the provisions of this code, an order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning ~~his~~ the personal representative's appointment or fitness to continue, or a supervised administration proceeding.

(2) ~~Nothing in this~~ This section ~~affects~~ does not affect the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this code."

Section 2355. Section 72-3-612, MCA, is amended to read:

"72-3-612. No individual liability -- exceptions -- certain claims to be brought against personal representative. (1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in ~~his~~ the personal representative's fiduciary capacity in the course of

administration of the estate unless ~~he~~ the personal representative fails to reveal ~~his~~ the representative capacity and identify the estate in the contract.

(2) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if ~~he~~ the personal representative is personally at fault.

(3) Claims based on contracts entered into by a personal representative in ~~his~~ a fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in ~~his~~ the personal representative's fiduciary capacity, whether or not the personal representative is individually liable ~~therefor~~.

(4) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding."

Section 2356. Section 72-3-614, MCA, is amended to read:

"72-3-614. Power to recover property ~~which~~ that is subject of void or voidable transfer. The property liable for the payment of unsecured debts of a decedent includes all property transferred by ~~him~~ the decedent by any means ~~which~~ that is in law void or voidable as against ~~his~~ the decedent's creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative."

Section 2357. Section 72-3-615, MCA, is amended to read:

"72-3-615. Transaction involving conflict of interest -- voidable -- exceptions. Any sale or encumbrance to the personal representative, ~~his~~ the personal representative's spouse, agent, or attorney, or any corporation or trust in which ~~he~~ the personal representative has a substantial beneficial interest or any transaction ~~which~~ that is affected by a substantial conflict of interest on the part of the personal representative is voidable by any person interested in the estate except one who has consented after fair disclosure; unless:

- (1) the will or a contract entered into by the decedent expressly authorized the transaction; or
- (2) the transaction is approved by the court after notice to interested persons."

Section 2358. Section 72-3-616, MCA, is amended to read:

"72-3-616. Improper exercise of power -- breach of fiduciary duty. (1) If any exercise of power

concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of ~~his~~ the personal representative's fiduciary duty to the same extent as a trustee of an express trust.

(2) The rights of purchasers and others dealing with a personal representative ~~shall~~ must be determined as provided in 72-3-615 and 72-3-618."

Section 2359. Section 72-3-617, MCA, is amended to read:

"72-3-617. Order restraining personal representative. (1) On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution or exercise of any powers or discharge of any duties of ~~his~~ the office or make any other order to secure proper performance of ~~his~~ the personal representative's duty if it appears to the court that the personal representative otherwise may take some action ~~which that~~ would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

(2) The matter ~~shall~~ must be set for hearing within 10 days unless the parties otherwise agree. Notice as the court directs ~~shall~~ must be given to the personal representative and ~~his~~ the personal representative's attorney of record, if any, and to any other parties named defendant in the petition."

Section 2360. Section 72-3-621, MCA, is amended to read:

"72-3-621. Powers and duties of successor personal representative. A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate as expeditiously as possible, but ~~he shall~~ the successor personal representative may not exercise any power expressly made personal to the executor named in the will."

Section 2361. Section 72-3-623, MCA, is amended to read:

"72-3-623. Persons dealing with single corepresentative -- protection. Persons dealing with a corepresentative, if actually unaware that another has been appointed to serve with ~~him~~ the corepresentative or if advised by the personal representative with whom they deal that ~~he~~ the personal representative has authority to act alone for any of the reasons mentioned ~~herein in this part~~, are as fully protected as if the person with whom they dealt had been the sole personal representative."

Section 2362. Section 72-3-632, MCA, is amended to read:

"72-3-632. Expenses of personal representative in estate litigation. If ~~any a~~ personal representative or person nominated as personal representative defends or prosecutes ~~any a~~ proceeding in good faith, whether successful or not, ~~he~~ the personal representative is entitled to receive from the estate ~~his~~ the personal representative's necessary expenses and disbursements, including reasonable ~~attorneys'~~ attorney fees incurred."

Section 2363. Section 72-3-634, MCA, is amended to read:

"72-3-634. Proceedings for review of employment of agents and compensation of personal representatives and employees. (1) Upon the filing of a motion for settlement of fees by the court filed by an interested person, the personal representative, or the person employed by the personal representative and after notice to all interested persons, the propriety of employment of any person by a personal representative, including any attorney, auditor, investment ~~advisor~~ adviser, or other specialized agent or assistant, the reasonableness of the compensation of any person ~~so~~ employed, or the reasonableness of the compensation determined by the personal representative for ~~his~~ the personal representative's own services ~~shall~~ must be reviewed and determined by the court.

(2) In ~~any a~~ dispute concerning fees, the court shall set the fee.

(3) ~~Any A~~ person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds."

Section 2364. Section 72-3-703, MCA, is amended to read:

"72-3-703. Special administrator appointed informally -- powers and duties. A special administrator appointed by the clerk in informal proceedings pursuant to 72-3-701(1) has the duty to collect and manage the assets of the estate, to preserve them, to account ~~therefor~~ for them, and to deliver them to the general personal representative upon ~~his~~ the personal representative's qualification. The special administrator has the power of a personal representative under the code necessary to perform ~~his~~ the special administrator's duties."

Section 2365. Section 72-3-801, MCA, is amended to read:

"72-3-801. Notice to creditors. (1) Unless notice has already been given under this section, a personal representative upon ~~his~~ appointment shall publish a notice once a week for 3 successive weeks in a newspaper of general circulation in the county announcing ~~his~~ the personal representative's appointment and address and notifying creditors of the estate to present their claims within 4 months after the date of the first publication of the

notice or be forever barred.

(2) A personal representative may give written notice by mail or other delivery to any creditor, notifying the creditor to present ~~his~~ the creditor's claim within 4 months from the published notice if given as provided in subsection (1) or within 30 days from the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice must be the notice described in subsection (1) or a similar notice.

(3) The personal representative is not liable to any creditor or to any successor of the decedent for giving or failing to give notice under this section."

Section 2366. Section 72-3-803, MCA, is amended to read:

"72-3-803. Nonclaim -- limitations on presentation of claims -- exceptions. (1) All claims against a decedent's estate ~~which~~ that arose before the death of the decedent, including claims of the state and any subdivision ~~thereof of the state~~, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent; unless presented within the earlier of the following time limitations:

(a) within 1 year after the decedent's death; or

(b) within the time provided by 72-3-801(2) for creditors who are given actual notice and within the time provided in 72-3-801(1) for all creditors barred by publication. However, claims barred by the nonclaim statute at the decedent's domicile before the giving of notice to creditors in this state are also barred in this state.

(2) All claims against a decedent's estate ~~which~~ that arise at or after the death of the decedent, including claims of the state and any subdivision ~~thereof of the state~~, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent unless presented as follows:

(a) a claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due;

(b) any other claim, within the later of 4 months after it arises or the time specified in subsection (1)(a).

(3) ~~Nothing in this~~ This section affects or prevents ~~does not affect or prevent:~~

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;

(b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which ~~he~~ the decedent or the personal representative is protected by liability insurance; or

(c) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate."

Section 2367. Section 72-3-804, MCA, is amended to read:

"72-3-804. Manner of presentation of claims. Claims against a decedent's estate may be presented as follows:

(1) The claimant shall mail to the personal representative return receipt requested a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is ~~deemed~~ considered presented on the first to occur of receipt of the written statement of claim by the personal representative or the filing of the claim with the court. If a claim is not yet due, the date when it will become due ~~shall~~ must be stated. If the claim is contingent or unliquidated, the nature of the uncertainty ~~shall~~ must be stated. If the claim is secured, the security ~~shall~~ must be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(2) The claimant may commence a proceeding against the personal representative, in any court where the personal representative may be subjected to jurisdiction, to obtain payment of ~~his~~ the claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. ~~No~~ A presentation of claim is not required in regard to matters claimed in proceedings against the decedent ~~which~~ that were pending at the time of ~~his~~ death.

(3) If a claim is presented under subsection (1), ~~no~~ a proceeding ~~thereon~~ on the claim may not be commenced more than 60 days after the personal representative has mailed a notice of disallowance, but in the case of a claim ~~which~~ that is not presently due or ~~which~~ that is contingent or unliquidated, the personal representative may consent to an extension of the 60-day period or, to avoid injustice, the court, on petition, may order an extension of the 60-day period, but ~~in no event shall~~ the extension may not run beyond the applicable statute of limitations."

Section 2368. Section 72-3-805, MCA, is amended to read:

"72-3-805. Allowance and disallowance of claims -- interest on allowed claims. (1) As to claims presented in the manner described in 72-3-804 within the time limit prescribed in 72-3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes ~~his~~ the decision concerning the claim, ~~he~~ the personal

representative shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. ~~Every~~ A claim ~~which~~ that is disallowed in whole or in part by the personal representative is barred so far as it is not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than 60 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on ~~his~~ the claimant's claim for 60 days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

(2) After allowing or disallowing a claim, the personal representative may change the allowance or disallowance as provided in this section. The personal representative may change the allowance to a disallowance, in whole or in part, prior to payment, but not after allowance by a court order or judgment or an order directing payment of the claim. The personal representative shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided in subsection (1). The personal representative may change a disallowance to an allowance, in whole or in part, until it is barred under subsection (1). After it is barred, it may be allowed and paid only if the estate is solvent and all successors whose interests would be affected consent.

(3) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow, in whole or in part, any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection (1). Notice in this proceeding ~~shall~~ must be given to the claimant, the personal representative, and those other persons interested in the estate ~~as~~ that the court may direct by order entered at the time the proceeding is commenced.

(4) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

(5) Unless otherwise provided in ~~any~~ a judgment in another court entered against the personal representative, an allowed claim bears interest at the legal rate for the period commencing 60 days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case the claim bears interest in accordance with that provision."

Section 2369. Section 72-3-808, MCA, is amended to read:

"72-3-808. Payment of claims. (1) Upon the expiration of the earlier of the time limitations provided in 72-3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed

against the estate in the order of priority prescribed, after making provision for homestead, family, and support allowances, for claims already presented ~~which~~ that have not yet been allowed or whose allowance has been appealed; and for unbarred claims ~~which~~ that may yet be presented, including costs and expenses of administration.

(2) By petition to the court in a proceeding for the purpose; or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided ~~herein~~ in this section may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

(3) The personal representative at any time may pay any just claim ~~which~~ that has not been barred, with or without formal presentation, but ~~he~~ the personal representative is personally liable to any other claimant whose claim is allowed and who is injured by ~~such~~ the payment if:

(a) the payment was made before the expiration of the time limit stated in subsection (1) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(b) the payment was made, due to the negligence or willful fault of the personal representative, in ~~such~~ a manner as to deprive that deprives the injured claimant of ~~his~~ the claimant's priority."

Section 2370. Section 72-3-811, MCA, is amended to read:

"72-3-811. Secured claims. Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders ~~his~~ the creditor's security; ~~otherwise~~ Otherwise, payment is upon the basis of one of the following:

(1) if the creditor exhausts ~~his~~ the creditor's security before receiving payment, unless precluded by other law, upon the amount of the claim allowed less the fair value of the security; or

(2) if the creditor does not have the right to exhaust ~~his~~ the creditor's security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor or by the creditor and personal representative by agreement, arbitration, compromise, or litigation."

Section 2371. Section 72-3-812, MCA, is amended to read:

"72-3-812. Encumbered assets. (1) If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part ~~thereof~~ of the

encumbrance, renew or extend any obligation secured by the encumbrance, or convey or transfer the assets to the creditor in satisfaction of ~~his~~ the lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate.

(2) Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration."

Section 2372. Section 72-3-814, MCA, is amended to read:

"72-3-814. Claims not due and contingent or unliquidated claims. (1) If a claim ~~which~~ that will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

(2) In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:

(a) If the claimant consents, ~~he~~ the claimant may be paid the present or agreed value of the claim, taking any uncertainty into account.

(b) Arrangement for future payment or possible payment on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise."

Section 2373. Section 72-3-821, MCA, is amended to read:

"72-3-821. Administration in more than one state -- payment of claims. (1) All assets of estates being administered in this state are subject to all claims, allowances, and charges existing or established against the personal representative wherever appointed.

(2) If the estate either in this state or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the exemptions, allowances, and charges, each claimant whose claim has been allowed either in this state or elsewhere in administrations of which the personal representative is aware is entitled to receive payment of an equal proportion of ~~his~~ the claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the creditor ~~se~~ benefited is to receive dividends from local assets only upon the balance of ~~his~~ the creditor's claim after deducting the amount of the benefit.

(3) In case the family exemptions and allowances, prior charges, and claims of the entire estate exceed

the total value of the portions of the estate being administered separately and this state is not the state of the decedent's last domicile, the claims allowed in this state ~~shall~~ must be paid their proportion if local assets are adequate for the purpose, and the balance of local assets ~~shall~~ must be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this state the amount to which they are entitled, local assets ~~shall~~ must be marshalled so that each claim allowed in this state is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions."

Section 2374. Section 72-3-902, MCA, is amended to read:

"72-3-902. Distribution in kind preferred -- method -- valuation. Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate ~~shall~~ must be distributed in kind to the extent possible through application of the following provisions:

(1) A specific devisee is entitled to distribution of the thing devised to ~~him~~ that devisee, and a spouse or child who has selected particular assets of an estate as provided in 72-2-413 ~~shall~~ must receive the items selected.

(2) Any homestead or family allowance or devise of a stated sum of money may be satisfied in kind; ~~provided if:~~

- (a) the person entitled to the payment has not demanded payment in cash;
- (b) the property distributed in kind is valued at fair market value as of the date of its distribution; and
- (c) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.

(3) For the purpose of valuation under subsection (2), any security regularly traded on a recognized exchange, if distributed in kind, is valued at the price for the last sale of like securities traded on the business day prior to distribution or, if there was no sale on that day, at the median between amounts bid and asked at the close of that day. An asset consisting of a sum owed the decedent or the estate by a solvent debtor as to which there is no known dispute or defense is valued at the sum due with accrued interest or discounted to the date of distribution. For an asset ~~which~~ that has no readily ascertainable value, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of any asset as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the asset may have been previously appraised.

(4) The residuary estate ~~shall~~ must be distributed in any equitable manner."

Section 2375. Section 72-3-903, MCA, is amended to read:

"72-3-903. Proposal for distribution -- delivery -- objection. (1) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution.

(2) The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset ~~he~~ the distributee is to receive, if not waived earlier in writing, terminates if ~~he~~ the distributee fails to object in writing received by the personal representative within 30 days after mailing or delivery of the proposal."

Section 2376. Section 72-3-906, MCA, is amended to read:

"72-3-906. Improper distribution or payment -- liability of distributee or payee. Unless the distribution or payment can no longer ~~can~~ be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid or a claimant who was improperly paid is liable to return the property improperly received and its income since distribution if ~~he~~ the claimant has the property. If ~~he~~ the claimant does not have the property, then ~~he~~ the claimant is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by ~~him~~ the claimant."

Section 2377. Section 72-3-907, MCA, is amended to read:

"72-3-907. Purchases from distributees protected. (1) If property distributed in kind or a security interest ~~therein~~ in that property is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative; or is so acquired by a purchaser from or lender to a transferee from ~~such~~ the distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed.

(2) This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to ~~himself~~ the personal representative distributee, as well as a purchaser from or lender to any other distributee or ~~his~~ the distributee's transferee. To be protected under this provision, a purchaser or lender need not inquire as to whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the

authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section ~~shall be~~ is prima facie evidence that ~~such the~~ the transfer was made for value.

(3) For purposes of this section, the term ~~purchaser~~ "purchaser" includes any lessee or other person acquiring any interest in the property for value."

Section 2378. Section 72-3-911, MCA, is amended to read:

"72-3-911. Successors' rights if no administration. (1) In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession.

(2) Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption, or intestacy may establish title ~~thereto~~ to the property by proof of the decedent's ownership, ~~his~~ death, and their relationship to the decedent.

(3) Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children and subject to the rights of others resulting from abatement, retainer, advancement, and ademption."

Section 2379. Section 72-3-912, MCA, is amended to read:

"72-3-912. Successor's indebtedness to estate offset against interest -- defenses available. The amount of a noncontingent indebtedness of a successor to the estate if due; or its present value if not due; ~~shall~~ must be offset against the successor's interest; ~~but~~ However, the successor has the benefit of any defense ~~which~~ that would be available to ~~him~~ the successor in a direct proceeding for recovery of the debt."

Section 2380. Section 72-3-915, MCA, is amended to read:

"72-3-915. Private agreements among successors as to distribution -- testamentary trustee as successor. (1) Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent or under the laws of intestacy in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to ~~his~~ the obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of ~~his~~ the personal representative's office for the benefit of any successors of the decedent who are not parties.

(2) Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee ~~thereof~~ is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. ~~Nothing herein relieves~~ This section does not relieve trustees of any duties owed to beneficiaries of trusts."

Section 2381. Section 72-3-916, MCA, is amended to read:

"72-3-916. Distribution to trustee -- registration -- bond. (1) Before distributing to a trustee, the personal representative may require that the trust be registered, if the state in which it is to be administered provides for registration, and that the trustee inform in writing the current beneficiaries and, if possible, one or more persons who under 72-1-303 may represent beneficiaries with future interests of ~~his~~ the trustee's name and address and provide each with a copy of the terms of the trust ~~which~~ that describe or affect ~~his~~ the interest of the beneficiaries and with relevant information about the assets of the trust and the particulars relating to the administration.

(2) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if ~~he~~ the trustee ~~apprehends~~ believes that distribution might jeopardize the interests of persons who are not able to protect themselves, and ~~he~~ the trustee may withhold distribution until the court has acted.

(3) ~~No inference~~ An inference of negligence on the part of the personal representative ~~shall~~ may not be drawn from ~~his~~ the personal representative's failure to exercise the authority conferred by subsections (1) and (2)."

Section 2382. Section 72-3-918, MCA, is amended to read:

"72-3-918. Disposition of unclaimed assets -- escheat. (1) If an heir, devisee, or claimant cannot be found, the personal representative shall distribute the ~~share of the missing person~~ person's share to ~~his~~ the person's conservator, if any, otherwise to the department of revenue to be deposited in the state escheat fund as provided in Title 72, chapter 14, ~~as amended~~.

(2) ~~Any~~ A person having any claim to a share deposited in the state escheat fund under the provisions of this code shall follow the procedures set out in Title 72, chapter 14, concerning escheated estates, to claim ~~such~~ the share."

Section 2383. Section 72-3-1003, MCA, is amended to read:

"72-3-1003. Formal proceedings terminating administration under informally probated will -- settlement order construing will without adjudicating testacy. (1) A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate ~~which~~ that will not adjudicate the testacy status of the decedent. The personal representative may petition at any time and a devisee may petition after 1 year from the appointment of the original personal representative, except that ~~no~~ a petition under this section may not be entertained until the time for presenting claims ~~which~~ that arose prior to the death of the decedent has expired.

(2) The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will, and adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those ~~he~~ the devisee represents. If it appears that a part of the estate is intestate, the proceedings ~~shall~~ must be dismissed or amendments must be made to meet the provisions of 72-3-1001 and 72-3-1002."

Section 2384. Section 72-3-1005, MCA, is amended to read:

"72-3-1005. Final accounting required to close estate. (1) Before an estate may be finally closed and the personal representative relieved of ~~his~~ duties and obligations, ~~he~~ the personal representative shall either file with the court or deliver to all interested persons an accounting under oath showing the amount of money received and expended by ~~him~~ the personal representative, the amount of all claims presented against the estate, and the names of the claimants and all other matters necessary to show the state of its affairs.

(2) Any interested person at any time during the course of the administration of an estate may for good cause shown require further accountings.

(3) If the personal representative is the sole residual beneficiary of the estate, ~~no~~ an accounting need not be made."

Section 2385. Section 72-3-1012, MCA, is amended to read:

"72-3-1012. Liability of distributees to claimants. (1) After assets of an estate have been distributed and subject to 72-3-1013, an undischarged claim that is not barred may be prosecuted in a proceeding against one or more distributees. ~~No~~ A distributee ~~shall be~~ is not liable to claimants for amounts in excess of the value

of ~~his~~ the distributee's distribution as of the time of distribution.

(2) As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who ~~shall have failed~~ fails to notify other distributees of the demand made upon ~~him~~ the distributee by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against ~~him~~ the distributee loses ~~his~~ the right of contribution against other distributees."

Section 2386. Section 72-3-1014, MCA, is amended to read:

"72-3-1014. Certificate discharging liens securing fiduciary performance. After ~~his~~ the personal representative's appointment has terminated, the personal representative, ~~his~~ the personal representative's sureties, or any successor of either, upon the filing of a verified application showing so far as is known by the applicant that ~~no~~ an action concerning the estate is not pending in any court, is entitled to receive a certificate from the clerk that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety but does not preclude action against the personal representative or the surety."

Section 2387. Section 72-3-1015, MCA, is amended to read:

"72-3-1015. Estate to be closed within two years. (1) If an estate has not been closed within 2 years from the date of appointment of the personal representative, the supreme court administrator shall notify the district judge ~~thereof~~. The judge shall order the personal representative and ~~his~~ the personal representative's attorney to appear before the court and show cause why the estate has not been closed.

(2) If, after the show cause hearing, the judge determines that good cause does not exist for failure to close the estate, the judge may make an order directing that the estate be closed within 30 days and that the personal representative and ~~his~~ the personal representative's attorney may not receive ~~no~~ a fee or other compensation from the estate."

Section 2388. Section 72-3-1102, MCA, is amended to read:

"72-3-1102. Effect of affidavit. (1) The person paying, delivering, transferring, or issuing personal property or the evidence ~~thereof~~ of personal property pursuant to affidavit is discharged and released to the same extent as if ~~he~~ the person dealt with a personal representative of the decedent. ~~He~~ The person is not required

to see to the application of the personal property or evidence ~~thereof~~ of personal property or to inquire into the truth of any statement in the affidavit.

(2) If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence ~~thereof~~ of personal property, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled ~~thereto~~ to the property.

(3) ~~Any~~ A person to whom payment, delivery, transfer, or issuance is made is answerable and accountable ~~therefor~~ for the property to any person representative of the estate or to any other person having a superior right."

Section 2389. Section 72-4-201, MCA, is amended to read:

"72-4-201. Jurisdiction by act of foreign personal representative. (1) A foreign personal representative submits personally to the jurisdiction of the courts of this state in any proceeding relating to the estate by:

- (a) filing authenticated copies of ~~his~~ the foreign personal representative's appointment as provided in 72-4-309;
- (b) receiving payment of money or taking delivery of personal property under 72-4-306; or
- (c) doing any act as a personal representative in this state that would have given the state jurisdiction over ~~him~~ the foreign personal representative as an individual.

(2) Jurisdiction under subsection (1)(b) is limited to the money or value of personal property collected."

Section 2390. Section 72-4-202, MCA, is amended to read:

"72-4-202. Jurisdiction by act of decedent. In addition to jurisdiction conferred by 72-4-201, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that ~~his~~ the foreign personal representative's decedent was subject to jurisdiction immediately prior to death."

Section 2391. Section 72-4-203, MCA, is amended to read:

"72-4-203. Service on foreign personal representative. (1) Service of process may be made upon the foreign personal representative by ~~registered or~~ certified mail addressed to ~~his~~ the foreign personal representative's last reasonably ascertainable address requesting a return receipt signed by addressee only. Notice by ordinary first-class mail is sufficient if ~~registered or~~ certified mail service to the addressee is unavailable.

Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or ~~his~~ the foreign personal representative's decedent immediately prior to death.

(2) If service is made upon a foreign personal representative as provided in subsection (1), ~~he shall~~ the foreign personal representative must be allowed at least 30 days within which to appear or respond."

Section 2392. Section 72-4-306, MCA, is amended to read:

"72-4-306. Payment of debt and delivery of property to foreign representative. At any time after the expiration of 60 days from the death of a nonresident decedent, ~~any a~~ person indebted to the estate of the nonresident decedent or having possession or control of personal property or of an instrument evidencing a debt, obligation, stock, or chose in action belonging to the estate of the nonresident decedent may pay the debt; or deliver the personal property; or the instrument evidencing the debt, obligation, stock, or chose in action to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of ~~his~~ the domiciliary foreign personal representative's appointment and an affidavit made by or on behalf of the representative, stating:

- (1) the date of the death of the nonresident decedent;
- (2) that no local administration; or application or petition ~~therefor~~ for local administration; is pending in this state;
- (3) that the domiciliary foreign personal representative is entitled to payment or delivery."

Section 2393. Section 72-4-309, MCA, is amended to read:

"72-4-309. Proof of authority -- bond. If ~~no~~ a local administration or application or petition ~~therefor~~ for local administration is not pending in this state, a domiciliary foreign personal representative may file with a court in this state in a county in which property belonging to the decedent is located, authenticated copies of ~~his~~ the domiciliary foreign personal representative's appointment and of any official bond ~~he~~ that the domiciliary foreign personal representative has given."

Section 2394. Section 72-4-311, MCA, is amended to read:

"72-4-311. Effect of local administration on foreign representative, third persons, and local representative. (1) The power of a domiciliary foreign personal representative under 72-4-306 or 72-4-310 ~~shall~~ may be exercised only if there is no administration or application ~~therefor~~ for administration pending in this state.

An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under 72-4-310, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate.

(2) ~~No~~ A person who, before receiving actual notice of a pending local administration, has changed ~~his~~ the person's position in reliance upon the powers of a foreign personal representative ~~shall~~ may not be prejudiced by reason of the application or petition for or grant of local administration. The local personal representative is subject to all duties and obligations ~~which that~~ that have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for ~~him~~ the foreign personal representative in any action or proceedings in this state."

Section 2395. Section 72-4-402, MCA, is amended to read:

"72-4-402. Adjudication in other jurisdiction binding on local representative. An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if ~~he~~ the local personal representative were a party to the adjudication."

Section 2396. Section 72-5-101, MCA, is amended to read:

"72-5-101. Definitions. Unless otherwise apparent from the context, in this code, the following definitions apply:

(1) "Incapacitated person" means ~~any~~ a person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, ~~(except minority)~~, to the extent that ~~he~~ the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning ~~his~~ the person or which cause has so impaired the person's judgment that ~~he~~ the person is incapable of realizing and making a rational decision with respect to ~~his~~ the person's need for treatment.

(2) "Protected person" means a minor or other person for whom a conservator has been appointed or other protective order has been made.

(3) "Protective proceeding" means a proceeding under the provisions of 72-5-409 to determine that a person cannot effectively manage or apply ~~his~~ the person's estate to necessary ends, either because ~~he~~ the person lacks the ability or is otherwise inconvenienced or because ~~he~~ the person is a minor, and to secure administration of ~~his~~ the person's estate by a conservator or other appropriate relief.

(4) "Ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for

whom a guardian has been appointed solely because of minority."

Section 2397. Section 72-5-104, MCA, is amended to read:

"72-5-104. Informal discharge of duty to pay or deliver property to minor. (1) ~~Any~~ A person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding \$5,000 ~~per annum a year~~, by paying or delivering the money or property to:

- (a) the minor, if ~~he~~ the minor has attained ~~the age of~~ 18 years of age or is married;
- (b) any person having the care and custody of the minor with whom the minor resides;
- (c) a guardian of the minor; or
- (d) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor.

(2) This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending.

(3) The persons, other than the minor or any financial institution under subsection (1)(d) above, receiving money or property for a minor are obligated to apply the money to the support and education of the minor but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums ~~shall~~ must be preserved for future support of the minor, and any balance not so used and any property received for the minor must be turned over to the minor when ~~he~~ the minor attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application ~~thereof~~ of the money or property."

Section 2398. Section 72-5-202, MCA, is amended to read:

"72-5-202. Consent to jurisdiction by acceptance of appointment. (1) By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person.

(2) Notice of any proceeding ~~shall~~ must be delivered to the guardian or mailed to ~~him~~ the guardian by ordinary mail at ~~his~~ the guardian's address as listed in the court records and to ~~his~~ the guardian's address as then known to the petitioner."

Section 2399. Section 72-5-211, MCA, is amended to read:

"72-5-211. Testamentary appointment of guardian of minor -- when effective -- priorities -- notice of appointment. (1) The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under 72-5-213, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated if before acceptance both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority.

(2) Upon acceptance of an appointment, written notice of acceptance must be given by the guardian to the minor and to the person having ~~his~~ the minor's care or to ~~his~~ the minor's nearest adult relations."

Section 2400. Section 72-5-213, MCA, is amended to read:

"72-5-213. Objection by minor ~~fourteen~~ 14 years of age or older to testamentary appointment. A minor ~~of 14 or more years of age or older~~ of age or older may prevent an appointment of ~~his~~ the minor's testamentary guardian from becoming effective or may cause a previously accepted appointment to terminate by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person."

Section 2401. Section 72-5-301, MCA, is amended to read:

"72-5-301. Consent to jurisdiction by acceptance of appointment. (1) By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person.

(2) Notice of any proceeding ~~shall~~ must be delivered to the guardian or mailed to ~~him~~ the guardian by ordinary mail at ~~his~~ the guardian's address as listed in the court records and to ~~his~~ the guardian's address as then known to the petitioner."

Section 2402. Section 72-5-312, MCA, is amended to read:

"72-5-312. Who may be guardian -- priorities. (1) Any competent person or a suitable institution, association, or nonprofit corporation or any of its members may be appointed guardian of an incapacitated person.

(2) Persons who are not disqualified have priority for appointment as guardian in the following order:

(a) a person, association, or private, nonprofit corporation nominated by the incapacitated person; if the

court specifically finds that at the time of the nomination the incapacitated person had the capacity to make a reasonably intelligent choice;

(b) the spouse of the incapacitated person;

(c) an adult child of the incapacitated person;

(d) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(e) any relative of the incapacitated person with whom ~~he~~ the incapacitated person has resided for more than 6 months prior to the filing of the petition;

(f) a relative or friend who has demonstrated a sincere, longstanding interest in the welfare of the incapacitated person;

(g) a private association or nonprofit corporation with a guardianship program for incapacitated persons, a member of ~~such~~ the private association or nonprofit corporation approved by the association or corporation to act as a guardian for the incapacitated person, or a person included on an official list of ~~such~~ the association or organization as willing and suitable to act as guardian of incapacitated persons;

(h) a person nominated by the person who is caring for ~~him~~ the incapacitated person or paying benefits to ~~him~~ the incapacitated person.

(3) The priorities established in subsection (2) are not binding, and the court shall select the person, association, or nonprofit corporation that is best qualified and willing to serve.

(4) Except as provided in subsection (5), the court may not appoint a person, institution, association, or nonprofit corporation to be the guardian of an incapacitated person if the person, institution, association, or nonprofit corporation:

(a) provides or is likely to provide during the guardianship substantial services to the incapacitated person in the professional or business capacity other than in the capacity of guardian;

(b) is or is likely to become during the guardianship period a creditor of the incapacitated person, other than in the capacity of guardian;

(c) has or is likely to have during the guardianship period interests that may conflict with those of the incapacitated person; or

(d) is employed by a person, institution, association, or nonprofit corporation ~~who or which~~ that would be disqualified under subsections (4)(a) through (4)(c).

(5) If the court determines that there is no qualified person willing and able to serve as guardian, the court may appoint an agency of the state or federal government that is authorized or required by statute to provide

services to the person or to persons suffering from the kind of disability from which the incapacitated person is suffering or a designee of the agency, notwithstanding the provisions of subsection (4). Whenever an agency is appointed guardian, the court may also appoint a limited guardian to represent a specified interest of the incapacitated person. Whenever a limited guardian is appointed pursuant to this subsection, the specified interest of the incapacitated person is the sole responsibility of the limited guardian and is removed from the responsibility of the agency."

Section 2403. Section 72-5-314, MCA, is amended to read:

"72-5-314. Notices in guardianship proceedings. (1) In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing ~~shall~~ must be given to each of the following:

(a) the ward or the person alleged to be incapacitated and ~~his~~ the ward's or person's spouse, parents, and adult children;

(b) any person who is serving as ~~his~~ the ward's or person's guardian; or conservator; or who has ~~his~~ the ward's or person's care and custody; and

(c) in case no other person is notified under ~~(a)~~ subsection (1)(a), at least one of ~~his~~ the ward's or person's closest adult relatives, if any can be found.

(2) Notice ~~shall~~ must be served personally on the alleged incapacitated person and ~~his~~ the person's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person ~~shall~~ must be given as provided in 72-1-301. Waiver of notice by the person alleged to be incapacitated is not effective unless ~~he~~ the person attends the hearing or ~~his~~ the person's waiver of notice is confirmed in an interview with the visitor. Representation of the alleged incapacitated person by a guardian ad litem is not necessary."

Section 2404. Section 72-5-316, MCA, is amended to read:

"72-5-316. Findings -- order of appointment. (1) If the court is satisfied that the person for whom a guardianship is sought is incapacitated and that judicial intervention in ~~his~~ the person's personal freedom of action and decision is necessary to meet essential requirements for ~~his~~ the person's physical health or safety, it may appoint a full guardian having the powers described in 72-5-321 or a limited guardian having the powers described in the order. If the court is satisfied that the allegedly incapacitated person could handle the essential requirements for physical health or safety if ~~his~~ the person's financial resources were managed by another, it shall

order that the petition be treated as a petition for a protective order under Title 72, chapter 5, part 4 of this chapter and proceed accordingly. Alternatively, the court may dismiss the proceeding or enter any other appropriate order that is not inconsistent with the specific provisions of this part. In issuing its order, the court shall make specific findings of fact.

(2) The court may not invest a guardian with powers or duties beyond those sought in the petition and may, upon petition for a full guardianship, create a limited guardianship or conservatorship when the court determines that a limited guardianship or conservatorship is all that is required for the care and protection of the incapacitated person. The order ~~shall~~ must specify whether a full or limited guardianship is being created. In the case of a limited guardianship, the order ~~shall~~ must specify the particular powers and duties vested in the limited guardian and the period for which the limited guardianship is created.

(3) ~~No~~ An incapacitated person may not be limited in the exercise of any civil or political rights except those that are clearly inconsistent with the exercise of the powers granted to the guardian unless the court's order specifically provides for ~~such~~ the limitations. The order ~~shall~~ must state that all rights not specifically limited are retained by the incapacitated person."

Section 2405. Section 72-5-317, MCA, is amended to read:

"72-5-317. Temporary guardians. (1) If an incapacitated person has no guardian and an emergency exists, the court may exercise the power of a guardian pending notice and hearing.

(2) If an appointed guardian is not effectively performing ~~his~~ the guardian's duties or if there is no appointed guardian and the court further finds that the welfare of the incapacitated person requires immediate action, it may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified period not to exceed 6 months. The court may appoint either a full or a limited temporary guardian; depending on the needs and circumstances of the incapacitated person. The court may not invest a temporary guardian with more powers than are required by the circumstances necessitating the appointment. The order of appointment of a temporary guardian ~~shall~~ must state whether a full or limited temporary guardianship is being created and, in the case of a limited temporary guardian, the specific powers and duties of the limited temporary guardian.

(3) ~~In case~~ If there is no person available and willing to act as temporary guardian for an incapacitated person who is in need of a temporary guardian except a person or entity who is ineligible to act as guardian pursuant to the provisions of 72-5-312(4), the court may appoint as temporary guardian a person or entity who would otherwise be ineligible under that provision to act as guardian. This subsection does not permit the appointment of a person or entity who has an actual conflict of interest in regard to the purpose for which the

temporary guardianship is sought. A temporary guardian who is otherwise ineligible shall serve until a person or entity who is not ineligible to serve as guardian and who is otherwise qualified to be guardian is appointed by the court to act as temporary guardian, but ~~in no case~~ the temporary guardian may ~~he~~ may not serve for longer than 6 months.

(4) A temporary full guardian is entitled to the care and custody of the ward, and the authority of any permanent guardian previously appointed by the court is suspended ~~so~~ as long as a temporary guardian has authority. A temporary limited guardian is entitled to exercise ~~such~~ powers ~~as~~ that are specifically granted to ~~him~~ the temporary guardian in the order of appointment, and the power of any permanent guardian previously appointed by the court to exercise those powers is suspended so long as the temporary limited guardian has authority. The court by specific order may suspend all authority of the permanent guardian upon appointment of a temporary limited guardian. A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects, the provisions of this code concerning guardians apply to temporary guardians."

Section 2406. Section 72-5-318, MCA, is amended to read:

"72-5-318. Request for notice -- interested person. (1) ~~Any~~ An interested person who desires to be notified before any order is made in a guardianship proceeding may file with the clerk a request for notice upon payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the guardian; if one has been appointed.

(2) A request is not effective unless it contains a statement showing the interest of the person making it and ~~his~~ the person's address or that of ~~his~~ the person's attorney and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the alleged incapacitated person is an interested person in guardianship proceedings."

Section 2407. Section 72-5-319, MCA, is amended to read:

"72-5-319. Contents of petition for appointment of guardian. (1) The petition for appointment of a guardian ~~shall~~ must contain:

- (a) the name, residence, and mailing address of the petitioner, ~~his~~ the petitioner's relationship to the alleged incapacitated person, and ~~his~~ the petitioner's interest in the matter;
- (b) the name, residence, and mailing address of the alleged incapacitated person;
- (c) the nature and degree of the alleged incapacity;

(d) if the petition in any way affects the management of the property of the alleged incapacitated person, the approximate value and description of ~~his~~ the property, including any compensation, pension, insurance, or allowance to which ~~he~~ the person may be entitled;

(e) whether there is, in any state, a full guardian or limited guardian for the person or estate of the incapacitated person or a conservator of ~~his~~ the person's property;

(f) the name, residence, and mailing address of the person whom the petitioner seeks to have appointed guardian;

(g) the names, residences, and nature of relationship, so far as is known or can reasonably be ascertained, of the persons most closely related by blood or marriage to the alleged incapacitated person;

(h) the name and residence of the person or institution having the care and custody of the alleged incapacitated person;

(i) the reasons why the appointment of a guardian is sought and whether a limited guardianship or full guardianship is requested;

(j) the facts supporting the allegations of incapacity and the need for a guardian;

(k) the specific areas of protection and assistance requested and the limitation of rights requested to be included in the order of appointment;

(l) in the case of a petition for limited guardianship, the particular powers and areas of authority that the petition seeks to have vested in the limited guardian as provided in 72-5-320 and the term for which the limited guardianship is requested;

(m) in the case of a petition for full guardianship, the length of time the guardianship is expected to last.

(2) The petition may also include a request for temporary guardianship as provided in 72-5-317 if the petitioner believes that the requisites of that section are met and that the appointment of a temporary guardian, pending the completion of guardianship proceedings, is necessary to protect the welfare of the alleged incapacitated person. The facts requiring appointment of a temporary guardian ~~shall~~ must be stated with specificity."

Section 2408. Section 72-5-320, MCA, is amended to read:

"72-5-320. Purposes for establishment of limited guardianship. A petition seeking the establishment of a limited guardianship ~~shall~~ must specify the particular powers that the limited guardian is proposed to exercise and the particular areas of protection and assistance required. The purposes for which a limited guardian may be appointed include:

- (1) to care for and maintain the alleged incapacitated person;
- (2) to assert and protect the rights and best interests of the alleged incapacitated person;
- (3) to provide timely and informed consent to necessary medical procedures and procedures implemented in connection with habilitation and training programs;
- (4) to assist in the acquisition of necessary training, habilitation, and education for the incapacitated person;
- (5) to exercise any other powers, duties, or limitations in regard to the care of the incapacitated person or the management of ~~his~~ the person's property that the petition ~~shall explicitly specify and specifies~~, which may not be ~~no~~ greater than the powers a full guardian ~~can~~ may exercise."

Section 2409. Section 72-5-401, MCA, is amended to read:

"72-5-401. Original petition for appointment or protective order -- who may petition. The person to be protected, any person who is interested in ~~his~~ that person's estate, affairs, or welfare, including ~~his~~ that person's parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of ~~his~~ the property and affairs of the person to be protected may petition for the appointment of a conservator or for other appropriate protective order."

Section 2410. Section 72-5-402, MCA, is amended to read:

"72-5-402. Contents of petition. (1) The petition ~~shall~~ must set forth to the extent known:

- (a) the interest of the petitioner;
- (b) the name, age, residence, and address of the person to be protected;
- (c) the name and address of ~~his~~ that person's guardian, if any;
- (d) the name and address of ~~his~~ that person's nearest relative known to the petitioner;
- (e) a general statement of ~~his~~ that person's property with an estimate of the value ~~thereof~~ of the property, including any compensation, insurance, pension, or allowance to which ~~he~~ the person is entitled; and
- (f) the reason why appointment of a conservator or other protective order is necessary.

(2) If the appointment of a conservator is requested, the petition also ~~shall~~ must set forth the name and address of the person whose appointment is sought and the basis of ~~his~~ the person's priority for appointment."

Section 2411. Section 72-5-403, MCA, is amended to read:

"72-5-403. Notice -- waiver. (1) On a petition for appointment of a conservator or other protective order,

the person to be protected and ~~his~~ the person's spouse or, if none, ~~his~~ the person's parents must be served personally with notice of the proceeding at least 14 days before the date of hearing if they can be found within the state, or if they cannot be found within the state, they must be given notice in accordance with 72-1-301. Waiver by the person to be protected is not effective unless ~~he~~ the person attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.

(2) Notice of a petition for appointment of a conservator or other initial protective order and of any subsequent hearing must be given to any person who has filed a request for notice under 72-5-404 and to interested persons and other persons as the court may direct. Except as otherwise provided in subsection (1), notice ~~shall~~ must be given in accordance with 72-1-301."

Section 2412. Section 72-5-404, MCA, is amended to read:

"72-5-404. Request for notice -- interested person. (1) ~~Any~~ An interested person who desires to be notified before any order is made in a protective proceeding may file with the clerk a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the conservator if one has been appointed.

(2) A request is not effective unless it contains a statement showing the interest of the person making it and ~~his~~ the person's address or that of ~~his~~ the person's attorney and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings."

Section 2413. Section 72-5-405, MCA, is amended to read:

"72-5-405. Exclusive and concurrent jurisdiction of particular court after petition and notice. After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

(2) exclusive jurisdiction to determine how the estate of the protected person ~~which~~ that is subject to the laws of this state ~~shall be~~ is managed, expended, or distributed to or for the use of the protected person or any of ~~his~~ the person's dependents;

(3) concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and ~~his~~ the person's title to any property or claim."

Section 2414. Section 72-5-406, MCA, is amended to read:

"72-5-406. Consent to jurisdiction by acceptance of appointment as conservator. (1) By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person.

(2) Notice of any proceeding ~~shall~~ must be delivered to the conservator or mailed to ~~him~~ the conservator by ~~registered or certified mail at his~~ the conservator's address as listed in the petition for appointment or as ~~thereafter~~ reported to the court and to ~~his~~ the conservator's address as then known to the petitioner."

Section 2415. Section 72-5-407, MCA, is amended to read:

"72-5-407. Venue. Venue for proceedings under this part is:

(1) in the place in this state where the person to be protected resides, whether or not a guardian has been appointed in another place; or

(2) if the person to be protected does not reside in this state, in any place where ~~he~~ the person has property."

Section 2416. Section 72-5-409, MCA, is amended to read:

"72-5-409. Cause for appointment of conservator or issuance of protective order. Upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator or make ~~other~~ another protective order for cause as follows:

(1) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection ~~which that~~ cannot otherwise be provided, has or may have business affairs ~~which that~~ may be jeopardized or prevented by ~~his~~ the person's minority, or that funds are needed for ~~his~~ the person's support and education and that protection is necessary or desirable to obtain or provide funds.

(2) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that:

(a) the person is unable to manage ~~his~~ the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and

(b) the person has property ~~which that~~ will be wasted or dissipated unless proper management is provided or that funds are needed for the support, care, and welfare of the person or those entitled to be

supported by ~~him~~ the person and that protection is necessary or desirable to obtain or provide funds."

Section 2417. Section 72-5-410, MCA, is amended to read:

"72-5-410. Who may be appointed conservator -- priorities. (1) The court may appoint an individual or a corporation with general power to serve as trustee as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(a) a conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(b) an individual or corporation nominated by the protected person if ~~he~~ the person is 14 ~~or more~~ years of age or older and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

(c) the spouse of the protected person;

(d) an adult child of the protected person;

(e) a parent of the protected person or a person nominated by the will of a deceased parent;

(f) any relative of the protected person with whom ~~he~~ the protected person has resided for more than 6 months prior to the filing of the petition;

(g) a person nominated by the person who is caring for ~~him~~ the person or paying benefits to ~~him~~ the person;

(h) a conservator corporation organized under Title 35, chapter 2;

(i) the public administrator.

(2) A person in priorities ~~(a), (c), (d), (e), or (f)~~ listed in subsections (1)(a) and (1)(c) through (1)(f) may nominate in writing a person to serve in ~~his~~ that person's stead.

(3) With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority."

Section 2418. Section 72-5-411, MCA, is amended to read:

"72-5-411. Bond -- court may require -- amount. (1) The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law with sureties ~~as that it shall specify~~ specifies.

(2) Unless otherwise directed, the bond ~~shall~~ must be in the amount of the aggregate capital value of the property of the estate in ~~his~~ the conservator's control plus 1 year's estimated income minus the value of

securities deposited under arrangements requiring an order of the court for their removal and the value of any land ~~which~~ that the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization.

(3) The court, in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land."

Section 2419. Section 72-5-412, MCA, is amended to read:

"72-5-412. Terms and requirements of bond. (1) The following requirements and provisions apply to any bond required under 72-5-411:

(a) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other.

(b) By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court ~~which~~ that issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding ~~shall~~ must be delivered to the surety or mailed to ~~him~~ the surety by ~~registered or~~ certified mail at ~~his~~ the surety's address as listed with the court where the bond is filed and to ~~his~~ the surety's address as then known to the petitioner.

(c) On petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator.

(d) The bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) ~~No~~ A proceeding may not be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation."

Section 2420. Section 72-5-413, MCA, is amended to read:

"72-5-413. Petitions for orders subsequent to appointment -- interested persons. (1) ~~Any~~ A person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order:

- (a) requiring bond or security or additional bond or security or reducing bond;
- (b) requiring an accounting for the administration of the trust;
- (c) directing distribution;
- (d) removing the conservator and appointing a temporary or successor conservator; or

(e) granting other appropriate relief.

(2) A conservator may petition the appointing court for instructions concerning ~~his~~ the conservator's fiduciary responsibility.

(3) Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.

(4) For purposes of this section, any person, institution, or agency ~~which~~ that is furnishing or supplying any money for support or care of a person for whom a conservator has been appointed is a person interested in the welfare of ~~such~~ the protected person."

Section 2421. Section 72-5-414, MCA, is amended to read:

"72-5-414. Resignation or removal of conservator for cause -- successor conservator. The court may remove a conservator for good cause, upon notice and hearing, or may accept the resignation of a conservator. After ~~his~~ the conservator's death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of ~~his~~ the predecessor."

Section 2422. Section 72-5-415, MCA, is amended to read:

"72-5-415. Public administrator as conservator when no other appropriate person. (1) Whenever a professional person, as defined in 53-21-102, has reason to believe that any person is in need of the appointment of a conservator for the effective management of ~~his~~ the person's property or affairs under this part and that the person has no relative, friend, or other appropriate person who is able and willing to serve as a conservator for the person, the professional person ~~must~~ shall notify the public administrator.

(2) Whenever the public administrator is notified under subsection (1) of the need for the appointment of a conservator and reasonable cause exists, ~~he must~~ the public administrator shall file a petition for appointment of the public administrator as conservator of the person."

Section 2423. Section 72-5-422, MCA, is amended to read:

"72-5-422. Power of court to authorize particular protective arrangements or transactions without appointing conservator. (1) If it is established in a proper proceeding that a basis exists as described in 72-5-409 for affecting the property and affairs of a person, the court without appointing a conservator may authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include but are not limited to:

- (a) payment, delivery, deposit, or retention of funds or property;
- (b) sale, mortgage, lease, or other transfer of property;
- (c) entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and education; or
- (d) addition to or establishment of a suitable trust.

(2) When it has been established in a proper proceeding that a basis exists as described in 72-5-409 for affecting the property and affairs of a person, the court without appointing a conservator may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's financial affairs or involving ~~his~~ the protected person's estate if the court determines that the transaction is in the best interests of the protected person.

(3) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of ~~his~~ the protected person's disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who, upon appointment, has the authority conferred by the order and serves until discharged by order after report to the court of all matters done pursuant to the order of appointment."

Section 2424. Section 72-5-423, MCA, is amended to read:

"72-5-423. Fiduciary duty of conservator. In the exercise of ~~his~~ a conservator's powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees."

Section 2425. Section 72-5-424, MCA, is amended to read:

"72-5-424. Inventory and records. (1) Within 90 days after ~~his~~ appointment, ~~every~~ a conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person, together with ~~his~~ the conservator's oath or affirmation that it is complete and accurate so far as ~~he~~ the conservator is informed. The conservator shall provide a copy ~~thereof~~ of the inventory to the protected person if ~~he~~ the protected person can be located, has attained ~~the age of~~ 14 years of age, and has sufficient mental capacity to understand these matters and to any parent or guardian with whom the protected person resides.

(2) The conservator shall keep suitable records of ~~his~~ the conservator's administration and exhibit the ~~same~~ records on request of any interested person."

Section 2426. Section 72-5-425, MCA, is amended to read:

"72-5-425. Title by appointment as conservator -- appointment not transfer for certain purposes.

(1) The appointment of a conservator vests in ~~him~~ the conservator title as trustee to all property of the protected person presently held or thereafter acquired, including title to any property ~~theretofore~~ previously held for the protected person by custodians or attorneys-in-fact.

(2) The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will, or trust instrument imposing restrictions upon or penalties for transfer or alienation by the protected person of ~~his~~ the protected person's rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator."

Section 2427. Section 72-5-426, MCA, is amended to read:

"72-5-426. Letters as evidence of transfer of assets -- recording. (1) Letters of conservatorship are evidence of transfer of all assets of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate from the conservator to the protected person or ~~his~~ the protected person's successors.

(2) Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship and orders terminating conservatorships may be filed or recorded to give record notice of title as between the conservator and the protected person."

Section 2428. Section 72-5-427, MCA, is amended to read:

"72-5-427. Powers of conservator in administration. (1) A conservator has all of the powers conferred ~~herein~~ in this section and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under ~~the age of~~ 18 years of age, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in 72-5-231 until the minor attains ~~the age of~~ 18 years of age or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by Title 72, chapter 5, part 2.

(2) A conservator has power, without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

(3) A conservator, acting reasonably in efforts to accomplish the purpose for which ~~he~~ the conservator was appointed, may act without court authorization or confirmation to:

(a) collect, hold, and retain assets of the estate, including land in another state, until in ~~his~~ the conservator's judgment disposition of the assets should be made, and the assets may be retained even though they include an asset in which ~~he~~ the conservator is personally interested;

(b) receive additions to the estate;

(c) continue or participate in the operation of any business or other enterprise;

(d) acquire an undivided interest in an estate asset in which the conservator in any fiduciary capacity holds an undivided interest;

(e) invest and reinvest estate assets in accordance with subsection (2);

(f) deposit estate funds in a bank, including a bank operated by the conservator;

(g) acquire or dispose of an estate asset, including land in another state, for cash or on credit at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(h) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(i) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; and dedicate easements to public use without consideration;

(j) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

(k) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(l) grant an option involving disposition of an estate asset; or take an option for the acquisition of any asset;

(m) vote a security in person or by general or limited proxy;

(n) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(o) sell or exercise stock subscription or conversion rights; or consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(p) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in

connection with the stock so held;

(q) insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;

(r) borrow money to be repaid from estate assets or otherwise; or advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets, and the conservator has a lien on the estate as against the protected person for advances ~~so~~ made;

(s) pay or contest any claim; or settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;

(t) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;

(u) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion in mineral or timber properties;

(v) pay any sum distributable to a protected person or a dependent of the person who is a minor or incompetent, without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to ~~his~~ the person's guardian or, if none, to a relative or other person with custody of ~~his~~ the person;

(w) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise or assist ~~him~~ the conservator in the performance of ~~his~~ administrative duties; ~~act upon their recommendation without independent investigation;~~ and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of ~~his~~ the conservator's duties; and

(y) execute and deliver all instruments ~~which~~ that will accomplish or facilitate the exercise of the powers vested in the conservator."

Section 2429. Section 72-5-428, MCA, is amended to read:

"72-5-428. Distributive powers and duties of conservator generally. (1) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support,

education, care, or benefit of the protected person and ~~his~~ the protected person's dependents in accordance with the following principles:

(a) The conservator ~~is to~~ shall consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person made by a parent or guardian, if any. ~~He~~ The conservator may not be surcharged for sums paid to persons or organizations actually furnishing support, education, or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless ~~he~~ the conservator knows that the parent or guardian is deriving personal financial benefit ~~therefrom~~, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.

(b) The conservator ~~is to~~ shall expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected person with due regard to:

(i) the size of the estate, the probable duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully able to manage ~~his~~ the person's affairs and the estate ~~which~~ that has been conserved for ~~him~~ the person;

(ii) the accustomed standard of living of the protected person and members of ~~his~~ the person's household;

(iii) other funds or sources used for the support of the protected person.

(c) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves and who are in need of support.

(d) Funds expended under this subsection (1) may be paid by the conservator to any person, including the protected person, to reimburse the person for expenditures ~~which~~ that the conservator might have made or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and ~~where~~ when advance payments are customary or reasonably necessary under the circumstances.

(2) If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsections, a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make in amounts ~~which~~ that do not exceed in total for any year 20% of the income from the estate."

Section 2430. Section 72-5-429, MCA, is amended to read:

"72-5-429. Distribution upon attainment of majority, termination of disability, or death of protected person. (1) When a minor who has not been adjudged disabled under 72-5-409(2) attains ~~his~~ majority, ~~his~~ the

minor's conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(2) When the conservator is satisfied that a protected person's disability, (other than minority), has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(3) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person ~~which that~~ may have come into ~~his~~ the conservator's possession, inform the executor or a beneficiary named ~~therein in the will~~ that ~~he~~ the conservator has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled ~~thereto to the estate~~. If after 40 days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that ~~he~~ the conservator may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator; and after notice to any person demanding notice under 72-3-106 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section ~~shall have~~ has the effect of an order of appointment of a personal representative as provided in 72-3-222, 72-3-223(1), and parts 5 through 10 of chapter 3, except that the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative."

Section 2431. Section 72-5-430, MCA, is amended to read:

"72-5-430. Enlargement or limitation of powers of conservator by court. (1) Subject to the restrictions in 72-5-421(4), the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on ~~him~~ the conservator by 72-5-427, 72-5-428, and 72-5-429, any power ~~which that~~ the court itself could exercise under ~~subsections (2) and (3) of~~ 72-5-421(2) and (3).

(2) The court may, at the time of appointment or later, limit the powers of a conservator conferred by the court and may at any time relieve ~~him~~ the conservator of any limitation. If the court limits any power conferred on the conservator by 72-5-427, 72-5-428, or 72-5-429, the limitation ~~shall~~ must be endorsed upon ~~his~~ the conservator's letters of appointment."

Section 2432. Section 72-5-431, MCA, is amended to read:

"72-5-431. Preservation of estate plan -- right to inspect will. In investing the estate and in selecting assets of the estate for distribution under 72-5-428; and in utilizing powers of revocation or withdrawal available for the support of the protected person and exercisable by the conservator or the court, the conservator and the court ~~should~~ shall take into account any known estate plan of the protected person, including ~~his~~ the protected person's will, any revocable trust of which ~~he~~ the protected person is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at ~~his~~ the protected person's death to another or others ~~which he~~ that the protected person may have originated. The conservator may examine the will of the protected person."

Section 2433. Section 72-5-433, MCA, is amended to read:

"72-5-433. Claims against protected person -- presentment, allowance, and payment -- priorities.

(1) A conservator ~~must~~ shall pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:

(a) The claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed.

(b) The claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator.

(2) A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within 60 days after its presentation. A claim is ~~deemed~~ considered presented on the first to occur of receipt of the written statement of claim by the conservator or the filing of the claim with the court. The presentation of a claim tolls any statute of limitation relating to the claim until 30 days after its disallowance.

(3) A claimant whose claim has not been paid may petition the court for determination of ~~his~~ the claim at any time before it is barred by the applicable statute of limitation and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person ~~thereafter~~ after the appointment, the moving party ~~must~~ shall give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

(4) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference ~~is to~~ must be given to prior claims for the care, maintenance, and education of the protected

person or ~~his~~ the protected person's dependents and existing claims for expenses of administration."

Section 2434. Section 72-5-434, MCA, is amended to read:

"72-5-434. Transaction involving conflict of interest -- voidable -- exceptions. Any sale or encumbrance to a conservator, ~~his~~ to the conservator's spouse, agent, or attorney, or ~~to~~ any corporation or trust in which ~~he~~ the conservator has a substantial beneficial interest or any transaction ~~which~~ that is affected by a substantial conflict of interest is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court."

Section 2435. Section 72-5-435, MCA, is amended to read:

"72-5-435. Persons dealing with conservator -- protection. (1) A person who in good faith either assists a conservator or deals with ~~him~~ the conservator for value in any transaction other than those requiring a court order as provided in 72-5-421 is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators ~~which~~ that are endorsed on letters as provided in 72-5-430 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator.

(2) The protection expressed in this section extends to any procedural irregularity or jurisdictional defect occurring in proceedings leading to the issuance of letters and is not a substitution for protection provided by comparable provisions of the law relating to commercial transactions or laws simplifying transfers of securities by fiduciaries.

(3) The protection ~~here expressed~~ under this section is not ~~by~~ a substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries."

Section 2436. Section 72-5-436, MCA, is amended to read:

"72-5-436. Claims arising during conservatorship -- individual liability of conservator. (1) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in ~~his~~ the conservator's fiduciary capacity in the course of administration of the estate unless ~~he~~ the conservator fails to reveal ~~his~~ the representative capacity and identify the estate in the contract.

(2) The conservator is individually liable for obligations arising from ownership or control of property of

the estate or for torts committed in the course of administration of the estate only if ~~he~~ the conservator is personally at fault.

(3) Claims based on contracts entered into by a conservator in ~~his~~ a fiduciary capacity on obligations arising from ownership or control of the estate or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in ~~his~~ the conservator's fiduciary capacity, whether or not the conservator is individually liable ~~therefor~~.

(4) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding or action."

Section 2437. Section 72-5-437, MCA, is amended to read:

"72-5-437. Termination of conservatorship. The protected person, ~~his~~ the protected person's personal representative, the conservator, or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing that the minority or disability of the protected person has ceased, may terminate the conservatorship. Upon termination, title to assets of the estate passes to the former protected person or to ~~his~~ the former protected person's successors, subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected ~~persons~~ person or ~~his~~ the former protected person's successors to evidence the transfer."

Section 2438. Section 72-5-439, MCA, is amended to read:

"72-5-439. Payment of debt and delivery of property to foreign conservator without local proceedings. (1) ~~Any~~ A person indebted to a protected person or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate, or other ~~like~~ fiduciary appointed by a court of the state or residence of the protected person upon being presented with proof of ~~his~~ the conservator's, guardian's, or fiduciary's appointment and an affidavit made by ~~him~~ the conservator, guardian, or fiduciary or on ~~his~~ the conservator's, guardian's, or fiduciary's behalf stating that:

- (a) ~~that~~ no protective proceeding relating to the protected person is pending in this state; and
- (b) ~~that~~ the foreign conservator is entitled to payment or to receive delivery.

(2) If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor."

Section 2439. Section 72-5-501, MCA, is amended to read:

"72-5-501. When power of attorney not affected by disability. (1) A durable power of attorney is a power of attorney by which a principal designates another ~~his~~ as the principal's attorney-in-fact or agent in writing and the writing contains the words, "This power of attorney ~~shall is~~ is not be affected by subsequent disability or incapacity of the principal or lapse of time" or "This power of attorney ~~shall become~~ becomes effective upon the disability or incapacity of the principal" or similar words showing the intent of the principal that the authority conferred ~~shall~~ must be exercisable notwithstanding the principal's subsequent disability or incapacity; and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument. All acts done by the attorney-in-fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and ~~his~~ the principal's successors in interest as if the principal were alive, competent, and not disabled. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.

(2) If a conservator ~~thereafter~~ is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, is accountable to the conservator as well as the principal. The conservator has the same power to revoke or amend the power of attorney that the principal would have had if ~~he~~ the principal were not disabled or incapacitated. A principal may nominate, by a durable power of attorney, the conservator of ~~his~~ the principal's estate or guardian of ~~his~~ the principal's person for consideration by the court if protective proceedings for the principal's person or estate are later commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification."

Section 2440. Section 72-5-502, MCA, is amended to read:

"72-5-502. Power of attorney not revoked until notice. (1) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death of the principal, acts in good faith under the power of attorney or agency. Any action ~~se~~ taken, unless otherwise invalid or unenforceable, binds the successors in interest of the principal.

(2) The disability or incapacity of a principal who has previously executed a power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney-in-fact or other person who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action ~~se~~

taken, unless otherwise invalid or unenforceable, binds the principal and ~~his~~ the principal's successors in interest.

(3) As to acts undertaken in good faith reliance ~~thereon~~ on a power of attorney, an affidavit executed by the attorney-in-fact or agent stating that ~~he~~ the attorney-in-fact or agent did not have, at the time of ~~exercise of~~ exercising the power, actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument ~~which~~ that is recordable, the affidavit when authenticated for record is likewise recordable.

(4) This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity."

Section 2441. Section 72-9-110, MCA, is amended to read:

"72-9-110. Purchaser for value or lender. (1) If a surviving spouse has apparent title to property to which this part applies, a purchaser for value or a lender taking a security interest in the property takes ~~his~~ the purchaser's or lender's interest in the property free of any rights of the personal representative or an heir or devisee, as those terms are defined in 72-1-103, of the decedent.

(2) If a personal representative or an heir or devisee of the decedent has apparent title to property to which this part applies, a purchaser for value or a lender taking a security interest in the property takes ~~his~~ the purchaser's or lender's interest in the property free of any rights of the surviving spouse.

(3) A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly.

(4) The proceeds of a sale or creation of a security interest must be treated in the same manner as the property transferred to the purchaser for value or a lender."

Section 2442. Section 72-12-401, MCA, is amended to read:

"72-12-401. Petition for handwriting analysis. In ~~any~~ a proceeding involving the probate, either contested or uncontested, of a will in which the signature of the testator or of any witness is an issue, any party to the proceeding may file with the court a verified petition requesting that the original ~~will~~ be delivered to a handwriting expert residing and having ~~his~~ a place of business outside the state or outside the county for an examination of any of the signatures on the will."

Section 2443. Section 72-12-403, MCA, is amended to read:

"72-12-403. Clerk to mail will to expert -- notice. If the court grants the petition for delivery of the

original will to a qualified handwriting expert residing and having ~~his~~ a place of business outside the county or state, the clerk of court shall make at least two photocopies of the original will, which photocopies ~~shall~~ must remain in the custody of the clerk of court. The clerk shall mail the original will by ~~registered or~~ certified mail, return receipt requested, to the handwriting expert specified in the order and shall give notice of the mailing by mailing copies of the order to each of the parties to the proceeding and to the handwriting expert."

Section 2444. Section 72-12-404, MCA, is amended to read:

"72-12-404. Expert to return will to clerk. Upon completion of ~~his~~ the analysis, the handwriting expert shall return the original will to the clerk of court by ~~registered or~~ certified mail, return receipt requested."

Section 2445. Section 72-12-405, MCA, is amended to read:

"72-12-405. Expert to mail report to petitioner. Unless the court orders another disposition of the written report, the handwriting expert, upon completion of ~~his~~ the analysis, shall mail ~~his~~ the expert's written report to the party who requested it."

Section 2446. Section 72-12-407, MCA, is amended to read:

"72-12-407. Report property of petitioner unless interested party shares fees. Unless the court otherwise orders, the handwriting expert's written report ~~shall~~ must be the sole and exclusive property of the party requesting it. However, upon demand and the payment of ~~his~~ a pro rata share of the fees and costs of the handwriting expert, as ~~shall be~~ determined by the court, any interested party may obtain a certified copy of the written report."

Section 2447. Section 72-14-201, MCA, is amended to read:

"72-14-201. Discovery to determine existence of escheatable property. In order to ascertain if any person has knowledge of or is in possession of any escheatable property, it ~~shall be~~ is lawful for the attorney general or ~~his~~ the attorney general's assistant to obtain discovery on motion in the district court requiring any ~~such~~ person or persons to divulge any information they may have concerning the possession or location of any property subject to escheat or any other information pertinent to the recovery of ~~such~~ property by the state of Montana or ~~which~~ information that may lead to the discovery of ~~such~~ the escheatable property."

Section 2448. Section 72-14-202, MCA, is amended to read:

"72-14-202. Public administrator to deposit moneys money with county treasurer -- disbursement for administration -- accounts. (1) ~~It is the duty of every~~ A public administrator shall, as soon as ~~he~~ the public administrator receives the ~~same~~ money, to deposit with the county treasurer of the county in which probate proceedings are pending all ~~moneys~~ money of the estate; ~~and such moneys~~ The money may be drawn upon the order of the public administrator, countersigned by a district judge, when required for the purposes of administration.

(2) ~~It is the duty of the~~ The county treasurer to shall receive and safely keep all ~~such moneys~~ money and pay ~~them~~ the money out upon the order of the public administrator, when countersigned by a district judge and not otherwise, and to keep an account with ~~such~~ the estate of all ~~moneys~~ money received and paid to ~~him~~; the county treasurer. ~~and~~ The treasurer and the treasurer's sureties are liable upon the treasurer's official bond for the safekeeping and payment of all such moneys; money as herein provided, ~~the treasurer and his sureties are liable upon his official bond in this section."~~

Section 2449. Section 72-14-401, MCA, is amended to read:

"72-14-401. Fiduciary deposit of money when interested person under disability or similar circumstances -- receipt as voucher. When property in the hands of a personal representative, trustee, or other fiduciary is assigned or distributed to any heir, legatee, devisee, creditor, beneficiary, or person interested in ~~any~~ an estate or trust who ~~has no~~ does not have an agent in this state or who cannot be found or who refuses to accept the ~~same~~ property or to give a proper voucher ~~therefor~~ for the property or to a minor or incompetent person who ~~has no~~ does not have a legal guardian to receive the ~~same~~ property or person authorized to receipt ~~therefor~~ for the property and the ~~same~~ property or any part ~~thereof~~ of the property consists of money, the personal representative, trustee, or other fiduciary may deposit the money in a special fund in the name of the heir, legatee, devisee, creditor, beneficiary, or person interested with the county treasurer of the county in which the proceedings are pending or in which ~~such~~ the property is located; ~~who~~ The county treasurer shall give a receipt for the ~~same~~ money and ~~be~~ is liable upon ~~his~~ the treasurer's official bond ~~therefor~~; ~~and said~~ The receipt ~~shall~~ must be ~~deemed~~ considered and received by the court or judge ~~thereof~~ as a voucher in favor of the personal representative, trustee, or other fiduciary with the same force and effect as if executed by ~~such~~ the heir, legatee, devisee, creditor, beneficiary, or person interested."

Section 2450. Section 72-14-402, MCA, is amended to read:

"72-14-402. Claim for money deposited in county treasury. When any person appears and claims

the money paid into the county treasury, the district court of ~~such the~~ county ~~must shall~~ inquire into ~~such the~~ claim and, if satisfied of ~~his the person's right thereto to the money,~~ ~~must shall~~ make an order to that effect, ~~and upon.~~ Upon presentation of the order, the treasurer ~~must shall~~ draw ~~his a~~ warrant on the special fund for the amount to which ~~the~~ claimant is entitled."

Section 2451. Section 72-15-101, MCA, is amended to read:

"72-15-101. Other provisions to supplement chapter. When no direction is given in this chapter for the government or guidance of a public administrator in the discharge of ~~his the administrator's~~ duties or for the administration of an estate in ~~his the administrator's~~ hands, the provisions of this title ~~must~~ govern."

Section 2452. Section 72-15-102, MCA, is amended to read:

"72-15-102. When public administrator to take charge of estate. (1) ~~Every A~~ public administrator ~~who~~ is duly elected, commissioned, and qualified ~~must shall~~ take charge of estates of persons dying within ~~his the~~ ~~administrator's~~ county as follows:

- (a) ~~of~~ estates of decedents for which no administrators are appointed and ~~which that,~~ in consequence ~~thereof of the lack of administration,~~ are being wasted, uncared for, or lost;
- (b) ~~of~~ estates of decedents who have no known heirs;
- (c) ~~of~~ estates ordered into ~~his the administrator's~~ hands by the court; and
- (d) ~~of~~ estates upon which letters of administration have been issued to ~~him the administrator~~ by the court.

(2) However, it ~~shall be is~~ unlawful for ~~any a~~ public administrator of any county of the state of Montana to file ~~any a~~ petition for the issuance to ~~him the public administrator~~ as ~~such~~ public administrator of letters of administration of the estate of any decedent until at least 30 days have elapsed from the day of the death of ~~any such the~~ decedent; unless it is affirmatively shown and made to appear in and by ~~any such the~~ petition for letters of administration that there are no known heirs of ~~such the~~ decedent or that all of the known heirs of ~~such the~~ decedent reside outside of the state of Montana and that the estate of ~~such the~~ decedent consists of property of ~~such~~ a nature that it will be lost, wasted, or depreciated in value unless cared for and administered upon at once."

Section 2453. Section 72-15-103, MCA, is amended to read:

"72-15-103. Requirement to procure letters of administration -- bond and oath. (1) Whenever a public administrator takes charge of an estate under order of the court, ~~he must the administrator shall~~ with all convenient dispatch procure letters of administration ~~thereon on the estate;~~ in ~~like the same~~ manner and ~~on like~~

under the same proceedings as letters of administration are issued to other persons.

(2) ~~His~~ The public administrator's official bond and oath are in lieu of a personal representative's bond and oath, but when real estate is ordered to be sold, another bond may be required by the court."

Section 2454. Section 72-15-105, MCA, is amended to read:

"72-15-105. Duty of persons in whose house stranger dies -- notification to public administrator.

Whenever a stranger or person without known heirs dies intestate in the house or premises of another, the possessor of ~~such the~~ premises or anyone knowing the facts ~~must shall~~ give immediate notice ~~thereof~~ to the public administrator of the county; ~~in default of so doing~~ if the possessor does not give the notice, he the possessor is liable for any damage that may be sustained ~~thereby by the failure, to which must~~ be recovered by the public administrator or any person interested."

Section 2455. Section 72-15-107, MCA, is amended to read:

"72-15-107. Power to require persons controlling property to furnish statement describing property. Whenever ~~any a~~ person dies in any county of this state and ~~no an~~ administrator has not been appointed to take charge of ~~his the person's~~ estate, the public administrator of ~~such the~~ county, prior to the issuance of letters of administration ~~to him, shall have~~ has authority to make a written demand upon any person, firm, bank, or corporation; ~~which he that the public administrator~~ believes holds or has in its possession or control any money, evidence of indebtedness, or other personal property or ~~which that~~ owes to ~~such the~~ deceased person any money; requiring that entity to furnish to him the public administrator a written statement, under oath, showing the amount of money or the evidence of indebtedness or personal property of ~~such the~~ deceased person held by it fully describing the ~~same~~ evidence or property and the total sums of money, if any, due from it to ~~such the~~ deceased person. Upon receipt of ~~such the~~ written demand, the person, firm, bank, or corporation receiving the ~~same demand~~ shall immediately furnish the statement, under oath, to ~~such the~~ public administrator ~~said statement.~~"

Section 2456. Section 72-15-109, MCA, is amended to read:

"72-15-109. Order to examine person in possession or charged with misappropriation of estate.

When the public administrator complains to the district court or a judge ~~thereof of the district court~~, on oath, that any person has concealed, committed theft of, or disposed of or has in ~~his the person's~~ possession any money, goods, property, or effects ~~to that the possession of which such administrator is entitled to possess~~ in ~~his the~~

administrator's official capacity, the court or judge may cite ~~such~~ the person to appear and may examine ~~him~~ the person on oath ~~touching~~ concerning the matter of ~~such~~ the complaint."

Section 2457. Section 72-15-110, MCA, is amended to read:

"72-15-110. Refusal to be examined -- civil contempt. All ~~such~~ interrogatories and answers must be reduced to writing and signed by the party examined and filed in the court. If the person ~~so~~ cited refuses to appear and submit to ~~such~~ the examination or to answer ~~such~~ the interrogatories as may be put to ~~him~~ the party touching the matter of ~~such~~ the complaint, the court or judge may commit ~~him~~ the party to the county jail; ~~there to remain in close custody~~ until ~~he~~ the party submits to the order of the court or judge."

Section 2458. Section 72-15-201, MCA, is amended to read:

"72-15-201. Duty to make out inventory, administer, and account. The public administrator ~~must~~ shall make out and return an inventory of all estates taken into ~~his~~ the administrator's possession and administer and account for the ~~same~~ inventory according to the provisions of this chapter, subject to the control and directions of the court."

Section 2459. Section 72-15-202, MCA, is amended to read:

"72-15-202. Duty to deliver up estate when letters granted to another. If at any time letters testamentary or of administration are regularly granted to any other person on the estate of which the public administrator has charge, ~~he must~~ the public administrator shall, under order of the court, account for, pay, and deliver to the executor or administrator ~~thus~~ appointed all the money, property, papers, and estate of every kind in ~~his~~ the public administrator's possession or under ~~his~~ the public administrator's control."

Section 2460. Section 72-15-203, MCA, is amended to read:

"72-15-203. Power of court to order account and delivery of estate at any time. The court or judge may, at any time, order the public administrator to account for and deliver all the money of an estate in ~~his~~ the public administrator's hands to the heirs or to the executors or administrators regularly appointed."

Section 2461. Section 72-15-204, MCA, is amended to read:

"72-15-204. Duty to keep register. It is the duty of the public administrator to keep a book to be labeled "Register of Public Administrator" in which ~~he must~~ the public administrator shall enter:

- (1) the name of every deceased person on whose estate ~~he~~ the public administrator administers;
- (2) the date of granting letters;
- (3) money received;
- (4) the property and its value;
- (5) proceeds of all sales of property;
- (6) the amount of ~~his~~ the public administrator's fees;
- (7) the expenses of administration;
- (8) the amount of the estate after all charges and expenses have been paid;
- (9) the disposition of the property on distribution;
- (10) the date of discharge of administrator; and
- (11) ~~such~~ other matters ~~as~~ that may be necessary to give a full and complete history of each estate administered by ~~him~~ the public administrator."

Section 2462. Section 72-15-205, MCA, is amended to read:

"72-15-205. Deposit of moneys money with county treasurer -- withdrawals for administrative costs -- investment. (1) It is the duty of ~~every~~ a public administrator, as soon as ~~he~~ the public administrator receives ~~the same~~ money, to deposit with the county treasurer of the county in which probate proceedings are pending all ~~moneys~~ money of the estate, and ~~such moneys~~ the money may be drawn upon the order of the personal representative, countersigned by a district judge, when required for the purposes of administration.

(2) It is the duty of the county treasurer to receive and safely keep all ~~such moneys~~ money and pay ~~them~~ it out upon the order of the personal representative, when countersigned by a district judge and not otherwise, and to keep an account with ~~such~~ the estate of all ~~moneys~~ money received and paid to ~~him~~; the county treasurer. ~~and~~ The county treasurer and the sureties of the county treasurer are liable on the treasurer's official bond for the safekeeping and payment of all ~~such moneys, as herein provided, the treasurer and his sureties are liable upon his official bond~~ money.

(3) The ~~moneys~~ thus money deposited with the county treasurer may, upon order of the court or judge, be invested pending the proceedings in securities of the United States or of this state when ~~such~~ the investment is for the best interests of the estate."

Section 2463. Section 72-15-206, MCA, is amended to read:

"72-15-206. Monthly settlement of accounts. The public administrator is required to account and to

settle and adjust ~~his~~ the public administrator's accounts; relating to the care and disbursement of money or property belonging to estates in ~~his~~ the public administrator's hands; with the clerk of the district court on the first Monday of each month, and ~~he must~~ the public administrator shall pay to the county treasurer any money remaining in ~~his~~ the public administrator's hands of an estate unclaimed."

Section 2464. Section 72-15-207, MCA, is amended to read:

"72-15-207. Annual account of condition of all estates. (1) The public administrator ~~must~~ shall once each year make to the district court or a judge ~~thereof~~ of the district court, under oath, a return of all estates of decedents ~~which that~~ have come into ~~his~~ the public administrator's hands stating:

- (a) the value of the ~~same~~ estates;
- (b) the money ~~which that~~ has come into ~~his~~ the public administrator's hands from each estate;
- (c) what ~~he~~ the public administrator has done with it;
- (d) the amount of ~~his~~ fees and expenses incurred by the public administrator; and
- (e) the balance, if any, remaining in ~~his~~ the public administrator's hands.

(2) ~~He must~~ The public administrator shall post a copy of the ~~same~~ return in the office of the clerk of the district court of the county."

Section 2465. Section 72-15-208, MCA, is amended to read:

"72-15-208. Power of court to require additional report or bond. The court or judge may, at any time, require the public administrator to report the amount of ~~moneys~~ money and property of any estate in ~~his~~ the public administrator's hands and may require ~~him~~ the public administrator at any time to file an additional bond or bonds."

Section 2466. Section 72-15-210, MCA, is amended to read:

"72-15-210. Fees -- how paid. The fees of all officers chargeable to estates in the hands of public administrators must be paid out of the assets ~~thereof~~ of the estates; as soon as the ~~same~~ assets come into ~~his~~ the public administrator's hands."

Section 2467. Section 72-15-211, MCA, is amended to read:

"72-15-211. Conflict of interest prohibited -- affidavit. The public administrator ~~must~~ may not be interested in the expenditures of any kind made on account of any estate ~~he~~ that the public administrator

administers; ~~nor must he~~ The public administrator may not be associated, in business or otherwise, with anyone who is ~~so~~ interested; in expenditures made on account of an estate that the public administrator administers, and ~~he must~~ the public administrator shall attach to his the report and publication, made in accordance with 72-15-207, his the public administrator's affidavit to that effect."

Section 2468. Section 72-15-213, MCA, is amended to read:

"72-15-213. Wrongful failure of public administrator to deposit moneys money -- action on bond.

When it appears from the returns made in pursuance of ~~the foregoing sections~~ this part that any money remains in the hands of the public administrator after final settlement of the estate unclaimed ~~which that~~ should be paid over to the county treasurer, the court or judge ~~must~~ shall order the ~~same~~ money paid over to the county treasurer; ~~and on~~ On the failure of the public administrator to comply with the order within 10 days after the ~~same~~ order is made, the county attorney ~~must~~ shall immediately institute the requisite proceedings against the public administrator for a judgment against ~~him~~ the public administrator and the sureties on his the public administrator's official bond; in the amount of the money ~~so~~ withheld and costs."

Section 2469. Section 72-15-302, MCA, is amended to read:

"72-15-302. Retiring public administrator may close pending estates. The public administrator, upon the expiration or termination of his the term of office, may continue to administer estates not closed by filing and presenting to the court a full and complete account pertaining to each estate not closed and securing ~~an a court~~ order of court granting ~~him~~ the public administrator letters of administration and qualifying ~~himself~~ the public administrator as a personal representative."

Section 2470. Section 72-15-303, MCA, is amended to read:

"72-15-303. Accounting and surrender of pending estates on retirement of public administrator. ~~Should said~~ If the public administrator, upon the expiration or termination of his the public administrator's office and within 60 days ~~thereafter~~ after that date, ~~fail~~ fails to qualify as general administrator of estates not yet closed, ~~he~~ the public administrator shall, upon demand of his the successor to ~~such~~ the office or voluntarily if ~~he~~ the former public administrator desires to be relieved from further performance of the trust, surrender to ~~said~~ the successor all estates not closed and property belonging to ~~such~~ the estates; ~~having first filed and presented~~ after filing and presenting to the court for approval a full and complete account pertaining to ~~such~~ each estate not closed."

Section 2471. Section 72-15-304, MCA, is amended to read:

"72-15-304. Adjustment of compensation. The court shall determine and allow ~~such~~ the predecessor in office for ~~his~~ services rendered in connection with estates not closed a compensation based upon the commission prescribed and allowed by law in proportion to the services necessarily rendered and those necessary to be rendered by ~~such~~ the successor in closing up ~~such~~ estates. ~~Such~~ The successor ~~shall thereupon~~ must be allowed and paid the balance of ~~such~~ the commission allowed."

Section 2472. Section 72-16-501, MCA, is amended to read:

"72-16-501. Interest of decedent terminated upon death. The interest of the decedent in property held in joint tenancy terminates upon ~~his~~ death."

Section 2473. Section 72-16-608, MCA, is amended to read:

"72-16-608. Powers of personal representative in relation to satisfaction of tax liability. (1) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to ~~him~~ the person, the amount of tax attributable to ~~his~~ the person's interest.

(2) If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate.

(3) If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this part."

Section 2474. Section 72-16-609, MCA, is amended to read:

"72-16-609. Penalties and interest charged to fiduciary when caused by his fiduciary's negligence. If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge ~~him~~ the fiduciary with the amount of the assessed penalties and interest."

Section 2475. Section 72-31-101, MCA, is amended to read:

"72-31-101. Oath in behalf of corporation acting as fiduciary. In all matters ~~where~~ in which a corporation is authorized to act as trustee, guardian, executor, administrator, or in any fiduciary capacity and an oath of office is required, it ~~shall be competent~~ is proper for an officer of ~~such the~~ corporation to take the required oath for and on behalf of ~~his~~ the officer's corporation; and ~~such the~~ corporation ~~shall thereby become amenable~~ becomes subject to the laws relating to individuals in ~~like~~ similar matters; so far as ~~such those~~ laws may be applied to a corporation."

Section 2476. Section 72-31-102, MCA, is amended to read:

"72-31-102. Investment by fiduciaries in home owners' loan corporation bonds authorized. Notwithstanding any other provision of law, it ~~shall be~~ is lawful for any executor, administrator, guardian or conservator, trustee, or other fiduciary to invest the funds or ~~moneys~~ money in ~~his~~ the person's custody or possession, eligible for investment, in bonds of the home owners' loan corporation or debentures issued by the federal housing administrator, guaranteed as to principal and interest by the United States government."

Section 2477. Section 72-33-216, MCA, is amended to read:

"72-33-216. Resulting trust upon failure of trust. ~~Where~~ When the owner of property gratuitously transfers it and manifests in the trust instrument an intention that the transferee should hold the property in trust but the trust fails, the transferee holds the trust estate as a resulting trust for the transferor or ~~his~~ the transferor's estate; unless:

- (1) the transferor manifested in the trust instrument an intention that no resulting trust should arise; or
- (2) the intended trust fails for illegality and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction."

Section 2478. Section 72-33-217, MCA, is amended to read:

"72-33-217. Resulting trust upon full performance of trust. ~~Where~~ When the owner of property gratuitously transfers it subject to a trust ~~which that~~ is properly declared and ~~which that~~ is fully performed without exhausting the trust estate, the trustee holds the surplus as a resulting trust for the transferor or ~~his~~ the transferor's estate; unless the transferor manifested in the trust instrument an intention that no resulting trust of the surplus should arise."

Section 2479. Section 72-33-219, MCA, is amended to read:

"72-33-219. Constructive trust. A constructive trust arises when a person holding title to property is subject to an equitable duty to convey it to another on the ground that the person holding title would be unjustly enriched if ~~he~~ the holder were permitted to retain it."

Section 2480. Section 72-33-306, MCA, is amended to read:

"72-33-306. Disclaimer not a transfer. A disclaimer or renunciation by a beneficiary of all or part of ~~his~~ the beneficiary's interest under a trust ~~shall~~ may not be considered a transfer under 72-33-301 or 72-33-302."

Section 2481. Section 72-33-503, MCA, is amended to read:

"72-33-503. Enforcement of a charitable trust. The attorney general, a cotrustee, or a person who has a special interest in the enforcement of the charitable trust ~~can~~ may maintain a suit for the enforcement of a charitable trust, but ~~not~~ persons who do not have ~~no~~ a special interest, ~~or the trustor,~~ or his the trustor's heirs or personal representative may not maintain a suit for the enforcement of a charitable trust."

Section 2482. Section 72-34-130, MCA, is amended to read:

"72-34-130. Standard for exercise of "absolute", "sole", or "uncontrolled" powers. (1) Subject to the additional requirements of subsection (2), if a trust instrument confers "absolute", "sole", or "uncontrolled" discretion on a trustee, the trustee shall act in accordance with fiduciary principles and may not act in disregard of the purposes of the trust.

(2) Notwithstanding the trustor's use of terms like "absolute", "sole", or "uncontrolled", a person who is a beneficiary of a trust and who, either individually or as trustee or cotrustee, holds a power to take or distribute income or principal to or for ~~the benefit of himself or herself~~ person's own benefit pursuant to a standard; shall exercise that power reasonably and in accordance with the standard. In any case in which the standard governing the exercise of the power does not clearly indicate that a broader power is intended, the holder of the power may exercise it in ~~his or her~~ the holder's favor only for ~~his or her~~ the holder's health, education, support, or maintenance."

Section 2483. Section 72-34-514, MCA, is amended to read:

"72-34-514. Consent of beneficiary to relieve trustee of liability for breach of trust. (1) Except as provided in subsections (2) and (3), a beneficiary may not hold the trustee liable for an act or omission of the trustee as a breach of trust if the beneficiary consented to the act or omission before or at the time of the act or

omission.

(2) The consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust in any of the following circumstances:

- (a) whenever the beneficiary was under an incapacity at the time of the consent or of the act or omission;
- (b) whenever the beneficiary at the time consent was given did not know of ~~his~~ the beneficiary's rights and of the material facts that the trustee knew or should have known and that the trustee did not reasonably believe that the beneficiary knew; or
- (c) whenever the consent of the beneficiary was induced by improper conduct of the trustee.

(3) Whenever the trustee has an interest in the transaction adverse to the interest of the beneficiary, the consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust under any of the circumstances described in subsection (2) or whenever the transaction to which the beneficiary consented was not fair and reasonable to the beneficiary."

Section 2484. Section 72-34-515, MCA, is amended to read:

"72-34-515. Discharge of trustee's liability by release or contract. (1) Except as provided in subsection (2), a beneficiary may be precluded from holding the trustee liable for a breach of trust by the beneficiary's release or contract effective to discharge the trustee's liability to the beneficiary for that breach.

(2) A release or contract is not effective to discharge the trustee's liability for a breach of trust in any of the following circumstances:

- (a) whenever the beneficiary was under an incapacity at the time of making the release or contract;
 - (b) whenever the beneficiary did not know of ~~his~~ the beneficiary's rights and of the material facts:
 - (i) that the trustee knew or reasonably should have known; and
 - (ii) that the trustee did not reasonably believe that the beneficiary knew;
 - (c) whenever the release or contract of the beneficiary was induced by improper conduct of the trustee;
- or
- (d) whenever the transaction involved a bargain with the trustee that was not fair and reasonable."

Section 2485. Section 72-34-516, MCA, is amended to read:

"72-34-516. Discharge of trustee's liability by subsequent affirmance. (1) Except as provided in subsection (2), if the trustee, in breach of trust, enters into a transaction that the beneficiary may at ~~his~~ the beneficiary's option reject or affirm, and the beneficiary affirms the transaction, the beneficiary may not ~~thereafter~~

reject it after the affirmance and hold the trustee liable for any loss occurring after the trustee entered into the transaction.

(2) The affirmance of a transaction by the beneficiary does not preclude the beneficiary from holding a trustee liable for a breach of trust if, at the time of the affirmance, any of the following circumstances existed:

- (a) the beneficiary was under an incapacity;
- (b) the beneficiary did not know of ~~his~~ the beneficiary's rights and of the material facts:
 - (i) that the trustee knew or reasonably should have known; and
 - (ii) that the trustee did not reasonably believe that the beneficiary knew;
- (c) the affirmance was induced by improper conduct of the trustee; or
- (d) the transaction involved a bargain with the trustee that was not fair and reasonable."

Section 2486. Section 72-35-313, MCA, is amended to read:

"72-35-313. Appointment of guardian ad litem. (1) The court may, on its own motion or on request of a trustee or other person interested in the trust, appoint a guardian ad litem at any stage of a proceeding concerning the trust to represent the interest of any of the following persons; if the court determines that representation of the interest otherwise would be inadequate:

- (a) a minor;
- (b) an incapacitated person;
- (c) an unborn person;
- (d) an unascertained person;
- (e) a person whose identity or address is unknown; or
- (f) a designated class of persons who are not ascertained or are not in being.

(2) If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(3) The reasonable expenses of the guardian ad litem, including compensation and ~~attorney's~~ attorney fees, ~~shall~~ must be determined by the court and paid as the court orders, either out of trust property or by the petitioner.

(4) If ~~no~~ a guardian ad litem is not appointed, an unborn person or an unascertained person is bound by an order to the extent ~~his or her~~ the person's interest is adequately represented by another party having a substantially identical interest in the proceeding."

Section 2487. Section 72-36-206, MCA, is amended to read:

"72-36-206. Effects on real property transactions. (1) This section relates only to conveyances of real property to or from a trust; and supplements; but does not modify other substantive provisions of Title 72, chapters 33 through 36, relating to the creation or validity of trusts.

(2) Except as otherwise provided in Title 72, chapters 33 through 36, a conveyance of real property to a trustee designated as such in the conveyance vests the whole estate conveyed in the trustee, subject only to the trustee's duties. The beneficiaries of the trust take no estate or interest in the real property, but may determine or enforce the terms of the trust as provided in chapters 33 through 36.

(3) An instrument creating or amending a trust need not be recorded, but may be recorded if properly acknowledged.

(4) If there is no clear reference to or designation of a grantee as trustee in a conveyance ~~(or~~ or in a separately recorded instrument recorded in the same county as the conveyance and describing the same property as described in the conveyance), the conveyance must be considered to be absolute to the grantee, in favor of purchasers or encumbrancers from the grantee, who were without actual knowledge and who acted for a valuable consideration, despite any valid trust ~~which~~ that may exist.

(5) Unless limitations upon a trustee's power or authority are set forth in the recorded conveyance of real property to the trustee or in a separate trust instrument, ~~(or portion thereof of a separate trust instrument, or abstract thereof) of a separate trust instrument~~ recorded in the same county, there are no limitations upon the trustee's power or authority to convey or encumber the real property in favor of third persons who were without actual knowledge and who acted for a valuable consideration. A separate trust instrument incorporated by reference in a conveyance to a trustee ~~cannot~~ may not limit the trustee's power or authority to convey or encumber unless the limitations are set forth in the trust instrument, ~~(or portion thereof of a trust instrument, or abstract thereof) which~~ of a trust instrument that is also recorded in the county where the real property is located. An amendment to a recorded trust instrument may not affect the power or authority of a trustee to convey or encumber unless it is also recorded in the same place.

(6) A subsequent conveyance from a person designated in the original conveyance as trustee ~~(or from his~~ the successor trustee) conveys the whole estate vested in the trustee, except as limited by the terms of the conveyance. The identity of ~~any~~ a successor trustee may be established by a recorded affidavit of the successor trustee specifying the successor trustee's name and address and the date and circumstances of succession; and confirming that the successor trustee is currently lawfully serving in that capacity.

(7) In an action or proceeding by a third person involving the real property granted to a trustee, the

person designated as trustee in the original conveyance, or the successor trustee as established in subsection (6), or, if none, the person then actually serving as trustee, or, if none, any beneficiary designated by the court to represent the interests of the beneficiaries; ~~shall be~~ is considered the only necessary representative of the trust and of all persons with an interest in the trust. A judgment is binding upon and conclusive against the trust and all persons interested in the trust as to all matters finally adjudicated in the judgment.

(8) The designation of the name of a trust in a recorded conveyance vests the estate in the trustee of the trust. A subsequent conveyance may be made by the trustee. The identity of a party serving as trustee may be established by a recorded affidavit of the party or by ~~other~~ another recorded instrument; specifying the trustee's name and address and confirming that the party is currently serving as the trustee."

Section 2488. Section 75-1-312, MCA, is amended to read:

"75-1-312. Hearings -- council subpoena power -- contempt proceedings. In the discharge of its duties, the council ~~shall have authority to~~ may hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and ~~to~~ cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. In case of disobedience on the part of ~~any a~~ any a person to comply with ~~any a~~ any a subpoena issued on behalf of the council or ~~any a~~ any a committee ~~thereof of the council~~ or of the refusal of ~~any a~~ any a witness to testify on any matters regarding which ~~he the witness~~ he the witness may be lawfully interrogated, it ~~shall be~~ is the duty of the district court of any county or the judge ~~thereof of the district court~~, on application of the council, to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from ~~such the court~~ on a refusal to testify ~~therein in the court~~."

Section 2489. Section 75-2-122, MCA, is amended to read:

"75-2-122. Chairman Presiding officer -- secretary. (1) A ~~chairman shall~~ presiding officer must be elected by the advisory council from among its number.

(2) The secretary of the advisory council ~~shall~~ must be a member of the staff of the department, designated by the director. The secretary shall keep all records of meetings of and actions taken by the council. ~~He~~ The secretary shall keep the advisory council advised as to actions taken by persons in response to recommendations and orders issued under this chapter and shall perform other duties as determined by the advisory council, not inconsistent with rules and policies adopted under this chapter or specific authority otherwise given the advisory council."

Section 2490. Section 75-2-123, MCA, is amended to read:

"75-2-123. Meetings. The advisory council shall hold at least two regular meetings each calendar year and shall keep a summary record of its proceedings ~~which shall~~ that must be open to the public for inspection. Special meetings may be called by the ~~chairman~~ presiding officer and must be called by ~~him~~ the presiding officer on receipt of a written request signed by two or more members of the advisory council. Notice of the time and place for meetings ~~shall~~ must be given in advance to each member of the advisory council by the secretary."

Section 2491. Section 75-2-212, MCA, is amended to read:

"75-2-212. Variances -- renewals -- filing fees. (1) A person who owns or is in control of a plant, building, structure, process, or equipment may apply to the board for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of air pollutants. The application ~~shall~~ must be accompanied by ~~such~~ information and data ~~as~~ that the board may require. The board may grant an exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) compliance with the rules from which an exemption is sought would produce hardship without equal or greater benefits to the public.

(2) ~~No~~ An exemption or partial exemption may not be granted pursuant to this section except after public hearing on due notice and until the board has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) The exemption or partial exemption may be renewed if ~~no~~ a complaint is not made to the board because of it or if, after the complaint has been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. ~~No~~ A renewal may not be granted except on application ~~therefor~~. An application ~~shall~~ must be made at least 60 days before the expiration of the exemption or partial exemption. Immediately before application for renewal, the applicant shall give public notice of ~~his~~ the application in accordance with rules of the board. A renewal pursuant to this subsection ~~shall~~ must be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) An exemption, partial exemption, or renewal ~~thereof~~ is not a right of the applicant or holder ~~thereof~~ but ~~shall~~ may be granted at the discretion of the board. However, a person adversely affected by an exemption, partial exemption, or renewal granted by the board may obtain judicial review ~~thereof~~ as provided by 75-2-411.

(5) ~~Nothing in this~~ This section and ~~no~~ an exemption, partial exemption, or renewal granted pursuant to

this section may not be construed to prevent or limit the application of the emergency provisions and procedures of 75-2-402 to a person or ~~his~~ the person's property.

(6) A person who owns or is in control of a plant, building, structure, process, or equipment, ~~(hereinafter which are called a facility)~~ facilities, who applies to the board for an exemption or partial exemption or a renewal of an exemption or partial exemption from a rule governing the quality, nature, duration, or extent of emissions of air pollutants shall submit with the application for variance a sum of not less than \$500 or 2% of the cost of the equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater, but not to exceed \$80,000. The department shall prepare a statement of actual costs, and funds in excess of this ~~shall~~ must be returned to the applicant. The person requesting the variance shall describe the facility in sufficient detail, with accompanying estimates of cost and verifying materials, to permit the department to determine with reasonable accuracy the sum of the fee. For a renewal of an exemption or partial exemption, if ~~no~~ a public hearing, environmental impact statement, or appreciable investigation by the department is not necessary, the minimum filing fee ~~shall apply~~ applies or the fee may be waived by the department. The filing fee ~~shall~~ must be deposited in the state special revenue fund provided for in 17-2-102. It is the intent of the legislature that the ~~revenues~~ revenue derived from the filing fees ~~shall~~ must be used by the department to:

- (a) compile the information required for rendering a decision on the request;
- (b) compile the information necessary for any environmental impact statements;
- (c) offset the costs of a public hearing, printing, or mailing; and
- (d) carry out its other responsibilities under this chapter."

Section 2492. Section 75-2-411, MCA, is amended to read:

"75-2-411. Judicial review. (1) A person aggrieved by an order of the board or local control authority may apply for rehearing upon one or more of the following grounds and upon no other grounds:

- (a) the board or local control authority acted without or in excess of its powers;
 - (b) the order was procured by fraud;
 - (c) the order is contrary to the evidence;
 - (d) the applicant has discovered new evidence, material to ~~him~~ the applicant, ~~which he~~ that the applicant could not with reasonable diligence have discovered and produced at the hearing; or
 - (e) competent evidence was excluded to the prejudice of the applicant.
- (2) The petition must be in ~~such a~~ such a form and filed in ~~such at a~~ such at a time ~~as that~~ as that the board ~~shall prescribe~~ prescribes.

(3) (a) Within 30 days after the application for rehearing is denied or, if the application is granted, within 30 days after the decision on the rehearing, ~~a~~ an aggrieved party aggrieved thereby may appeal to the district court of the judicial district of the state ~~which that~~ is the situs of property affected by the order.

(b) The appeal ~~shall~~ must be taken by serving a written notice of appeal upon the ~~chairman~~ presiding officer of the board, ~~which service shall~~ Service must be made by the delivery of a copy of the notice to the ~~chairman~~ presiding officer and by filing the original with the clerk of the court to which the appeal is taken. Immediately after service upon the board, the board shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the board. Immediately upon receiving the certified record, the district court shall fix a day for filing of briefs and hearing arguments on the cause and shall cause a notice of the ~~same~~ the dates to be served upon the board and the appellant.

(c) The court shall hear and decide the cause upon the record of the board. The court shall determine whether or not the board regularly pursued its authority, whether or not the findings of the board were supported by substantial competent evidence, and whether or not the board made errors of law prejudicial to the appellant.

(4) Either the board or the person aggrieved may appeal from the decision of the district court to the supreme court. The proceedings before the supreme court ~~shall~~ must be limited to a review of the record of the hearing before the board and of the district court's review of that record."

Section 2493. Section 75-5-105, MCA, is amended to read:

"75-5-105. Confidentiality of records. Except as provided in 80-15-108, any information concerning sources of pollution ~~which that~~ is furnished to the board or department or ~~which that~~ is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution ~~which that~~ would, if disclosed, reveal methods or processes entitled to protection as trade secrets ~~shall~~ must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if ~~he~~ the owner or operator wishes ~~such the~~ information to ~~enjoy remain~~ enjoy remain confidential ~~status~~. The department ~~shall~~ must be served in ~~any such the~~ action and may intervene as a party ~~therein~~. Any information not intended to be public when submitted to the board or department ~~shall~~ must be submitted in writing and clearly marked as confidential. The data describing physical and chemical characteristics of a waste discharged to state waters ~~shall~~ may not be considered confidential. The board may use any information in compiling or publishing analyses or summaries relating to water pollution if ~~such the~~ analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information ~~which that~~ is otherwise made confidential by this section."

Section 2494. Section 75-5-306, MCA, is amended to read:

"75-5-306. Purer than natural unnecessary -- dams -- definition. (1) It is not necessary that wastes be treated to a purer condition than the natural condition of the receiving stream as long as the minimum treatment requirements established under this chapter are met.

(2) "Natural" refers to conditions or material present from runoff or percolation over which ~~man has~~ humans have no control or from developed land where all reasonable land, soil, and water conservation practices have been applied. Conditions resulting from the reasonable operation of dams ~~at~~ on July 1, 1971, are natural."

Section 2495. Section 75-5-603, MCA, is amended to read:

"75-5-603. Power to inspect. The authorized representative of the department, upon presentation of ~~his~~ the representative's credentials, may at reasonable times enter upon any public or private property to:

- (1) investigate conditions relating to pollution of state waters or violations of permit conditions;
- (2) have access to and copy any records required under this chapter;
- (3) inspect any monitoring equipment or method required under 75-5-602(3); and
- (4) sample any effluents ~~which~~ that the owner or operator of ~~such~~ the source is required to sample under 75-5-602(4)."

Section 2496. Section 75-5-641, MCA, is amended to read:

"75-5-641. Appeals from board orders -- review by district court. (1) An appeal of an order of the board ~~shall~~ must be in the district court of the county in which the alleged source of pollution is located.

(2) A person interested in the order may intervene, in the manner provided by the rules of civil procedure, if ~~he~~ the person shows good cause. An intervenor is a party for the purposes of this chapter.

(3) The attorney general shall represent the board if requested, or the department may appoint special counsel for the proceedings, subject to the approval of the attorney general.

(4) The initiation of an action for review or the taking of an appeal does not stay the effectiveness of any order of the board unless the court finds that there is probable cause to believe:

- (a) that refusal to grant a stay will cause serious harm to the affected party; and
- (b) that any violation found by the board will not continue or, if it does continue, any harmful effects on state waters will be remedied immediately on the cessation of the violation.

(5) If a court does not stay the effectiveness of an order of the board, it may enforce compliance with that order by issuing a temporary restraining order or an injunction at the request of the board."

Section 2497. Section 75-5-801, MCA, is amended to read:

"75-5-801. Definitions. For the purposes of this part, the following definitions apply:

(1) "Animal feeding operation" means a lot or facility where the following conditions are met:

(a) animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

(b) crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(2) "Concentrated animal feeding operation" means an animal feeding operation that is defined as a large concentrated animal feeding operation or as a medium concentrated animal feeding operation or that is designated as a concentrated animal feeding operation in accordance with 40 CFR, part 122. Two or more animal feeding operations under common ownership are considered to be a single animal feeding operation for the purposes of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(3) "Large concentrated animal feeding operation" means an animal feeding operation that stables or confines at a minimum:

(a) 700 mature dairy cows, whether milked or dry;

(b) 1,000 veal calves;

(c) 1,000 cattle other than mature dairy cows or veal calves;

(d) 2,500 swine each weighing 55 pounds or more;

(e) 10,000 swine each weighing less than 55 pounds;

(f) 500 horses;

(g) 10,000 sheep or lambs;

(h) 55,000 turkeys;

(i) 30,000 laying hens or broilers if the animal feeding operation uses a liquid manure-handling system;

(j) 125,000 chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure-handling system;

(k) 82,000 laying hens if the animal feeding operation uses other than a liquid manure-handling system;

(l) 30,000 ducks if the animal feeding operation uses other than a liquid manure-handling system; or

(m) 5,000 ducks if the animal feeding operation uses a liquid manure-handling system.

(4) "Medium concentrated animal feeding operation" means an animal feeding operation with the type and number of animals that fall within any of the ranges listed in subsection (4)(a) and that has been defined or

designated as a concentrated animal feeding operation. An animal feeding operation is defined as a medium concentrated animal feeding operation if:

- (a) the type and number of animals that it stables or confines falls within any of the following ranges:
 - (i) 200-699 mature dairy cows, whether milked or dry;
 - (ii) 300-999 veal calves;
 - (iii) 300-999 cattle other than mature dairy cows or veal calves;
 - (iv) 750-2,499 swine each weighing 55 pounds or more;
 - (v) 3,000-9,999 swine each weighing less than 55 pounds;
 - (vi) 150-499 horses;
 - (vii) 3,000-9,999 sheep or lambs;
 - (viii) 16,500-54,999 turkeys;
 - (ix) 9,000-29,999 laying hens or broilers if the animal feeding operation uses a liquid manure-handling system;
 - (x) 37,500-124,999 chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure-handling system;
 - (xi) 25,000-81,999 laying hens if the animal feeding operation uses other than a liquid manure-handling system;
 - (xii) 10,000-29,999 ducks if the animal feeding operation uses other than a liquid manure-handling system; or
 - (xiii) 1,500-4,999 ducks if the animal feeding operation uses a liquid manure-handling system; and
- (b) either of the following conditions is met:
 - (i) pollutants are discharged into waters of the state through a ~~manmade~~ constructed ditch, flushing system, or other similar ~~manmade~~ constructed device; or
 - (ii) pollutants are discharged directly into waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation."

Section 2498. Section 75-7-205, MCA, is amended to read:

"75-7-205. Unauthorized work. A person who performs work in a lake ~~after May 1, 1975~~, without a permit for that work shall, if required by the local governing body or the district court, restore the lake to its condition before ~~he~~ the person disturbed it."

Section 2499. Section 75-10-212, MCA, is amended to read:

"75-10-212. Disposal in unauthorized area prohibited -- exception. (1) ~~No~~ A person may not dispose of solid waste except as permitted under this part.

(2) It ~~shall be~~ is unlawful to dump or leave any garbage, dead animal, or other debris or refuse:

(a) in or upon any highway, road, street, or alley of this state;

(b) in or upon any public property, highway, street, or alley under the control of the state of Montana or any political subdivision ~~thereof~~ of the state or any officer or agent or department ~~thereof~~ of the state or political subdivision of the state;

(c) within 200 yards of ~~such a~~ a public highway, road, street, or alley or public property;

(d) on privately owned property where hunting, fishing, or other recreation is permitted, ~~provided;~~ however, this subsection ~~shall~~ does not apply to the owner, ~~his~~ the owner's agents, or those disposing of debris or refuse with the owner's consent.

(3) ~~Any~~ A person in violation of this section is absolutely liable, as provided in 45-2-104, and is subject to the civil penalties provided in 75-10-233."

Section 2500. Section 75-10-214, MCA, is amended to read:

"75-10-214. Exclusions -- exceptions to exclusions. (1) (a) This part may not be construed to prohibit a person from disposing of ~~his~~ the person's own solid waste that is generated in reasonable association with ~~his~~ the person's household or agricultural operations upon land owned or leased by that person or covered by easement or permit as long as the disposal does not create a nuisance or public health hazard or violate the laws governing the disposal of hazardous or deleterious substances.

(b) This part does not apply to the operation of an electric generating facility, to the drilling, production, or refining of natural gas or petroleum, or to the operation of a mine, mill, smelter, or electrolytic reduction facility.

(2) The exclusions contained in subsection (1) ~~of this section~~ do not apply to a division of land of 5 acres or less made after July 1, 1977, that falls within the definition of subdivision in Title 76, chapter 4, part 1, or the Montana Subdivision and Platting Act in Title 76, chapter 3."

Section 2501. Section 75-10-223, MCA, is amended to read:

"75-10-223. Refusal by local health officer -- appeal to board. (1) The local health officer may ~~only~~ refuse to validate a license issued under this part only upon a finding that the requirements of this part and the rules implementing this part cannot be satisfied. If the local health officer refuses to validate the license, ~~he~~ the

local health officer shall notify the applicant, the department, and any other interested person in writing.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the board within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the board ~~shall~~ must be held pursuant to the contested case provisions of the Montana Administrative Procedure Act."

Section 2502. Section 75-10-233, MCA, is amended to read:

"75-10-233. Dumping penalty -- enforcement. (1) A person found guilty of a violation of 75-10-212 shall be fined in the sum not exceeding \$100 or imprisoned in the county jail for a period not exceeding 30 days, or ~~be punished by both fine and imprisonment, in the discretion of the court.~~

(2) A person found absolutely liable under 75-10-212 is subject to a civil penalty not to exceed \$5,000.

(3) The provisions of 75-10-212 ~~shall~~ must be enforced by all highway patrol officers, sheriffs, ~~policemen and police officers~~; and by all other enforcement agencies and officers of the state of Montana. In addition, game wardens have the right to enforce the provisions of 75-10-212 on public property and on private property where public recreation is permitted."

Section 2503. Section 75-10-501, MCA, is amended to read:

"75-10-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Component part" means any identifiable part of a discarded, ruined, wrecked, or dismantled motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions, frames, axles, wheels, tires, and passenger compartment fixtures.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) (a) "Junk vehicle" means a motor vehicle, including component parts:

(i) that is discarded, ruined, wrecked, or dismantled;

(ii) that, except as provided in subsection (4)(b), is not lawfully and validly licensed; and

(iii) that remains inoperative or incapable of being driven.

(b) If a vehicle is permanently registered under 61-3-562 and meets the criteria for a junk vehicle under subsection (4)(a), the vehicle is a junk vehicle.

(5) "Motor vehicle graveyard" means a collection point established by a county for junk motor vehicles prior to their disposal.

(6) (a) "Motor vehicle wrecking facility" means:

~~(a)~~(i) a facility buying, selling, or dealing in four or more vehicles ~~per a~~ year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or

~~(b)~~(ii) a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor vehicle parts. A facility that buys or sells component parts of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification.

(b) The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

(7) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or ~~any~~ other governmental or private entity, whether organized for profit or not.

(8) "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen.

(9) "Shielding" means the construction or use of fencing or ~~manmade~~ constructed or natural barriers to conceal junk vehicles from public view."

Section 2504. Section 75-10-940, MCA, is amended to read:

"75-10-940. Enforcement by residents. (1) A person with knowledge that a requirement of 75-10-901 through 75-10-945 or a rule adopted under 75-10-901 through 75-10-945 is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that states the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the statements subjects the person to the penalties prescribed for a violation of 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the person may bring an action of mandamus in the district court of the first judicial district of Montana. If the court finds that a requirement of 75-10-901 through 75-10-945 or a rule adopted under 75-10-901 through 75-10-945 is not being enforced, the court may order the public officer or employee whose duty it is to enforce the requirement or rule to perform those duties. If ~~he~~ the public officer or employee fails to do so, the public officer or employee must be held in contempt of court and is subject to the

penalties provided by law."

Section 2505. Section 75-10-941, MCA, is amended to read:

"75-10-941. Action to recover damages to water supply. An owner of an interest in real property who obtains all or part of ~~his~~ the owner's supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a person to recover damages for contamination, diminution, or interruption of the water supply proximately resulting from the operation of a facility. The remedy provided in this section does not exclude the use of any other remedy that may be available under the laws of the state."

Section 2506. Section 75-16-104, MCA, is amended to read:

"75-16-104. Right to relief. A person who suffers or is threatened with injury to ~~his~~ that person's person or property in a reciprocating jurisdiction caused by pollution originating or that may originate in this state has the same rights to relief with respect to the injury or threatened injury and may enforce those rights in this state as if the injury or threatened injury occurred in this state."

Section 2507. Section 75-20-404, MCA, is amended to read:

"75-20-404. Enforcement of chapter by residents. (1) A resident of this state with knowledge that a requirement of this chapter or a rule adopted under it is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that ~~shall~~ must state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark. If the court finds that a requirement of this chapter or a rule adopted under it is not being enforced, the court may order the public officer or employee whose duty it is to enforce the requirement or rule to perform ~~his~~ the officer's or employee's duties. If ~~he~~ the public officer or public employee fails to do so, the public officer or employee ~~shall~~ must be held in contempt of court and is subject to the penalties provided by law."

Section 2508. Section 75-20-405, MCA, is amended to read:

"75-20-405. Action to recover damages to water supply. An owner of an interest in real property who obtains all or part of ~~his~~ the owner's supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a person to recover damages for contamination, diminution, or interruption of the water supply proximately resulting from the operation of a facility. The remedies enumerated in this section do not exclude the use of any other remedy ~~which~~ that may be available under the laws of the state."

Section 2509. Section 75-20-409, MCA, is amended to read:

"75-20-409. Optional annual installments for location of facility on landowner's property. A landowner upon whose land a facility is proposed to be located ~~shall have~~ has the option of receiving any negotiated settlement for use of ~~his~~ the landowner's land, if and when the land is used for a facility, by easement, right-of-way, or other legal conveyance in either a lump sum or in not more than five consecutive annual installments."

Section 2510. Section 75-20-411, MCA, is amended to read:

"75-20-411. Surety bond -- other security. If an order of the board is stayed or suspended, the court may require a bond with good and sufficient surety conditioned that the party petitioning for review answer for all damages caused by the delay in enforcing the order of the board; except that the cost of the bond is not chargeable to the applicant as part of the fee. If the party petitioning for review prevails upon final resolution of an appeal, ~~he~~ the party does not forfeit bond nor is ~~he~~ the party responsible for damages caused by delay."

Section 2511. Section 76-1-222, MCA, is amended to read:

"76-1-222. City council member of city planning board. (1) As soon as the city council has enacted an ordinance creating a city planning board, the city council shall select a member of its body to serve on the planning board. The term of the appointed member ~~shall~~ must be coextensive with the term of office to which ~~he~~ the member has been elected or appointed unless the council, on its first regular meeting of each year, appoints another to serve as its representative or unless ~~his~~ the member's term is terminated as ~~hereinafter~~ provided in this part.

(2) The city council shall fill any vacancy occurring in its respective membership on the planning board."

Section 2512. Section 76-2-221, MCA, is amended to read:

"76-2-221. Board of adjustment. (1) The board of county commissioners shall provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part shall provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the zoning resolution in harmony with its general purposes and intent and in accordance with the general or specific rules of this part.

(2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to this part. Meetings of the board of adjustment ~~shall~~ must be held at the call of the ~~chairman~~ presiding officer and at ~~such times as~~ that the board may determine. ~~Such chairman~~ The presiding officer or in ~~his~~ the ~~presiding officer's~~ absence the acting ~~chairman~~ presiding officer may administer oaths and compel the attendance of witnesses."

Section 2513. Section 76-2-226, MCA, is amended to read:

"76-2-226. Appeals to board of adjustment. (1) Appeals to the board of adjustment may be taken by ~~any a~~ any person aggrieved or by ~~any an~~ any officer, department, board, or bureau of the county affected by any decision of the administrative officer. ~~Such~~ The appeal ~~shall~~ must be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds ~~thereof~~ of the appeal.

(2) The officer from whom the appeal is taken shall ~~forthwith~~ transmit to the board in a timely manner all papers constituting the record upon which the action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal ~~shall have~~ has been filed with ~~him~~ the officer that by reason of facts stated in the certificate a stay would, in ~~his~~ the officer's opinion, cause imminent peril to life or property. In ~~such that~~ that case, proceedings ~~shall~~ may not be stayed ~~other than~~ except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice ~~thereof~~ of the hearing as well as due notice to the parties in interest, and decide the ~~same~~ the appeal within a reasonable time.

(5) ~~Upon~~ At the hearing, ~~any a~~ any party may appear in person or by ~~his~~ the party's attorney."

Section 2514. Section 76-2-227, MCA, is amended to read:

"76-2-227. Appeals from board to court of record. (1) Any person or persons, jointly or severally, aggrieved by ~~any a~~ decision of the board of adjustment or ~~any a~~ taxpayer or ~~any an~~ officer, department, board, or bureau of the county may present to a court of record a petition, duly verified, setting forth that ~~such the~~ decision is illegal, in whole or in part, and specifying the grounds of the illegality. ~~Such the~~ petition ~~shall~~ must be presented to the court within 30 days after the filing of the decision in the office of the board.

(2) Upon presentation of ~~such a~~ petition, the court may allow a writ of certiorari directed to the board of adjustment to review ~~such the~~ decision of the board of adjustment and shall prescribe ~~therein in the writ~~ the time within which a return ~~thereto~~ must be made and served upon the relator's attorney, which ~~shall may~~ not be less than 10 days and may be extended by the court. The allowance of the writ ~~shall may~~ not stay proceedings upon the decision appealed from, but the court may, (upon application, on notice to the board, and on due cause shown), grant a restraining order. The board of adjustment ~~shall may~~ not be required to return the original papers acted upon by it, but it ~~shall be~~ is sufficient to return certified or sworn copies ~~thereof of the original papers~~ or of ~~such portions thereof as~~ of the original papers that may be called for by ~~such the~~ writ. The return ~~shall~~ must concisely set forth ~~such other facts as~~ that may be pertinent and material to show the grounds of the decision appealed from and ~~shall~~ must be verified.

(3) If, upon the hearing, it ~~shall appear~~ appears to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take ~~such~~ evidence as it may direct and report the ~~same~~ evidence to the court with ~~his~~ the referee's findings of fact and conclusions of law, which ~~shall~~ constitute a part of the proceedings upon which the determination of the court ~~shall~~ must be made.

(4) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review."

Section 2515. Section 76-2-321, MCA, is amended to read:

"76-2-321. Board of adjustment. (1) ~~Such~~ A city or town council or other legislative body may provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part may provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purposes and intent and in accordance with the general or specific rules ~~therein~~ contained in the ordinance.

(2) An ordinance adopted pursuant to this section providing for a board of adjustment may restrict the authority of the board and provide that the city or town council or other legislative body reserves to itself the power to make certain exceptions to regulations, ordinances, or land use plans adopted pursuant to this part.

(3) The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this part. Meetings of the board ~~shall must~~ be held at the call of the ~~chairman~~ presiding officer and at ~~such~~ other times ~~as that~~ the board may determine. ~~Such chairman~~ The presiding officer or in ~~his~~ the presiding officer's absence the acting ~~chairman~~ presiding officer may administer oaths and compel the attendance of witnesses."

Section 2516. Section 76-2-326, MCA, is amended to read:

"76-2-326. Appeals to board of adjustment. (1) Appeals to the board of adjustment may be taken by ~~any a~~ person aggrieved or by ~~any an~~ officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. ~~Such An~~ appeal ~~shall must~~ be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds ~~thereof~~ of the appeal.

(2) The officer from whom the appeal is taken shall, in a timely manner, ~~forthwith~~ transmit to the board all papers constituting the record upon which the action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal ~~shall have~~ has been filed with ~~him~~ the officer that by reason of facts stated in the certificate a stay would, in ~~his~~ the officer's opinion, cause imminent peril to life or property. In ~~such that~~ case, proceedings ~~shall may~~ not be stayed ~~otherwise than~~ except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice ~~thereof~~ of the hearing as well as due notice to the parties in interest, and decide the ~~same~~ appeal within a reasonable time.

(5) ~~Upon~~ At the hearing, any party may appear in person or by the party's attorney."

Section 2517. Section 76-2-327, MCA, is amended to read:

"76-2-327. Appeals from board to court of record. (1) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department, board, or bureau of the municipality may present to a court of record a petition, duly verified, setting forth that ~~such the~~ decision is illegal, in whole or in part, and specifying the grounds of the illegality. ~~Such The~~ petition ~~shall must~~ be presented to the court within 30 days after the filing of the decision in the office of the board.

(2) Upon the presentation of ~~such the~~ petition, the court may allow a writ of certiorari directed to the

board of adjustment to review ~~such the~~ decision of the board of adjustment and shall prescribe ~~therein in the writ~~ the time within which a return ~~thereto~~ must be made and served upon the relator's attorney, which ~~shall~~ may not be less than 10 days and may be extended by the court. The allowance of the writ ~~shall~~ does not stay proceedings upon the decision appealed from, but the court may, ~~(on application, on notice to the board, and on due cause shown),~~ grant a restraining order. The board of adjustment ~~shall~~ may not be required to return the original papers acted upon by it, but it ~~shall be~~ is sufficient to return certified or sworn copies ~~thereof of the original papers~~ or of ~~such portions thereof as~~ of the original papers that may be called for by ~~such the~~ writ. The return ~~shall~~ must concisely set forth ~~such other facts as~~ that may be pertinent and material to show the grounds of the decision appealed from and ~~shall~~ must be verified.

(3) If, upon the hearing, it ~~shall appear~~ appears to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take ~~such evidence as~~ that it may direct and report the ~~same the evidence~~ to the court with ~~his the referee's~~ findings of fact and conclusions of law, which ~~shall~~ constitute a part of the proceedings upon which the determination of the court ~~shall~~ must be made.

(4) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review."

Section 2518. Section 76-3-303, MCA, is amended to read:

"76-3-303. Contract for deed permitted if buyer protected. Notwithstanding the provisions of 76-3-301, after the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

(1) ~~that~~ under the terms of the contracts, the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the state of Montana;

(2) ~~that~~ under the terms of the contracts and the escrow agreement, the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;

(3) ~~that~~ the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within 2 years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments ~~he~~ the purchaser has made under the contract;

(4) ~~that~~ the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and

(5) ~~that~~ the contracts contain the following language conspicuously set out ~~therein~~: "The real property

which ~~that~~ is the subject hereof of this contract has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property ~~cannot~~ may not be transferred in any manner."."

Section 2519. Section 76-3-405, MCA, is amended to read:

"76-3-405. Administration of oaths by registered land surveyor. (1) ~~Every~~ A registered land surveyor may administer and certify oaths when:

(a) it becomes necessary to take testimony for the identification of old corners or reestablishment of lost or obliterated corners;

(b) a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated;

(c) the importance of the survey makes it desirable to administer an oath to ~~his~~ the surveyor's assistants for the faithful performance of their duty.

(2) A record of oaths ~~shall~~ must be preserved as part of the field notes of the survey and noted on the certificate of survey filed under 76-3-404."

Section 2520. Section 76-4-110, MCA, is amended to read:

"76-4-110. Additional remedies available. This part does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does any provision of this part or any act done by virtue of it estop the state, any municipality or other subdivision of the state, or any person in the exercise of ~~his~~ the person's rights in equity or under the common law or statutory law."

Section 2521. Section 76-13-108, MCA, is amended to read:

"76-13-108. Person responsible for performance of duties. (1) If the owner does not appear upon the public records as the holder of the legal title to the land or timber, ~~he~~ the owner is nevertheless primarily responsible for the performance of the acts and duties imposed upon ~~him~~ the owner by ~~this part and part 2 and~~ this part.

(2) ~~Where~~ When the owner of the timber is not the owner of the land, the primary responsibility for the performance of the acts and duties imposed by ~~this part and part 2 and~~ this part is upon the owner of the timber.

(3) ~~Where~~ When the state has title to forest lands within ~~any~~ an organized forest protection district, it ~~shall~~ must be considered as an owner and it shall list its lands and pay the assessments to the recognized agencies

responsible for lands in ~~such~~ organized forest protection districts."

Section 2522. Section 76-13-413, MCA, is amended to read:

"76-13-413. Failure to submit withholding -- remedy. (1) If a purchaser does not submit withheld money and required reports on or before the 15th day of the following month as provided in 76-13-409, ~~he~~ the purchaser must be notified by certified mail that ~~he~~ the purchaser is in noncompliance and be given 15 days to submit all money and reports then due. If ~~he~~ the purchaser fails to submit all money due within the required time, the department may initiate a lien upon the real property of the purchaser and may initiate proceedings to enjoin further processing of all wood products until all money due is paid in full and all required reports are submitted.

(2) If payment and reports are not received by the department within the 15-day period after notification as provided in subsection (1), a penalty of 5% of the payment amount due must be assessed. The department may abate the penalty if the purchaser establishes that the failure to submit the amount due or the reports as required was due to reasonable cause and was not due to neglect on ~~his~~ the purchaser's part. The department, in addition to the penalty, may impose interest at the rate of 10% a year on any balance remaining unpaid.

(3) All money withheld by a purchaser for the contractor's bond and for department fees is considered to be excise taxes withheld for the benefit of the state within the meaning of 11 U.S.C. 507."

Section 2523. Section 76-13-423, MCA, is amended to read:

"76-13-423. When additional notification required. (1) Except as provided in subsection (2), the department may require only one notification for each timber sale, even though multiple forest practices may be conducted.

(2) If an operator modifies ~~his~~ the operator's proposed forest practices in a manner that substantially alters the potential watershed disturbance, ~~he~~ the operator shall submit a revised notification to the department."

Section 2524. Section 76-14-105, MCA, is amended to read:

"76-14-105. Role of state coordinator. The state coordinator shall:

(1) serve as an advisor, counselor, and coordinator for and between persons and agencies involved in range management;

(2) strive to create understanding and compatibility between the many users of rangeland, including ~~sportsmen~~ hunters, anglers, recreationists, ranchers, and others;

(3) promote and coordinate the adoption and implementation of sound range management plans to

minimize conflicts between governmental agencies and private landowners;

(4) participate in zoning and planning studies to ~~insure~~ ensure that native ranges are adequately represented at sessions for development of zoning and planning regulations;

(5) coordinate range management research to help prevent duplication and overlap of effort in this area."

Section 2525. Section 76-15-101, MCA, is amended to read:

"76-15-101. Legislative determinations. It is ~~hereby~~ declared, as a matter of legislative determination:

(1) that the farm and grazing lands of the state of Montana are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land use practices have caused and have contributed to and are now causing and contributing to a progressively more serious erosion of the farm and grazing lands of this state by wind and water; that the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon ~~his~~ the occupier's lands causes a washing and blowing of soil and water from ~~his~~ the occupier's lands onto other lands and makes the conservation of soil and control of erosion on ~~such~~ other lands difficult or impossible;

(2) that the consequences of ~~such~~ soil erosion in the form of soil blowing and soil washing are the silting and sedimentation of stream channels, reservoirs, dams, and ditches; ~~the~~ the loss of fertile soil material in dust storms; ~~the~~ the piling up of soil on lower slopes and its deposit over alluvial plains; ~~the~~ the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; ~~the~~ the deterioration of soil and its fertility, ~~the~~ the deterioration of crops and range cover grown ~~thereon~~ on the land, and declining acre yields despite development of scientific processes for increasing ~~such~~ such yields; ~~the~~ the loss of soil and water ~~which that~~ causes destruction of food and cover for wildlife; ~~a~~ a blowing and washing of soil into streams ~~which that~~ silts over spawning beds and destroys water plants, diminishing the food supply of fish; ~~a~~ a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop and range vegetation cover failures; ~~and, an~~ an increase in the speed and volume of rainfall runoff, causing severe and increasing floods ~~which that~~ bring suffering, disease, and death; ~~the~~ the impoverishment of families attempting to operate eroding and eroded lands; ~~damage~~ damage to roads, highways, railways, farm buildings, and other property

from floods and from dust storms; and losses in municipal water supply, irrigation developments, farming, and grazing;

(3) that to conserve soil resources and control and prevent soil erosion and prevent floodwater and sediment damages and further the conservation, development, utilization, and disposal of water, it is necessary that land use practices contributing to soil wastage and soil erosion be discouraged and discontinued and appropriate soil-conserving land use practices and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption are the carrying on of engineering operations such as the construction of water spreaders, terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodways, land drainage, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops, restriction of number of livestock grazed, deferred grazing, rodent eradication; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded."

Section 2526. Section 76-15-312, MCA, is amended to read:

"76-15-312. Term of office and vacancies. (1) The term of office of each supervisor ~~shall be~~ is 4 years, except that the supervisors who are first appointed by the department ~~shall~~ must be designated to serve for terms of 2 years from the date of their appointment. An elected supervisor ~~shall hold~~ holds office until ~~his~~ a successor has been elected and has qualified.

(2) A vacancy is created when any of the following events occurs before the expiration of the term of the incumbent:

- (a) death;
- (b) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent is mentally ill;
- (c) resignation;
- (d) removal from office;
- (e) unexcused absence from three consecutive regular meetings of the board of supervisors;
- (f) ceasing to be a resident of the district;
- (g) conviction of a felony or a violation of official duties; or

(h) the decision of a court declaring void the incumbent's election or appointment.

(3) For the purpose of subsection (2)(e), a majority vote of the board of supervisors may excuse a supervisor from attending a meeting.

(4) ~~Any~~ A vacancy occurring in the office of an elected supervisor ~~shall~~ must be filled by appointment by the remaining supervisors until the next regular election, when a successor ~~shall~~ must be elected to serve the unexpired term."

Section 2527. Section 76-15-313, MCA, is amended to read:

"76-15-313. Operation of supervisors. (1) The supervisors shall annually elect a ~~chairman~~ presiding officer from their members.

(2) A majority of the supervisors constitute a quorum, and except as otherwise specifically provided, the concurrence of a majority in any matter within their duties is required for its determination.

(3) Upon the unanimous approval of the board of supervisors, a supervisor may receive compensation for ~~his~~ the supervisor's services, including travel expenses as provided for in 2-18-501 through 2-18-503, incurred in the discharge of ~~his~~ the supervisor's duties. However, ~~no~~ a supervisor may not receive compensation for attendance at a regularly scheduled meeting of the board of supervisors."

Section 2528. Section 76-15-315, MCA, is amended to read:

"76-15-315. Administrative functions of the supervisors. (1) The supervisors may employ a secretary and ~~such~~ other officers, agents, and employees, permanent and temporary, ~~as~~ that they may require and shall determine their qualifications, duties, and compensation.

(2) The supervisors may delegate to their ~~chairman~~ presiding officer, to one or more supervisors, or to one or more agents or employees ~~such~~ powers and duties ~~as~~ that they consider proper.

(3) The supervisors shall furnish to the department copies of ~~such~~ ordinances, rules, orders, contracts, forms, and other documents ~~as~~ that they adopt or employ and ~~such~~ other information concerning their activities ~~as~~ that may be required in the performance of their duties under this chapter.

(4) The supervisors shall:

(a) provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property;

(b) ~~shall~~ provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and

(c) ~~shall~~ provide for an annual audit of the accounts of receipts and disbursements."

Section 2529. Section 76-15-526, MCA, is amended to read:

"76-15-526. Treasurer's reports. The treasurer shall report in writing at each regular meeting of the supervisors and as often at other times as the supervisors may request the amount of money on hand and the receipts and disbursements since ~~his~~ the treasurer's last report. ~~Such~~ The report ~~shall~~ must be verified."

Section 2530. Section 76-15-604, MCA, is amended to read:

"76-15-604. Protest procedure. At any time within 15 days after the date of the last publication of the notice of the hearing on the petition, any owner of property liable to be assessed for the project may protest against the proposed project or the creation of the project area, or both. The protest must be in writing and be delivered to the secretary of the conservation district who shall endorse ~~thereon~~ on the protest the date of its receipt by ~~him~~ the secretary."

Section 2531. Section 76-15-606, MCA, is amended to read:

"76-15-606. Election procedure. (1) The question ~~shall~~ must be submitted to the electors by ballot on which the words "For creation of proposed project area" and "Against creation of proposed project area" ~~shall~~ must appear, with a square before each proposition and directions to insert an "X" mark in the square before one or the other of ~~said~~ the propositions as the voter may favor or oppose creation of the project area.

(2) ~~No~~ A person ~~shall be~~ is not entitled to vote at the election unless ~~such~~ the person possesses all the qualifications required of electors under Title 13 and resides within the boundaries of the proposed project area and the county in which ~~he~~ the person proposes to vote."

Section 2532. Section 76-15-710, MCA, is amended to read:

"76-15-710. Court procedure after petition is filed. (1) Upon the presentation of ~~such~~ a petition as described in 76-15-709, the court shall cause process to be issued against the defendant and shall hear the case. If it ~~shall appear~~ appears to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take ~~such~~ evidence as that it may direct and report the ~~same~~ evidence to the court with ~~his~~ the referee's findings of fact and conclusions of law, which ~~shall~~ must constitute a part of the proceedings upon which the determination of the court ~~shall be~~ is made.

(2) In all cases ~~where~~ in which the person in possession of lands who ~~shall fail~~ fails to perform ~~such~~ work,

operations, or avoidances ~~shall is not be~~ the owner, the owner of ~~such the~~ lands ~~shall must~~ be joined as party defendant.

(3) The court may dismiss the petition, or it may require the defendant to perform the work, operations, or avoidances and may provide that, upon the failure of the defendant to initiate ~~such the~~ performance within the time specified in the order of the court and to prosecute the ~~same performance~~ to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of ~~such the~~ land into conformity with the requirements of the regulations and recover the costs and expenses ~~thereof of the work or operations~~, with interest at the rate of 10% a year, from the defendant.

(4) The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of ~~such the~~ work pursuant to ~~such the~~ order of the court, the supervisors may file a petition with the court, a copy of which ~~shall must~~ be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and ~~praying asking~~ judgment ~~therefor for the costs and expenses~~ with interest. The court ~~shall have has~~ jurisdiction to enter judgment for the amount of ~~such the~~ costs and expenses, with interest at the rate of 10% a year until paid, together with the costs of suit, including a reasonable ~~attorney's fee~~ attorney fees to be fixed by the court."

Section 2533. Section 76-15-722, MCA, is amended to read:

"76-15-722. Operation of board of adjustment. (1) The board of adjustment shall adopt rules to govern its procedures, ~~which~~ The rules shall must be in accordance with this chapter and with the ordinance establishing the board of adjustment.

(2) The board shall annually elect a ~~chairman~~ presiding officer from among its members. Meetings of the board ~~shall must~~ be held at the call of the ~~chairman~~ presiding officer and at ~~such~~ other times ~~as that~~ the board may determine. Any two members of the board constitute a quorum. The ~~chairman~~ presiding officer or in ~~his~~ the presiding officer's absence ~~such other another~~ member of the board ~~as he~~ that the presiding officer may designate to serve as acting ~~chairman~~ presiding officer may administer oaths and compel the attendance of witnesses.

(3) All meetings of the board ~~shall must~~ be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which ~~shall must~~ be filed in the office of the board and ~~shall be~~ are a public record."

Section 2534. Section 76-15-723, MCA, is amended to read:

"76-15-723. Petition for a variance. (1) ~~Any~~ A qualified elector may file a petition with the board of adjustment alleging that there are great practical difficulties or unnecessary hardship in the way of ~~his~~ the elector carrying out upon ~~his~~ the elector's lands the strict letter of the land use regulations prescribed by ordinance approved by the supervisors and ~~praying~~ asking the board to authorize a variance from the terms of the land use regulations in the application of the regulations to the lands occupied by the petitioner.

(2) Copies of the petition ~~shall~~ must be served by the petitioner upon the ~~chairman~~ presiding officer of the supervisors of the district within which ~~his~~ the petitioner's lands are located and upon the department."

Section 2535. Section 77-1-104, MCA, is amended to read:

"77-1-104. Survey of lands. If the board considers it necessary that any of the lands mentioned in 77-1-102 be surveyed, it ~~shall~~ must have the lands surveyed by the county surveyor of the county in which the lands are located. If there is no county surveyor, if the county surveyor is unable to make the survey, or if the best interests of the state require, the board shall appoint a qualified surveyor to make the surveys. The county surveyor or other surveyor appointed shall make an actual survey ~~thereof~~ establishing four corners of every quarter section and connecting the same with a United States survey and within 30 days after ~~such~~ the survey file with the county clerk and recorder of that county a copy under oath of ~~his~~ the surveyor's field notes and plat and a ~~duly~~ certified copy of ~~his~~ the field notes and plat with the department. For the services required in connection with the survey, the county surveyor or other surveyor appointed is entitled to fees as prescribed in 7-4-2821. ~~Such~~ The fees ~~shall~~ must be paid in the same manner as other expenses of the department."

Section 2536. Section 77-1-111, MCA, is amended to read:

"77-1-111. Court actions. (1) All actions for the recovery of money due under this title or for the cancellation of leases or for the cancellation of certificates of purchase or patents or for the recovery of state lands, actions of forcible entry and detainer, actions for ejectment, and all other actions affecting any state lands ~~shall~~ must be controlled, as to venue, by the provisions of the rules of civil procedure relating to the place of trial of civil actions and ~~shall~~ must be conducted by the attorney general.

(2) When ~~so~~ requested by the attorney general, the county attorney of each county in the state shall represent the state in all foreclosure proceedings, collections of delinquent rentals, actions for trespass on state lands, and in all other state land matters that may arise in ~~his~~ the county attorney's county. The county attorney ~~shall not be~~ is not entitled to charge the state any compensation for ~~such~~ services beyond ~~his~~ the county attorney's regular salary."

Section 2537. Section 77-1-112, MCA, is amended to read:

"77-1-112. Violations classified. (1) Any officer, employee, or representative of the state who directly or indirectly accepts any money or any other valuable thing, except ~~his~~ the officer's, employee's, or representative's regular and lawful compensation, for performing or not performing an official act under the provisions of this title or for modifying the performance ~~thereof~~ of an official act is guilty of a felony and is punishable as provided in 77-1-115.

(2) Any officer, employee, or representative of the state who knowingly and willfully makes any false classification or appraisal of any state land or of any land offered the state for sale or offered as security for a loan from the state or who falsely classifies or scales any timber on state lands or from state lands or any timber in which the state is interested or who knowingly and willfully makes any false report of any ~~such~~ classification or appraisal or scaling is guilty of a felony and is punishable as provided in 77-1-115.

(3) (a) Any officer, employee, or representative of the state who otherwise violates any of the provisions of this title:

(i) is guilty of a felony if the violation results in a loss to the state of \$1,000 or more; or

(ii) is guilty of a misdemeanor if the violation results in a loss to the state of less than \$1,000 or in no pecuniary loss.

(b) The punishment shall be as provided in 77-1-115."

Section 2538. Section 77-1-114, MCA, is amended to read:

"77-1-114. Prosecutions. (1) Whenever an arrest ~~shall be~~ is made for any violation of the provisions of this title or whenever any information of ~~such violations shall be lodged with him,~~ a violation is given to the the county attorney of the county in which this act was committed, ~~must~~ the county attorney shall prosecute the offender or offenders if in ~~his~~ the county attorney's judgment the facts warrant the ~~same~~ prosecution.

(2) If ~~any~~ a county attorney ~~shall fail~~ fails to comply with the provisions of this section, ~~he shall be~~ the county attorney is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$100 or more than \$1,000. Upon ~~his~~ the county attorney's conviction, the district court ~~wherein he~~ in which the county attorney is convicted shall ~~forthwith~~ declare ~~his~~ the county attorney's office vacant and notify the proper appointing power ~~thereof~~. Actions against the county attorney ~~shall~~ must be brought by the attorney general in the name of the state.

(3) The penalties of this section ~~shall~~ also apply to any magistrate with proper authority who refuses or neglects to cause the arrest and prosecution of any person when a complaint under oath of a violation of any of

the provisions of this title has been lodged with ~~him~~ the magistrate."

Section 2539. Section 77-1-115, MCA, is amended to read:

"77-1-115. Punishments. (1) ~~Any~~ An officer, employee, or representative of the state who is found guilty of a felony as defined in 77-1-112 is punishable by imprisonment in the state penitentiary for not less than 1 or more than 10 years, ~~or~~ by a fine ~~which shall neither~~ that may not be less than \$500 ~~nor~~ or less than twice the amount of the loss that resulted to the state through the crime of which ~~he~~ the officer, employee, or representative has been convicted, ~~or by both such imprisonment and fine.~~

(2) ~~Any~~ An officer, employee, or representative of the state who is found guilty of a misdemeanor as defined in 77-1-112 is punishable by imprisonment in a county jail not to exceed 1 year, ~~or~~ by a fine ~~which shall neither~~ that may not be less than \$100 ~~nor~~ or less than twice the amount of the loss that resulted to the state through the crime of which ~~he~~ the officer, employee, or representative has been convicted, ~~or by both such imprisonment and fine.~~"

Section 2540. Section 77-1-201, MCA, is amended to read:

"77-1-201. Board -- meetings and officers. (1) The board shall hold regular meetings at least once each month and may hold special meetings whenever considered necessary upon call of the president or a majority of the members.

(2) Three members of the board constitute a quorum for the transaction of business. The governor is the president of the board; ~~in his~~ In the governor's absence, the lieutenant governor shall preside, and in ~~his~~ the lieutenant governor's absence, the superintendent of public instruction shall preside."

Section 2541. Section 77-1-702, MCA, is amended to read:

"77-1-702. Transfer of records held by secretary of state. ~~By November 1, 1987, the~~ The secretary of state shall transfer all ownership records on file in ~~his~~ the secretary of state's office to the department. The department shall ~~further~~ transfer the records of land held or administered by the department of transportation for highway rights-of-way and maintenance to the department of transportation and any remaining ownership records, other than those of state lands, to the state agency administering the interest or property described in ~~such~~ the records."

Section 2542. Section 77-1-801, MCA, is amended to read:

"77-1-801. (Temporary) Recreational use license required to use state lands for general recreational purposes -- penalty -- exemption. (1) Except as provided in subsection (3), a person 12 years of age or older shall obtain an annual recreational use license pursuant to 77-1-802 to use state lands, as defined in 77-1-101, for general recreational purposes.

(2) Except as provided in subsection (3), a person shall, upon the request of a peace officer or fish and game warden, present for inspection the person's recreational use license.

(3) If the department and the department of fish, wildlife, and parks consent to and sign an agreement for hunting, fishing, and trapping purposes, as provided in 77-1-815, a person is not required to obtain a recreational use license for use of legally accessible state trust land for hunting, fishing, and trapping purposes.

(4) A violator of subsection (1) or (2) is guilty of a misdemeanor and shall be fined not less than \$50 or more than \$500; or be imprisoned in the county jail for not more than 6 months, or both. (Void on occurrence of contingency--sec. 8, Ch. 596, L. 2003.)

77-1-801. (Effective on occurrence of contingency) Recreational use license required to use state lands for general recreational purposes -- penalty. (1) A person 12 years of age or older shall obtain an annual recreational use license pursuant to 77-1-802 to use state lands, as defined in 77-1-101, for general recreational purposes.

(2) A person shall, upon the request of a peace officer or fish and game warden, present for inspection ~~his~~ the person's recreational use license.

(3) A violator of subsection (1) or (2) is guilty of a misdemeanor and shall be fined not less than \$50 or more than \$500; or be imprisoned in the county jail for not more than 6 months, or both."

Section 2543. Section 77-1-805, MCA, is amended to read:

"77-1-805. Liability of state and lessee. (1) The provisions of 70-16-302 that limit the liability of a landowner or ~~his~~ the landowner's tenant for the recreational use of property apply to the state and any lessee of state lands used for general recreational purposes.

(2) The lessee is not responsible for the suppression of or for damages resulting from a fire on ~~his~~ the leased land caused by a general recreational user, except that a lessee who observes a fire caused by a general recreational user shall make reasonable efforts to suppress the fire or report it to the proper firefighting authority."

Section 2544. Section 77-1-806, MCA, is amended to read:

"77-1-806. Prior notification to lessee of recreational use -- trespass -- penalty. (1) If a lessee of

state lands under this part desires to be notified prior to anyone entering upon ~~his~~ the lessee's leasehold, the lessee shall post, at customary access points, signs provided or authorized by the department. The signs must set forth the lessee's or ~~his~~ the lessee's agent's name, address, telephone number, and method of notification. The lessee or ~~his~~ lessee's agent ~~shall make himself~~ must be available to receive notice from recreational users or provide an alternative means for notice as prescribed by rule. When state land is posted, recreational users shall contact and identify themselves to the lessee or ~~his~~ the lessee's agent for the purposes of minimizing impact upon the leasehold interest and learning the specific boundaries of adjacent unfenced private property.

(2) Each recreational user of state lands shall obtain permission of the lessee or ~~his~~ the lessee's agent before entering the adjacent private property owned by the lessee. Entry to private property from adjacent state lands without permission of the landowner or ~~his~~ the lessee's agent is an absolute liability offense. A violator of this subsection is guilty of a misdemeanor and shall be fined not less than \$50 or more than \$500; or imprisoned in the county jail for not more than 6 months, or both.

(3) A person may be found guilty of the offense described in subsection (2) regardless of the absence of fencing or failure to post a notice in accordance with 45-6-201."

Section 2545. Section 77-2-105, MCA, is amended to read:

"77-2-105. Termination of easements. Whenever lands granted for any of the purposes mentioned in 77-2-101(2) ~~shall~~ cease to be used for ~~such~~ those purposes, ~~said~~ the easement ~~shall forthwith terminate~~ terminates upon notice to that effect to the person to whom ~~such~~ the grant was made, served at ~~his~~ the person's ~~last known~~ last-known post-office address."

Section 2546. Section 77-2-315, MCA, is amended to read:

"77-2-315. Participation in irrigation districts -- lien status of land. (1) A purchaser of state lands is ~~hereby~~ authorized and empowered to sign any petition that ~~he~~ the purchaser may desire to sign for the creation of an irrigation district and the inclusion of the land purchased from the state in ~~such~~ the irrigation district and any other petition relating to irrigation districts affecting the land ~~so~~ purchased by ~~him~~ the person from the state. ~~Such~~ The petition or petitions ~~shall~~ have the effect of making all the interest that ~~he~~ the person then has in ~~such~~ the land purchased from the state and all interest ~~which he~~ that the person may subsequently acquire ~~therein in the land~~ subject to the same liens and charges as privately owned lands under ~~such~~ the irrigation district; ~~and if~~ if for any reason ~~his~~ the person's certificate to ~~such~~ the state lands and ~~his~~ the person's rights ~~thereunder should be under~~ the certificate are canceled and ~~later~~ such the certificate ~~be~~ is reinstated or a new certificate is issued, ~~such~~ the

liens and charges ~~shall stand~~ are valid against the interest in ~~such the~~ lands of the holder of ~~such the~~ certificate.

(2) The board for and on behalf of the state of Montana ~~is hereby empowered to~~ may sign a petition for the inclusion of any lands belonging to the state in an irrigation district organized or to be organized for the purpose of cooperating with the United States under the federal reclamation laws or any act of congress relating to reclamation projects and to sign any petition for the execution of a contract between ~~such the~~ district and the United States. The interest of the state in any lands within an irrigation district ~~shall are~~ not be subject to assessment or taxation for any purpose ~~whatever, nor shall and~~ the state ~~be is not~~ liable for the payment of any costs or charges ~~whatever~~ arising from the fact that its lands are included within an irrigation district.

(3) The interest of a purchaser of state lands in the land purchased ~~shall be~~ is subject to the same liens as other real estate; ~~provided, however~~ However, that in the case of sale, only the interest of the purchaser or of the assignee ~~shall may~~ be sold. In the case of any sale under the provisions of this section, including the sale for taxes, the purchaser shall succeed to all the rights of the purchaser from the state under the certificate of purchase and a new certificate of purchase ~~shall must~~ be issued to the person entitled ~~thereto to the certificate~~ upon satisfactory proof being submitted to the board. In the case of sale under execution or court decree, ~~of court~~ ~~such the~~ new certificate of purchase ~~shall may~~ not be issued by the board until the period of redemption from ~~such the~~ sale has expired and the sheriff's deed has been issued. In the case of sale for taxes, the new certificate ~~shall may~~ not be issued until the tax deed has been issued."

Section 2547. Section 77-2-324, MCA, is amended to read:

"77-2-324. Preference to lessee of land. The lessee of the land need not make a higher bid than others, but ~~he shall have~~ the lessee has the option to match the high bid and must be given the preference. If the lessee matches the high bid, bidding must be reopened to all bidders, with the lessee retaining the right of preference to match the ultimate high bid and be awarded the sale."

Section 2548. Section 77-2-329, MCA, is amended to read:

"77-2-329. Terms of payment. (1) ~~Every~~ A purchaser of state land shall pay on the day of sale that portion of the purchase price ~~as he may desire~~ that the purchaser desires, but ~~in no case~~ not less than 10% of the total sales price. ~~In case~~ If the balance on the purchase price is not an exact multiple of \$25, ~~then he~~ the purchaser shall pay ~~such the~~ additional sum ~~as~~ that is necessary to reduce the balance to an even multiple of \$25.

(2) The purchaser shall pay the balance of the purchase price within 30 days. The department may

extend this deadline up to 30 additional days for good cause."

Section 2549. Section 77-2-332, MCA, is amended to read:

"77-2-332. Procedure in case of default. (1) If ~~any a~~ a purchaser or assignee of state land defaults for a period of 30 days or more in the payment of any of the installments due on ~~his~~ the certificate of purchase, the certificate is subject to cancellation. The department shall mail to ~~him~~ the purchaser at ~~his~~ the purchaser's last known last-known post-office address a notice of default and pending cancellation. The notice ~~shall~~ must give ~~him~~ the purchaser 60 additional days from the date of mailing the notice in which to make payment of the delinquent installment or installments with penalty interest.

(2) If ~~he~~ the purchaser fails to make the payment within 60 days, the certificate of purchase ~~shall~~ from that date and without further notice ~~be~~ is void, the duplicate of the certificate in the office of the department ~~shall~~ must be canceled, and the land under the certificate ~~shall revert reverts~~ to and become becomes the property of the state to the same extent as other state lands and ~~shall~~ must be open to lease and sale.

(3) All buildings, fences, and other improvements placed ~~thereon~~ on the land subsequent to the date of execution of the certificate of purchase ~~shall~~ must be and remain the property of the purchaser named in the certificate of purchase or of ~~his~~ the purchaser's heirs, assigns, or devisees and may be removed from the land at any time within 90 days after the date of the cancellation. If the buildings, fences, and other improvements are not removed prior to the expiration of the 90-day period, they become the property of the state.

(4) In case of cancellation of certificate of purchase or surrender of certificate of purchase and ~~where~~ when the land is again open to lease, the former lessee has the prior right to lease the tract at the existing rate or at the rate set by competitive bidding if ~~such~~ bidding occurs."

Section 2550. Section 77-2-333, MCA, is amended to read:

"77-2-333. Reinstatement of canceled certificates of purchase. (1) In all cases ~~where~~ in which a certificate of purchase of state lands has been canceled and annulled as provided by law and the lands under ~~such~~ the certificate have not been resold to another purchaser, the board may in its discretion reinstate the canceled certificate upon:

(a) proper application made in writing by the original purchaser or ~~his~~ the original purchaser's heirs, assigns, or devisees, filed within 1 year and 6 months from ~~such~~ the cancellation;

(b) payment of all delinquent installments of principal and interest on the certificate, together with penalty interest at the rate of 6% ~~per annum~~ a year upon all ~~such~~ delinquent installments from the date due until the date

of actual payment; and

(c) the furnishing of proof from the county treasurer showing that there are no tax liens against the land.

(2) This reinstatement ~~shall~~ does not have the effect of canceling any lease that the state may have issued on the land or affecting any of the provisions of ~~said~~ the lease."

Section 2551. Section 77-2-334, MCA, is amended to read:

"77-2-334. Assignment of certificate. Certificates of purchase may be assigned to a citizen of the United States or to a person who has declared ~~his~~ an intention to become a citizen or to a corporation organized under the laws of this state. ~~Such~~ These assignments ~~shall~~ must be made on forms prescribed by the department, ~~shall~~ must be duly acknowledged as other conveyances of real estate, and ~~shall~~ must be executed in duplicate, with one copy to be filed and retained in the office of the department and one copy to be retained by the assignee. A person is not qualified to receive an assignment if the lands ~~he~~ that the person has already purchased from the state, together with the lands included in the assignment, exceed one section. The assignee must in all respects possess the same qualifications as an original purchaser."

Section 2552. Section 77-2-335, MCA, is amended to read:

"77-2-335. Lost certificate. If a certificate of purchase to state ~~lands~~ land is lost or is wrongfully withheld by any person from the owner ~~thereof~~ of the land, the rightful owner may apply to the board for the issuance of a substitute certificate. This application ~~shall~~ must be accompanied by an affidavit from the owner of the certificate setting forth the facts in regard to the loss or unlawful withholding of the certificate and by a certificate from the county clerk and recorder of the county in which the land is located showing all instruments of record in ~~his~~ the clerk and recorder's office affecting the title to the land under the certificate. The board shall issue a substitute certificate of purchase to the applicant if in the judgment of the board the facts warrant its issue."

Section 2553. Section 77-2-336, MCA, is amended to read:

"77-2-336. Lien on improvements and crops for amount due state. (1) The state has a lien prior and superior to all other liens, except ~~threshermen's~~ thresher's liens and seed liens as specified in 71-3-701 and 71-3-801, ~~which~~ that have priority, but only for the aggregate amount of the indebtedness then existing, including any advances ~~heretofore~~ made, interest due, and other charges, as evidenced by the original loan contract and indebtedness ~~thereafter~~ accumulating on ~~such~~ that basis, exclusive of any other future advances originally contemplated. This lien is upon all buildings, structures, fences, and ~~all~~ other improvements upon the ~~lands~~ so

land sold and upon all crops growing upon any of ~~these lands~~ the land and also upon ~~such~~ crops after they have been separated from the ~~lands~~ land for all due and delinquent installments of principal and interest and penalty interest and taxes under the certificate of purchase and also for all installments becoming due during the calendar year in which the crop is harvested, and this lien is ~~hereby~~ expressly reserved.

(2) Any person purchasing or otherwise acquiring the improvements or crops or any part ~~thereof~~ of the improvements or crops takes them subject to the lien.

(3) Any representative of the department or the sheriff of the county in which the land is located or ~~his~~ the sheriff's deputy may demand of the purchaser or ~~his~~ the purchaser's agent payment of the amounts due the state, and if they are not paid upon demand, the officer making the demand or any representative of the department may immediately seize the improvements and crops; and, upon giving 3 days' notice, sell and dispose of, either at private or public sale, sufficient of the crops or improvements or of both to pay the amounts due the state, together with cost and expenses of seizure and sale."

Section 2554. Section 77-3-102, MCA, is amended to read:

"77-3-102. Mining leases authorized. (1) The board may, in its discretion; and subject to the other provisions of this part, lease state lands, including the beds of navigable streams and the beds of navigable bodies of water and the reserved mineral rights of the state in lands sold or leased by the state, to any person, association, or corporation; for the purpose of prospecting for or mining metalliferous minerals or gems.

(2) These leases may be for a period of time determined by the board, subject to limitations contained in the grants by which the state has acquired title to lands or mineral rights so leased.

(3) Leases issued under this part ~~shall~~ must give the lessee, so long as ~~he~~ the lessee complies with the terms and conditions of the lease, the exclusive right of possession of the lands or mineral rights leased, subject to any reservations contained in the leases.

(4) ~~In short the board in~~ In making the leases, the board may exercise business discretion, ~~so~~ as long as this part is not violated."

Section 2555. Section 77-3-104, MCA, is amended to read:

"77-3-104. Notice of lease or permit permit or lease approval. Upon the approval of an application for a prospecting permit or a mining lease under this part, the department shall promptly give written notice, by ordinary mail, to the ~~lessee or permittee~~ permittee or lessee and to any holder of an agricultural or grazing lease embracing the same land or to any holder of a certificate of purchase or patent embracing the same land. The

notice ~~shall~~ must be addressed to the permittee, mining lessee, agricultural or grazing lessee, purchaser, or patentee at ~~his~~ the person's last known last-known post-office address."

Section 2556. Section 77-3-115, MCA, is amended to read:

"77-3-115. Lease provisions. (1) A lease may contain reasonable provisions for preliminary prospecting periods and ~~shall~~ must contain reasonable requirements for the prosecution of work during the prospecting period, (if any), and for the prosecution of mining after the prospecting period.

(2) ~~It shall~~ The lease may provide for the payment of rentals in conjunction with the work requirements or may prescribe cash rentals as an alternative or otherwise as the board considers best.

(3) ~~It shall~~ The lease must specify the term of the lease, the royalty to be paid, reasonable forfeiture provisions, and reasonable terms under which the lessee may, within a time limited in the lease, remove property placed upon the leased lands by ~~him~~ the lessee in the event of the termination of the lease by forfeiture or by lapse of time.

(4) ~~It~~ The lease may ~~also~~ contain other provisions that the board and the lessee agree upon; that are not inconsistent with this part."

Section 2557. Section 77-3-307, MCA, is amended to read:

"77-3-307. Improvements of former lessee. (1) When a coal mining lease is applied for on land where mining operations have been carried on by a former lessee and there are surface or underground improvements on the land used at the former operations, disposition ~~shall~~ must be made of the improvements satisfactory to the board before a new lease is issued. If the owner of the improvements desires to sell the ~~same~~ the improvements to the new lessee, ~~then~~ the new lessee shall pay ~~him~~ the owner the reasonable value ~~thereof~~ of the improvements as far as they are suitable for the new mining operations. If they fail to agree on the value of ~~such~~ the improvements, ~~then~~ such the value ~~shall~~ must be ascertained and fixed as provided in 77-6-306.

(2) Before a new lease is issued, the applicant shall show to the satisfaction of the board that ~~he~~ the applicant has paid the owner for the improvements as agreed on between them or as fixed ~~by the aforesaid officers or officer~~ under the provisions of 77-6-306, or that ~~he~~ the applicant has tendered payment as ~~so~~ fixed, or that the owner desires to remove ~~his~~ the owner's improvements."

Section 2558. Section 77-3-409, MCA, is amended to read:

"77-3-409. Misconduct of officers in relation to oil and gas leases. (1) Any officer, employee, or

representative of the state who directly or indirectly accepts any money or any other valuable thing, except ~~his~~ the officer's, employee's, or representative's regular and lawful compensation, for performing or not performing an official act under the provisions of this part or for modifying the performance ~~thereof of an official act~~ shall be ~~is~~ guilty of a felony.

(2) Any officer, employee, or representative of the state who knowingly and willfully makes any false classification or appraisal of any state land or interest of the state ~~therein in the land~~ or of any oil and gas deposits in which the state is interested or who knowingly and willfully makes any false report of any ~~such~~ classification or appraisal ~~shall be~~ is guilty of a felony."

Section 2559. Section 77-3-426, MCA, is amended to read:

"77-3-426. Lessee to prevent waste. Oil and gas leases issued under the provisions of this part ~~shall~~ must all be subject to the conditions that the lessee in conducting ~~his~~ explorations and mining or drilling operations shall use all reasonable precautions to prevent waste of oil or gas developed in the land or the entrance of water through wells drilled by ~~him~~ the lessee to the oil or gas sands or oil or gas bearing strata to the destruction or injury of the oil or gas deposits. Violations of any of these conditions ~~shall constitute~~ constitutes grounds for the forfeiture of the lease after a hearing had thereon on the violations before the board."

Section 2560. Section 77-4-108, MCA, is amended to read:

"77-4-108. Water rights in connection with geothermal development. If any geothermal development located on state land requires the utilization of water, the lessee may, at any time prior to 1 year before the expiration of ~~his~~ the lease, make application to the board for permission to secure a water right to the land under ~~his~~ the lease. ~~Such~~ The application ~~shall~~ must be in writing, show the permanency of the water supply, and give the estimated cost of utilizing ~~such~~ the water resources. If the proposed plan meets with the approval of the board, permission ~~shall~~ must be granted to the lessee to secure the desired water right for the land. ~~Such~~ The right ~~shall~~ must be secured in accordance with Title 85, chapter 2, and ~~shall~~ must be filed in the name of the state. Existing water rights purchased by the geothermal lessee ~~shall be~~ are the property of the lessee."

Section 2561. Section 77-4-121, MCA, is amended to read:

"77-4-121. Provisions of the lease. (1) A lease issued by the board gives the lessee, so long as ~~he~~ the lessee complies with the terms and conditions of the lease, the exclusive right of possession of the lands or interests leased, subject to conditions contained in the lease.

(2) In ~~every~~ a geothermal resource lease granted there is reserved to this state the right to sell, lease, or otherwise dispose of the surface of the lands covered ~~thereby by the lease~~ subject to the rights and privileges granted the lessee under the terms of the lease.

(3) ~~Every~~ A lease ~~shall~~ must specify the rental and royalty to be paid, reasonable forfeiture provisions, and reasonable terms under which the lessee may, within a specified time, remove property placed on the leased lands upon the termination of the lease by forfeiture or by lapse of time.

(4) ~~Furthermore, the~~ The lease may contain other provisions that the board and the lessee agree upon; ~~provided that the additional terms~~ are not inconsistent with this part."

Section 2562. Section 77-4-128, MCA, is amended to read:

"77-4-128. Permission for and disposition of improvements. (1) A geothermal lessee of state lands has the right to place upon the leased lands a reasonable amount of improvements, provided that ~~such~~ the improvements are directly related to the purpose of the lease.

(2) Whenever another person becomes the geothermal lessee, ~~he~~ the person shall pay the former lessee the reasonable value of ~~such~~ the improvements at the time the new lessee takes possession ~~thereof~~ of the improvements.

(3) In determining the value of these improvements, the original cost, the present condition, and the ~~suitableness~~ suitability of the improvements for the uses ordinarily made of geothermal resources ~~shall~~ must be considered.

(4) The former lessee may, ~~however,~~ remove or dispose of the movable improvements from the land within 60 days from the expiration of ~~his~~ the former lessee's lease except for the well casing and other equipment necessary for the preservation of any geothermal well. If not removed within 60 days, improvements ~~shall~~ become the property of the state unless the board ~~shall grant~~ grants additional time for the removal ~~thereof~~ of the improvements. Before a lease is issued to the new lessee, ~~he~~ the new lessee shall show that ~~he~~ the new lessee has paid the former lessee the value of the improvements as agreed upon by them or as fixed and determined under 77-4-129, that ~~he~~ the new lessee has offered to pay the value of the improvements as ~~so~~ fixed and determined, or that the former lessee elects to remove the improvements."

Section 2563. Section 77-4-129, MCA, is amended to read:

"77-4-129. Procedure to fix value of improvements. (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed ~~thereon~~ on the land desires to sell these

improvements to the new lessee and they are unable to agree on the value ~~thereof~~ of the improvements, the value ~~shall~~ must be ascertained and fixed by three arbitrators, one of whom ~~shall~~ must be appointed by the owner of the improvements, one by the new lessee, and the third by the two arbitrators ~~so~~ appointed. The reasonable compensation that the arbitrators may fix ~~shall~~ must be paid in equal shares by the owner of the improvements and the new lessee. The value of the improvements ~~so~~ as ascertained and fixed is binding on both parties.

(2) If either party is dissatisfied with the valuation ~~so~~ as fixed, ~~he~~ the party may within 10 days appeal ~~from their~~ the arbitrators' decision to the department ~~which~~ and the department shall examine the improvements and make the final decision as to the value of the improvements. The department shall apportion the actual cost of the reexamination to the owner and the new lessee as justice may require. The value of the improvements ~~shall~~ must be ascertained and fixed as provided in 77-4-128."

Section 2564. Section 77-6-108, MCA, is amended to read:

"77-6-108. Who may lease. ~~No~~ A person may not lease state lands, except one who is the head of a family, unless ~~he~~ the person has attained ~~the age of~~ 18 years of age. ~~Any such~~ An eligible person and ~~any~~ an association, company, or corporation authorized to hold lands under lease may lease state lands and may hold more than one lease to state lands."

Section 2565. Section 77-6-112, MCA, is amended to read:

"77-6-112. Liens on crops and improvements. (1) The state has a lien upon all crops growing upon any of its ~~lands~~ land and upon the crops after they have been separated from the ~~lands~~ land for any rentals and penalties due or delinquent under the lease on the ~~lands~~ land or becoming due during the calendar year in which the crops are harvested, for any year or part of a year that the land has been held or used by the lessee. This lien applies to all buildings, structures, fences, and ~~all~~ other improvements and is prior and superior to all other liens, except ~~threshermen's~~ thresher's liens and seed liens specified in 71-3-701 and 71-3-801, which have priority, but only for the aggregate amount of the indebtedness then existing, including any advances ~~theretofore~~ made, interest due and other charges as evidenced by the original loan-contract, and indebtedness ~~thereafter~~ accumulating ~~on such basis~~, exclusive of any other future advances originally contemplated.

(2) Any person acquiring any of these crops or improvements takes them subject to this lien. The department or the sheriff of the county in which the land is located may demand of the lessee payment of the amounts due the state, and if they are not paid upon demand, the officer making the demand or the department may seize and sell, either at a private or public sale, upon giving notice for not less than 3 days of the sale,

sufficient of those crops or improvements, or of both, to pay the amounts due the state, together with costs and expenses of seizure and sale. These provisions relating to liens on crops and improvements ~~shall~~ must be embodied in all leases for agricultural and grazing lands and for town, city, or other lots."

Section 2566. Section 77-6-115, MCA, is amended to read:

"77-6-115. Acquisition of water right by lessee. (1) The lessee of state lands may at any time prior to 1 year before the expiration of ~~his~~ the lease make application to the board for permission to secure a water right to the land under ~~his~~ the lease. ~~Such~~ The application ~~shall~~ must be in writing; ~~shall~~ and must show how much of the land can be irrigated, the permanency of the water supply, and the probable cost of placing the land under irrigation. If the proposed plan meets with the approval of the board, permission ~~shall~~ must be granted the lessee to secure the desired water right for the land and to place the ~~same~~ land under irrigation.

(2) If ~~such~~ the water right becomes a permanent and valuable improvement, then in case of the sale or lease of the ~~lands~~ land to other parties, the former lessee ~~shall be~~ is entitled to receive compensation in the amount of the reasonable value ~~thereof~~ of the water right, as in the case of other improvements, from the new lessee or the purchaser.

(3) These provisions ~~shall~~ may not be ~~so~~ construed ~~as~~ to make the state liable to the lessee for the payment of the cost or value of ~~such~~ the irrigation improvements."

Section 2567. Section 77-6-201, MCA, is amended to read:

"77-6-201. Appraisal of grazing lands. (1) The department shall appraise the grazing lands owned by the state as to their animal-unit-month carrying capacity and make and preserve records ~~thereof~~ of carrying capacity in its office and from time to time reexamine these lands as to their animal-unit-month carrying capacity ~~so as in order~~ to keep the records ~~thereof~~ in its office reasonably accurate.

(2) In appraising these grazing lands, the following factors ~~shall~~ must be taken into consideration:

- (a) inventory of the forage resources~~==~~, including kind, amount, and location of vegetation;
- (b) accessibility and usability of this forage resource as influenced by topography, availability of stock water, and season of usability;
- (c) condition of soils~~==~~, including the erosion situation;
- (d) other and related resources such as timber, game animals, and need for watershed protection;
- (e) record of needed improvements and facilities~~==~~, including fuel and stock water, revegetation, rodent control, trails, fences, and the like;

- (f) pertinent facts and figures submitted by ~~stockmen~~ stockgrowers living in the area and directors of state grazing districts including the land or in its vicinity;
- (g) carrying capacity set for similar land in a state grazing district in which the land is situated."

Section 2568. Section 77-6-209, MCA, is amended to read:

"77-6-209. Change from grazing lease to agricultural lease. (1) When land is leased for grazing purposes and the lessee desires to cultivate any part of the land, ~~he~~ the lessee shall, before doing any ~~such~~ cultivation, make application to the department stating how much land ~~he~~ the lessee desires to cultivate and showing the location in the section of the land and agree that for the remainder of the term of the lease the annual rental ~~shall~~ will be at the rate of the original lease until ~~such~~ the time as ~~that~~ the first crop is harvested from the cultivated portion of the lease. At the time of the first harvest, the lease ~~shall~~ must be at the original rate for that portion remaining as grazing land plus the crop share rental for that portion cultivated. If any person cultivates lands leased for grazing purposes without first securing the right to do so under this section, the department shall either cancel the lease, subject to the appeal procedure provided in 77-6-211, or require the lessee to pay twice the regular agricultural rental on the land ~~so~~ cultivated in addition to the grazing rental.

- (2) The provisions of this section ~~shall~~ must be incorporated in every lease."

Section 2569. Section 77-6-212, MCA, is amended to read:

"77-6-212. Loss of preference right -- cancellation of lease -- subleasing -- pasturing agreements.

(1) Except as provided in subsections (3) and (4), a lessee of state land classed as agricultural or grazing land may not exercise the preference right provided in 77-6-205 if ~~he~~ the lessee subleases the land for more than 2 years in the term of the lease.

(2) The department shall cancel a lease of state agricultural or grazing land if the lessee subleases the land for more than 3 years during the term of the lease; unless the sublease is made between members of a family as provided in subsection (3).

(3) A lessee under subsection (1) or (2) may sublease the land for a period of not more than 5 years without losing the preference right or the lease to state land if, during the term of the lease, the land is subleased only to a spouse, son, daughter, adopted child, or sibling of the lessee.

(4) The lessee does not lose the preference right or right to lease because of subleasing as provided under this section if:

- (a) the sublease is one-third or less acres of the lease; or

(b) the sublease is considered to be a pasturing agreement and is approved in writing by the department prior to the initiation of the agreement.

(5) For purposes of this section, a sublease may not be considered a pasturing agreement unless the lessee personally retains management and physical control of the land and livestock. "Management" ~~means~~ includes but is not limited to:

(a) providing all costs for improvements, land maintenance, and range renovation, if range renovation is approved by the department;

(b) making all decisions regarding rotation or other placement of livestock on state land;

(c) making all decisions regarding turn-in and turn-out dates of the livestock on state land; and

(d) making all decisions regarding proper range management, including placement of water, fencing, and salt.

(6) A lessee of state land classified as agricultural or grazing land ~~shall lose~~ loses the preference right provided in 77-6-205 upon conviction of a felony offense involving a dangerous drug, as defined in Title 50, chapter 32, and involving the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, or concealing of a dangerous drug on any portion of the unit. When a state land lease is held by an association, company, or corporation, conviction of a member of the association, company, or corporation under this subsection does not result in loss of lease preference unless it appears that the operator, manager, or family in control of the association, company, or corporation is a consenting party or privy to the violation of this subsection."

Section 2570. Section 77-6-401, MCA, is amended to read:

"77-6-401. Pledge or mortgage of leasehold interest in state lands. Any lessee of a grazing or agricultural lease of state lands is ~~hereby~~ authorized to pledge ~~said the~~ the lease or mortgage ~~his the~~ the leasehold interest in ~~said lands~~ the lands."

Section 2571. Section 80-2-104, MCA, is amended to read:

"80-2-104. Powers of department -- claims and obligations -- property acquired at foreclosure.

(1) The department may:

(a) collect, compromise, adjust, or cancel claims and obligations arising out of or administered under this part or under any mortgage, lease, contract, or agreement entered into or administered under this part and, if necessary, pursue them to final collection in any court having jurisdiction;

(b) bid for and purchase at any execution, foreclosure, or other sale or otherwise acquire property upon which the department has a lien by reason of a judgment or execution or ~~which that~~ is pledged, mortgaged, or conveyed or ~~which that~~ otherwise secures any loan or other indebtedness owing to or acquired by the department under this part;

(c) accept title to any property ~~so~~ purchased or acquired, operate or lease the property for a period necessary to protect the investment, and sell or otherwise dispose of the property in a manner consistent with this part.

(2) The authority granted to the department in this section may be delegated to the secretary of agriculture with respect to funds or assets authorized to be administered and used by ~~him~~ the secretary of agriculture under agreements entered into under 80-2-102."

Section 2572. Section 80-2-202, MCA, is amended to read:

"80-2-202. Compensation of ~~chairman~~ presiding officer and officers. (1) The appointed members of the board of hail insurance ~~shall~~ must receive a per diem of \$25 for each day they are engaged in the transaction of official business.

(2) All board members and employees ~~shall~~ must be allowed expenses as provided in 2-18-501 through 2-18-503.

(3) All other public officials specified in this chapter shall perform the duties relative to hail insurance without other compensation than that allowed by law."

Section 2573. Section 80-2-241, MCA, is amended to read:

"80-2-241. Report of losses. All losses by hail to crops insured under this part ~~shall~~ must be reported within 14 days ~~thereafter~~ after the loss by the owner of ~~such the~~ such crops; ~~his or by the owner's~~ agent or attorney; to the board of hail insurance, ~~which~~ The board shall require the claimant to make a statement of the losses sustained, the cause ~~thereof~~ of the losses, and ~~such~~ such other information ~~as that~~ that the board may require on the forms to be provided for ~~such that~~ such purpose. If a loss is reported more than 14 days after it occurs, the board shall charge the claimant for all costs incurred in making the adjustment."

Section 2574. Section 80-2-243, MCA, is amended to read:

"80-2-243. Disputed appraisal. (1) ~~In case~~ If the party that has sustained the loss is dissatisfied with and refuses to accept the adjustment made by the official appraiser, ~~then he shall have~~ the party has the right

to appeal to the board of hail insurance. ~~He~~ The party shall make ~~such the~~ appeal by ~~registered or certified mail~~ within 10 days after receiving the adjustment offer of the board in writing. Also the board may require the posting of a cash bond of \$25 with the request for reappraisal of the first adjustment. ~~In cases where~~ If the board requires the posting of the \$25 bond, the board may retain it if ~~no an~~ increase is not allowed. If an increase is obtained, the board ~~will~~ shall return the bond to the claimant.

(2) ~~In case~~ If the adjuster who makes the second appraisal fails to secure an agreement, the claimant may ~~at his option~~ submit the matter to arbitration as ~~herein~~ provided in this subsection or sue the board in the district court of the county where the loss occurred, within 90 days from the date of receipt of written notice of the second appraisal. ~~Such~~ The actions ~~shall~~ must be trials de novo and the Montana Rules of Civil Procedure ~~shall~~ apply. ~~Where any~~ If a claimant demands arbitration, ~~he~~ the claimant shall, if required by the board, furnish a cash bond to the board in the sum of \$50, which ~~shall~~ must accompany ~~his~~ the application. If there is not sufficient allowance made to any claimant after arbitration to cover the cost of arbitration without the use of the \$50 bond, ~~then~~ the board may use a part or all of ~~said the~~ cash bond. ~~In cases where~~ If the claimant secures an increase, the bond ~~shall~~ must be promptly returned to the claimant. If the claimant elects to submit the matter to arbitration, ~~he~~ the claimant shall then appoint one disinterested person as appraiser, ~~and~~ the official appraiser shall appoint another person as appraiser, ~~and~~ the two shall select a third disinterested person, ~~and~~ the three shall then proceed to adjust the loss in the same manner as specified in 80-2-242. The judgment of the majority ~~shall be~~ is the judgment of ~~said the~~ appraisers and ~~shall be~~ is binding upon both parties as the final determination of ~~said the~~ the loss.

(3) (a) If the insured does not recover a greater sum than allowed by the official appraiser in the first instance, ~~he~~ the insured shall pay the expenses of the three appraisers and their witnesses in making ~~said the~~ adjustment, but if ~~he~~ the insured is awarded a larger sum, ~~then the same shall~~ expenses must be paid by the board.

(b) If the insured ~~shall be~~ is required to pay the expenses of ~~such the~~ reappraisal as ~~above~~ provided in subsection (3)(a), the board is ~~hereby authorized to~~ may deduct the amount of ~~such the~~ expenses from the amount allowed ~~said the~~ insured before making settlement for ~~said the~~ loss.

(4) The board shall examine all reports of appraisers and verify the ~~same~~ reports and adjust all losses and for ~~such those~~ purposes may order hearings, subpoena witnesses, conduct examinations, and do all things necessary to secure a fair and impartial appraisal of losses by hail."

Section 2575. Section 80-4-406, MCA, is amended to read:

"80-4-406. Appointment by nonresident licensee of agent to receive process. A nonresident applying for a license under this chapter shall file a written power of attorney, designating the secretary of state as ~~his~~ the nonresident's agent upon whom service of process may be had if legal action is brought against the nonresident. A nonresident who has ~~a duty an~~ appointed resident agent upon whom legal process may be served as provided by law is not required to designate the secretary of state as ~~his~~ the nonresident's agent for service of process. The department must be furnished a copy of the designation of the resident agent, ~~which and the~~ copy shall must be certified by the secretary of state."

Section 2576. Section 80-4-424, MCA, is amended to read:

"80-4-424. Director's authority -- investigative hearing. The director may upon ~~his~~ the director's own motion, whenever ~~he~~ the director has reason to believe a violation has occurred or upon verified complaint of any person in writing, investigate the actions of any person and, if ~~he~~ the director finds probable cause, shall notify the person that ~~he must~~ the person shall appear for an investigative hearing before the director 20 days from receipt of written notice."

Section 2577. Section 80-4-428, MCA, is amended to read:

"80-4-428. Penalty for operating without a license -- misrepresentation. (1) A person acting as a warehouse operator or a commodity dealer without a license or in any way representing by action or words that ~~he~~ the person is a warehouse operator or a commodity dealer when not ~~so~~ licensed violates the provisions of Title 80, chapter 4, parts 5 and 6 ~~of this chapter~~, is guilty of a felony; and is punishable by imprisonment for not more than 10 years or by a fine of not more than \$10,000, or both.

(2) A person who issues or aids in the issuance of a fraudulent receipt for any commodity is guilty of a felony and is punishable by imprisonment for not more than 10 years or by a fine of not more than \$10,000, or both.

(3) A person who knowingly submits false information to or who knowingly withholds information from the department when that information is required to be submitted is guilty of a felony."

Section 2578. Section 80-4-430, MCA, is amended to read:

"80-4-430. Director's enforcement action. ~~Nothing in parts~~ Title 80, chapter 4, parts 4 through 7, of this chapter may not be construed to require the director or ~~his~~ the director's authorized representative to report for prosecution or for the institution of civil action a violation if ~~he~~ the director or the representative believes that

the public interest will best be served by a suitable warning."

Section 2579. Section 80-4-504, MCA, is amended to read:

"80-4-504. Bond of applicant for license -- additional bond -- additional obligations. (1) Each applicant for a warehouse operator's license shall file a bond or its equivalent, as established by department rule, with the department. The bond must be in ~~such~~ the form and must contain ~~such~~ the terms and conditions ~~as that~~ the department may prescribe by rule to carry out the purpose of ~~this section and 80-4-505~~ and this section.

(2) The department may demand an additional bond if the nature or volume of the business conducted by the warehouse operator warrants an increase.

(3) The warehouse operator may give a single bond to cover all warehouses operated by ~~him~~ the operator.

(4) Any changes in the capacity of a warehouse or installation of any new warehouse involving a change in the bond liability under 80-4-505 must be reported in writing to the director, and an appropriate bond must be filed prior to the operation ~~thereof~~ of the warehouse or installation."

Section 2580. Section 80-4-506, MCA, is amended to read:

"80-4-506. Net asset requirements. (1) Each licensee or applicant for a license shall maintain, above all exemptions and liabilities, total net assets liable for the payment of any indebtedness arising from the conduct of the warehouse or warehouses of at least 40 cents per hundredweight of all agricultural commodities that ~~his~~ the licensee's or applicant's warehouse or warehouses can accommodate.

(2) ~~No~~ A person may not be licensed as a warehouse operator unless ~~he~~ the person has and maintains allowable net assets of at least \$10,000.

(3) Assets must be valued at original cost less depreciation, except that upon written request filed with the department, the director may allow asset valuations in accordance with a competent appraisal.

(4) In determining total net assets, credit may be given for insurable property, such as buildings, machinery, equipment, and merchandise inventory, only to the extent that ~~such~~ the property is protected by insurance against loss or damage by fire. The insurance must be in the form of lawful policies issued by one or more insurance companies authorized to do business and subject to service of process in suits brought in this state.

(5) If a warehouse operator is licensed or applies for licenses to operate two or more warehouses, the maximum number of hundredweight ~~which~~ that all ~~such~~ warehouses will accommodate must be considered in

determining whether the warehouse operator meets the net asset requirements specified in this section."

Section 2581. Section 80-4-521, MCA, is amended to read:

"80-4-521. Duties of warehouse operator -- content of records. (1) Each warehouse operator shall maintain in a safe place current and complete records at all times with respect to all agricultural commodities stored, conditioned, handled, or shipped by ~~him~~ the operator, including agricultural commodities owned by ~~him~~ the operator. ~~Such~~ The records must include but are not limited to a daily position record, showing the total quantity of each kind and class of agricultural commodity received and loaded out and the amount remaining in storage at the close of each business day and the warehouse operator's total storage obligations for each kind and class of agricultural commodity at the close of each business day.

(2) ~~Every~~ Each warehouse operator purchasing any agricultural commodity from a depositor ~~thereof~~ shall promptly make and keep for 5 years a correct record showing in detail the following information:

- (a) the name and address of the depositor;
- (b) the date purchased;
- (c) the terms of the sale; and
- (d) the quality and quantity purchased by the warehouse operator and, ~~where~~ when applicable, the dockage, tare, grade, size, and net weight."

Section 2582. Section 80-4-522, MCA, is amended to read:

"80-4-522. Schedule of charges -- posting. (1) Before a license to conduct a warehouse is granted, the warehouse operator shall file with the director a copy of the schedule of charges for storage and other services. The schedule must be posted in a conspicuous place in ~~his~~ the warehouse.

(2) All charges made by ~~any~~ a warehouse operator for the handling and storage of agricultural commodities must be just and reasonable. However, the director may, upon the complaint of any person or upon ~~his~~ the director's own motion, hold a public hearing and may declare any existing charges for handling or storage of any agricultural commodity to be unreasonable or unjust. After the hearing, the director shall determine and order what is a just and reasonable charge to be imposed or enforced in place of that found to be unreasonable or unjust.

(3) Failure to file and post scheduled charges for the current year will keep in full force the most recently posted and filed schedule rates.

(4) In all cases, the producers ~~will~~ must receive the first 15 days of storage without charge."

Section 2583. Section 80-4-523, MCA, is amended to read:

"80-4-523. Required receipt of agricultural commodities according to capacity. A warehouse operator shall ~~shall~~ must receive for storage, conditioning, handling, or shipment without discrimination of any kind, so far as the capacity of ~~his~~ the operator's warehouse will permit, all agricultural commodities tendered ~~him~~ to the operator in the usual course of business in suitable condition for storage. However, a warehouse operator may not be compelled to accept and hold agricultural commodities for storage in ~~such~~ quantities ~~as to that~~ block ~~his~~ the operator's regular cash agricultural commodity business. A warehouse operator may not be required to accept agricultural commodities for storage in excess of working capacity. However, ~~his~~ the operator's appointment of space may be modified by rule upon proof that ~~such~~ the appointment operates to the disadvantage of either the public or the warehouse operator."

Section 2584. Section 80-4-524, MCA, is amended to read:

"80-4-524. Discrimination in charge by warehouse operator prohibited. A warehouse operator may not directly or indirectly, by a special charge, rebate, drawback, or other device, collect from any person a greater or lesser compensation for any service rendered in the storage, conditioning, handling, or shipment of agricultural commodities than ~~he~~ the operator collects from any other person for a similar circumstance or condition. A warehouse operator may not make or give any advantage to any person, company, or corporation or subject any person, company, or corporation to any undue or unreasonable prejudice or disadvantage."

Section 2585. Section 80-4-529, MCA, is amended to read:

"80-4-529. Partial withdrawal of agricultural commodities -- adjustment or substitution of receipt -- duties of warehouse operator. When partial withdrawal of ~~his~~ a depositor's agricultural commodity is made by a depositor, the warehouse operator shall make an appropriate notation ~~thereof~~ on the depositor's warehouse receipt or claim or shall cancel and replace it with a warehouse receipt showing the amount of the depositor's agricultural commodity remaining in the warehouse. The warehouse operator is liable for the redelivery of all agricultural commodities specified on all outstanding warehouse receipts."

Section 2586. Section 80-4-530, MCA, is amended to read:

"80-4-530. Shipment of stored grain to a terminal grain warehouse outside ~~the~~ state. (1) Warehouse receipts or signed agreements from the owners of grain, on a form approved by the department and in an amount equal to the number of bushels the warehouse operator has in a terminal grain warehouse outside

the state, are required for all grain shipped out of state by a warehouse operator.

(2) Warehouse receipts covering grain in terminal grain warehouses outside the state must have the words "Owner waives redelivery at point of origin of grain represented by this receipt" printed or stamped on the back.

(3) Waivers or agreements to accept terminal warehouse receipts must be signed in triplicate by the owner of the grain or ~~his~~ the owner's agent and by ~~a duty an~~ an authorized representative of the warehouse, with:

- (a) the original to be mailed to the department;
- (b) the duplicate copy to be retained by the warehouse operator; and
- (c) the triplicate copy to be given to the holder of the warehouse receipt.

(4) All grain must be held in bonded and approved terminal warehouses, fully insured for the benefit of the holder of Montana warehouse receipts.

(5) ~~No grain~~ Grain held in terminal warehouses is not subject to any lien, mortgage, or encumbrance."

Section 2587. Section 80-4-537, MCA, is amended to read:

"80-4-537. Examination of stored agricultural commodities. A department inspector may examine at any reasonable time during ordinary business hours any stored agricultural commodity and all parts of any warehouse, ~~provided if~~ if the warehouse or the agricultural commodities stored ~~therein~~ in the warehouse are not endangered by ~~such~~ the inspections. ~~Every~~ Each warehouse operator or ~~his~~ the operator's agent shall furnish safe and reasonable access to facilities for ~~such~~ the examination."

Section 2588. Section 80-4-539, MCA, is amended to read:

"80-4-539. Inspection by the department. (1) The department may investigate any warehouse operator who has applied for or who had previously been issued a license and may inspect ~~his~~ the operator's warehouse for purposes of determining compliance with this part and rules of the department.

(2) The department may investigate any warehouse operator or inspect any warehouse that it has reasonable cause to believe is operating in violation of this part and rules of the department."

Section 2589. Section 80-4-605, MCA, is amended to read:

"80-4-605. Posting of license. The commodity dealer's license must be posted in a conspicuous location at ~~his~~ the dealer's place of business. A duplicate commodity dealer's license must be posted at each location at which records are maintained for transactions of the commodity dealer and also within each truck

operated by ~~him~~ the dealer in the state."

Section 2590. Section 80-6-102, MCA, is amended to read:

"80-6-102. Registration. (1) A person who owns or possesses an apiary in the state shall, before April 1 each year, register the apiary. There are four classes of apiary registration. The conditions under which the department may issue certificates of registration for each class are specified in 80-6-111 through 80-6-115.

(2) Applications ~~shall~~ must be made to the department for registration application blanks.

(3) Registration application blanks ~~shall~~ must be furnished by the department. The applicant shall provide the following information:

(a) a statement of the name and place of residence;

(b) the number of colonies of bees, hives, and equipment in the apiary;

(c) the location of the apiary, setting forth specifically the location by sectional division to the nearest quarter section, and the township and range and, if within the corporate limits of a town or city, the number of the lot and block in the town or city;

(d) the name of the owner, renter, or occupant of the land on which the apiary is located and, when the application is for a new apiary being registered for the first time, the application must also show that the owner, renter, or occupant of the land has consented to the apiary being located on ~~his~~ the owner's, renter's, or occupant's land;

(e) the date when the apiary was first established;

(f) the class of apiary registration for which application is being made; and

(g) other information the department may require under rules adopted by it for the protection, safety, and welfare of the public and the beekeeping industry.

(4) Upon receipt of the application and payment of the fees prescribed, the department may issue a certificate of registration for an apiary, setting forth the name of the owner, the specific location, the number of colonies of bees or size of the apiary authorized under the registration, and the class of apiary authorized by the registration.

(5) In issuing certificates of registration for apiaries, if there is a conflict between applicants with respect to location, the department shall give preference to the applicant having the oldest continuous registered apiary.

(6) Certificates of registration may not be issued for new apiaries ~~which~~ that are within such close proximity to established registered apiaries that there is or may be danger of spread of disease or pests or that the proximity will or may interfere with the proper feeding and honey flow of established apiaries.

(7) Before registering new apiaries, the department shall give at least 10 days' notice by certified mail to all registered apiarists likely to be affected by the proposed new apiary so that any party affected may file written protests with the department against registering the new apiary. If a written protest is filed, the department may require a hearing. Notice of the time and place of the hearing ~~shall~~ must be given all parties interested by certified mail at least 10 days before the date set for the hearing.

(8) Suitable evidence of registration furnished by the department ~~shall~~ must be posted by the apiary registrant in a conspicuous place at or near the apiary. If an owner has more than one apiary, suitable evidence of registration furnished by the department ~~shall~~ must be posted at each apiary.

(9) A registration not applied for by April 1 of each year is a late registration and incurs an added penalty of 10% of the regular registration fee or \$10, whichever is greater. Registrants who fail to apply for reregistration by April 1 of each year ~~shall~~ must be notified of their delinquency by the department. The notification ~~shall~~ must be by certified mail and is sufficient if deposited in a United States post office or mail box and addressed to the registrant at ~~his~~ the registrant's last address appearing in the apiary registration files of the department at least 10 days before May 1. The registration of an apiary for which application for reregistration is not made by May 1 of each year is forfeited, and all rights under the registration terminate.

(10) ~~Any~~ A person who owns or possesses any bees, hives, colonies, or beekeeping equipment in this state or who owns or possesses an apiary in this state and who fails or refuses to register the ~~same bees, hives, colonies, or beekeeping equipment~~ as provided in this part is guilty of a misdemeanor and upon conviction ~~thereof~~ is subject to the penalties set forth in 80-6-303.

(11) ~~Nothing contained in this section or in Sections 80-6-111 through 80-6-115 shall~~ or this section may not be construed as invalidating, canceling, amending, terminating, or extending any certificate of registration issued by the department prior to October 1, 1981. All such previously issued certificates of registration remain in effect for the period for which they were issued, ~~subject, however,~~ to forfeiture, lapse, abandonment, and termination in the manner provided by law."

Section 2591. Section 80-6-103, MCA, is amended to read:

"80-6-103. Changing locations -- enlarging or selling apiaries. (1) An owner of an established registered apiary may not change the location of the apiary without first receiving authorization from the department ~~authorization~~ to establish the new apiary. In making the application, ~~he~~ the owner shall specify the location of the apiary with the same particularity as in the application for original registration. If the new apiary is not used within 60 days after a new certificate of registration is issued, the certificate of registration lapses and

all rights under the registration terminate. Registrations for new apiaries may not be issued for greater areas than the applicant can show are reasonably necessary for ~~his~~ the applicant's needs consistent with good beekeeping practice.

(2) A registered apiary may be sold or transferred to a purchaser subject to Title 80, chapter 6, parts 1 through 3, if all bees and equipment on the apiary are sold to the purchaser.

(3) ~~No~~ A person may not increase the number of hives on an apiary to exceed the number of hives authorized by ~~his~~ the person's certificate of registration for that apiary, except that a person may increase the number of hives on a general apiary beyond the number authorized by the certificate of registration in order to protect ~~his~~ the person's bees during adverse weather or crop conditions or to protect ~~his~~ the person's bees and hives from bears or other predators. A person may also enlarge a general apiary during the spring buildup and in the fall after the end of the honey season in order to gather ~~his~~ the person's bees for shipment out of the state or to winter ~~his~~ the person's bees on that apiary.

(4) A person enlarging an apiary ~~so as in order~~ to exceed the number of hives ~~herein~~ allowed under this section is guilty of a misdemeanor and is subject to the penalties set forth in 80-6-303."

Section 2592. Section 80-6-104, MCA, is amended to read:

"80-6-104. Apiaries -- termination of rights -- abandonment. (1) The registration of an apiary ~~which~~ that is not stocked with bees during at least part of the normal build-up or honey-producing season is forfeited, and all rights under the certificate of registration terminate.

(2) An apiary not regularly attended in accordance with good beekeeping practice, which comprises a hazard or threat to disease or pest control in the beekeeping industry or which by reason of its physical condition or construction cannot be inspected, or any apiary not registered in accordance with 80-6-102; may be considered an abandoned apiary and may be seized by the department. Any pest-infected or diseased equipment or equipment ~~which~~ that by reason of its physical condition or construction cannot be inspected may be burned, and the remainder may be sold at public auction. Proceeds, after the cost of the sale is deducted, ~~shall~~ must be returned to the former owner or ~~his~~ the former owner's estate. Before burning or selling any equipment, the department shall give the owner or person in charge a written notice at least 5 days before the burning or sale. The notice ~~shall~~ must be given by certified mail or personal service upon the owner or person in charge of the property. If the owner or person in charge cannot be located, a certified letter sent to the owner's last address registered with the department is sufficient notice under this section."

Section 2593. Section 80-6-111, MCA, is amended to read:

"80-6-111. General apiary registrations. (1) In order to control, limit, and prevent the spread of bee diseases, pests, and other contagious or infectious diseases among bees, hives, and apiaries and to control, limit, and prevent interference with the proper feeding and honey flow of established apiaries, general apiaries registered to different persons on October 1, 1981, must be located 3 or more miles apart, except as otherwise provided in this part. The department ~~shall~~ may not register or issue a certificate of registration for any general apiary that is located less than 3 miles from a general apiary registered to another person, except as otherwise provided in this section.

(2) A person may register a general apiary that is situated less than 3 miles from another general apiary ~~he that the person~~ has registered ~~so~~ as long as the location of the general apiary being applied for is 3 or more miles from general apiaries registered to other persons.

(3) A general apiary may be registered even though it is less than 3 miles from any registered pollination apiary, landowner apiary, or hobbyist apiary.

(4) A person with an existing apiary that is located less than 3 miles from an existing general apiary registered to another person may register ~~his~~ the apiary as a general apiary under the following conditions:

(a) ~~his~~ the existing apiary was established and registered with the department as a general apiary under the department's rules in effect prior to July 1, 1981;

(b) ~~his~~ the existing apiary is registered with the department as a general apiary as of July 1, 1981; and

(c) the registration of ~~his~~ the existing apiary has not been forfeited or abandoned under the provisions of 80-6-102(9) or 80-6-104."

Section 2594. Section 80-6-1105, MCA, is amended to read:

"80-6-1105. Alfalfa leaf-cutting bees -- certification. (1) A person possessing or controlling alfalfa leaf-cutting bees in the state of Montana may annually certify all or part of ~~his~~ the person's bees as provided in this section.

(2) To certify bees, a person ~~must~~ shall file a completed application form provided by the department, together with a fee set by rule. The applicant ~~must~~ shall provide the following:

(a) name and place of residence;

(b) the general location and number of bees to be certified; and

(c) other relevant information as may be required by committee rule.

(3) After receipt of an application for certification, a sample of the total population of bees to be certified

~~shall~~ must be selected by the committee or its agent in a manner prescribed by the committee. The sample ~~shall~~ must be analyzed for pathogens, parasites, predators, nest destroyers, and live larvae count. If certification standards are met, the sample ~~shall~~ must be certified.

(4) All bees to be certified may be stored in containers ~~which~~ that can be officially sealed after sampling to maintain their certification identity.

(5) When the committee has in its possession a completed application form, an appropriate fee, and a report that the sample meets certification standards, it may issue a certificate for the bees.

(6) The committee shall by rule specify the date by which any applicant ~~must~~ shall apply for recertification the following year."

Section 2595. Section 80-7-505, MCA, is amended to read:

"80-7-505. Computation and collection of assessments on landowners. Each owner of cropland benefited under a cropland spraying program is liable for ~~such~~ the portion of the landowner's share of the program costs as ~~his~~ the owner's cropland is a portion of all cropland within the boundaries of the program. The county treasurer shall compute each landowner's liability and mail a special assessment ~~therefor~~ to each owner or occupier of land within the boundaries of the program. Unless otherwise mutually agreed upon, this assessment is due and payable within 32 days of mailing or 30 days of receipt if receipt is shown to be more than 2 days after mailing. A delinquent assessment is a lien upon the land assessed."

Section 2596. Section 80-7-1104, MCA, is amended to read:

"80-7-1104. Vertebrate pest management advisory council. (1) The director of agriculture may appoint a vertebrate pest management advisory council to provide advice to the department concerning the administration of this part.

(2) If appointed, the council must be composed of eight members as follows:

- (a) the director of agriculture, who shall serve as ~~chairman~~ presiding officer;
- (b) one member representing agricultural interests from Montana west of the continental divide;
- (c) one member representing agricultural interests from eastern Montana;
- (d) one member representing agricultural interests from north central Montana;
- (e) one member representing agricultural interests from south central Montana;
- (f) one member from a ~~sportsmen's~~ hunter's, angler's, or wildlife group;
- (g) one member from the rodenticide industry; and

(h) one member representing public land interests.

(3) Technical advisers in vertebrate pest control from the department, the extension service, the university system, or the industry may serve as ex officio members at the request of the director of agriculture."

Section 2597. Section 80-8-102, MCA, is amended to read:

"80-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Active ingredient" means:

(a) in the case of a pesticide, other than a plant regulator, defoliant, or desiccant, an ingredient that will prevent, destroy, repel, alter life processes, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(b) in the case of a plant regulator, an ingredient that acts upon the physiology to accelerate or retard the rate of growth or rate of maturation or otherwise alter the normal processes of ornamental or crop plants or their produce;

(c) in the case of a defoliant, an ingredient that will cause the leaves or foliage to drop from a plant;

(d) in the case of a desiccant, an ingredient that will artificially accelerate the drying of plant tissue.

(2) "Adulterated" applies to a pesticide if its strength of purity falls below the professed standard or quality as expressed on labeling or under which it is sold, if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment.

(4) "Applicator" means a person who applies pesticides by any method.

(5) "Beneficial insects" means those insects that, in the course of their life cycle, carry, transmit, or spread pollen to and from vegetation, act as parasites and predators on other insects, or are otherwise beneficial.

(6) "Commercial applicator" means a person who by contract or for hire applies by aerial, ground, or hand equipment pesticides to land, plants, seed, animals, waters, structures, or vehicles.

(7) "Commercial operator" means a person who applies pesticides under the supervision of a commercial applicator.

(8) "Crop" means a food intended for human or animal consumption or a fiber product.

(9) "Dealer" means a person who sells, wholesales, offers or exposes for sale, exchanges, barter, or gives away within this state any pesticide except those pesticides that are to be used for home, yard, garden, home orchard, shade trees, ornamental trees, bushes, and lawn.

(10) "Defoliant" means a substance or mixture of substances for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(11) "Desiccant" means a substance or mixture of substances for artificially accelerating the drying of plant tissue.

(12) (a) "Device" means any instrument or contrivance intended for destroying, controlling, repelling, or mitigating pests.

(b) The term does not include equipment used for the application of pesticides.

(13) "Environment" means the soil, air, water, plants, and animals.

(14) "Equipment" means equipment used in the actual application of pesticides, including aircraft, ground sprayers and dusters, hand-held applicators, and water surface equipment.

(15) "Farm applicator" means a person applying pesticides to the person's own crops or land.

(16) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts), such as rusts, smuts, mildews, molds, yeasts, and bacteria, except those resident on or in living humans or other animals.

(17) "Fungicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any fungus.

(18) "Herbicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any weed.

(19) "Inert ingredient" means an ingredient that is not an active ingredient.

(20) "Ingredient statement" means either:

(a) a statement of the chemical name and common name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or

(b) a statement of the chemical name and common name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any, in the pesticide. However, subsection (20)(a) applies if the preparation is highly toxic to ~~man~~ humans, determined as provided in 80-8-105~~1~~₂, and if the pesticide contains arsenic in any form, the ingredient statement must also include a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic.

(21) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, winged and wingless forms, such as beetles, bugs, wasps, flies, and keds, and to other classes of arthropods whose members are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood

lice.

(22) "Insecticide" means any substance or mixture of substances for preventing, destroying, repelling, or mitigating any insects present in any environment.

(23) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or to its immediate container and any outside container or wrapper of any retail package of the pesticide or device.

(24) "Labeling" means all labels and other written, printed, or graphic matter:

(a) upon the pesticide or device or any of its containers or wrappers;

(b) accompanying the pesticide or device at any time;

(c) to which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of:

(i) the United States environmental protection agency;

(ii) federal departments of agriculture, interior, or health and human services;

(iii) state experiment stations;

(iv) state agricultural colleges; or

(v) other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(25) "Misbranded" applies:

(a) to a pesticide or device if its labeling bears any statement, design, or graphic representation relative to its ingredients that is false or misleading;

(b) to a pesticide if:

(i) it is an imitation of or is offered for sale under the name of another pesticide;

(ii) its labeling bears any reference to registration under this chapter;

(iii) the labeling accompanying it does not contain instructions for use necessary and, if complied with, adequate for the protection of the public;

(iv) the label does not contain a warning or caution statement necessary and, if complied with, adequate to prevent injury to living humans or undue hazard to the environment;

(v) the label of the retail package that is presented or displayed under customary conditions of purchase does not bear an ingredient statement on that part of the immediate container and on the outside or on a wrapper through which the ingredient statement on the immediate container cannot be clearly read;

(vi) any word, statement, or other information required to appear on the labeling is not prominently placed on the labeling with a conspicuousness (as compared with other words, statements, designs, or graphic matter

in the labeling) and in terms rendering it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(vii) in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to living humans or other vertebrate animals or vegetation, except weeds, to which it is applied or to the person applying the pesticide;

(viii) in the case of a plant regulator, defoliant, or desiccant, when used as directed, it is injurious to humans or other vertebrate animals or vegetation to which it is applied or to the person applying the pesticide. Physical or physiological effects on plants or parts of plants are not injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with the label claims and recommendations.

(26) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(27) "Nematodes", "nemas", or "eelworms" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle and inhabiting soil, water, animals, plants, or plant parts.

(28) "Person" means any natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons, whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(29) "Pest" includes any insect, rodent, nematode, snail, slug, or weed; and any form of plant or animal life or virus, except a virus on or in living humans or other animals, that is normally considered a pest or that the department declares a pest.

(30) "Pesticide" means any:

(a) substance or mixture of substances, including any living organism or any product derived from a living organism, intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living humans or other animals, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or that the department declares a pest;

(b) substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(c) other substances intended for that use named by the department by a rule adopted by it.

(31) (a) "Plant regulator" means any substance or mixture of substances affecting the rate of growth or rate of maturation or for otherwise altering physiological condition of plants.

(b) The term does not include substances to the extent that they are intended as plant nutrients, trace

elements, nutritional chemicals, plant inoculants, and soil amendments.

(32) "Public utility applicator" means a person applying pesticides to land and structures owned or leased by a public utility.

(33) "Registrant" means the person registering any pesticide or device under the provisions of this chapter.

(34) "Restricted-use pesticide" means any pesticide, including highly toxic pesticides, that the department has found and determined, subsequent to a hearing, to be injurious, when used in accordance with registration, label, directions, and cautions, to persons, beneficial insects, animals, crops, or the environment other than the pests it is intended to prevent, destroy, control, or mitigate.

(35) "Retailer" means ~~any~~ a person who sells, offers or exposes for sale, exchanges, barter, or gives away within this state any pesticide for home, yard, lawn, and garden use; in quantities or concentrations as determined by the department of agriculture.

(36) "Waste pesticide" means a pesticide that:

(a) ~~that~~ may not be used legally because the environmental protection agency or the department has canceled or suspended the pesticide's registration or has taken other administrative action to prohibit use of the pesticide;

(b) ~~that~~ will not be used for reasons including but not limited to product damage, toxicity, or obsolescence; or

(c) ~~that~~ cannot be disposed of in a legal or economically feasible manner.

(37) "Weed" means any plant or part of the plant that grows where it is not wanted."

Section 2598. Section 80-8-103, MCA, is amended to read:

"80-8-103. Purpose. The control of pesticides and their use is essential for the protection of ~~man~~ humans and ~~his~~ the environment. Pesticides are currently considered valuable and necessary to provide sufficient quantity of quality foods and for the protection of humans from vector-borne diseases. However, the protection of ~~man~~ humans and ~~his~~ human's essential needs--water, air, food, animals, vegetation, pollinating insects, and shelter from pesticides ~~which~~ that are potentially dangerous--is in the public interest now and in the future. Therefore, it is ~~deemed~~ necessary to provide for the control of pesticides."

Section 2599. Section 80-8-108, MCA, is amended to read:

"80-8-108. Advisory council. (1) The director of agriculture may appoint an advisory council to study

and make recommendations on special pesticide problems in the state. The council ~~shall consist~~ consists of individuals representing, equally, controlled industry, agriculture, health, and wildlife. Governmental personnel, university personnel not included, may not be represented on the council. Governmental personnel shall meet with the council in an advisory capacity when requested by the council. The council may not exceed 12 members. The director of agriculture shall establish the time period in which the council shall exist. The time period may not exceed 2 years. The department of agriculture shall provide the necessary administrative, secretarial, and any other essential items to the council.

(2) Each member of the council ~~shall~~ must receive as compensation for ~~his~~ services the sum of \$25 ~~per~~ a day for each day actually spent in the performance of ~~his~~ duties and ~~shall~~ must be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(3) The council may request that the department hold a public hearing to assist it in gathering factual data and information on the special problems assigned it."

Section 2600. Section 80-8-202, MCA, is amended to read:

"80-8-202. Prohibited acts. (1) It is unlawful for ~~any~~ a person to distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce between points within this state any of the following:

(a) ~~any~~ a pesticide ~~which~~ that has not been registered pursuant to the provisions of 80-8-201 or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration or if the composition of a pesticide differs from its composition as represented in connection with its registration or if registration or reregistration has been refused, revoked, canceled, or suspended. The department ~~of agriculture~~ may allow a change in the labeling or formula of a pesticide within a registration period without requiring reregistration of the product when ~~such~~ the change does not adversely affect the product for its intended use and if proper application ~~therefor~~ for the change is made.

(b) ~~any~~ a pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to ~~such~~ the container and to the outside container or wrapper of the retail package, if there ~~be~~ is one, through which the required information on the immediate container cannot be clearly read, a label bearing:

- (i) the name and address of the manufacturer, registrant, or person for whom manufactured;
- (ii) the trade and chemical name, brand, or trademark under which ~~said~~ the article is sold;

(iii) the net weight or measure of the content, subject to ~~such~~ reasonable variations ~~as~~ that the department may permit;

(c) ~~any a~~ pesticide ~~which~~ that contains any substance or substances in quantities highly toxic to ~~man~~ humans, determined as provided in 80-8-105, unless the label ~~shall bear~~ bears, in addition to any other matter required by this chapter:

(i) the skull and crossbones;

(ii) the word "poison" prominently in red on a background of distinctly contrasting color;

(iii) a statement of an antidote for the pesticide;

(d) ~~the~~ pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored, as provided by regulations issued in accordance with this chapter, or any other white powder pesticide ~~which~~ that the department, after investigation of and after public hearing on the necessity for ~~such~~ the action for the protection of the public health and the environment and the feasibility of ~~such~~ the coloration or discoloration, ~~shall~~ by regulations ~~require~~ requires to be distinctly colored or discolored, unless it has been so colored or discolored. The department may exempt any pesticide to the extent that it is intended for a particular use from the coloring or discoloring required or authorized by this section if it determines that ~~such~~ the coloring or discoloring for ~~such~~ the use is not necessary for the protection of the public health and the environment.

(e) ~~any a~~ pesticide ~~which~~ that is adulterated or misbranded; or any device ~~which~~ that is misbranded.

(2) It is unlawful for ~~any a~~ person to:

(a) detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or rules ~~promulgated hereunder~~ adopted under this chapter or to add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of this chapter;

(b) use for ~~his~~ the person's own advantage or reveal, other than to the department or proper officials or employees of the state or the courts of this state in response to a subpoena, to physicians or to veterinarians or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of 80-8-201."

Section 2601. Section 80-8-206, MCA, is amended to read:

"80-8-206. Applicator's and operator's examination. (1) The department ~~of agriculture~~ shall publish and distribute or have available upon request ~~such~~ information ~~as~~ that may be helpful to persons engaged in the

application of pesticides, including information that may be required or ~~which~~ that may appear upon any examination given to applicators and operators by the department.

(2) The department shall require an applicant for a license to show upon written examination that ~~he~~ the person possesses adequate knowledge concerning the proper use and application of pesticides under the classification for which ~~he~~ the person has applied, provided that the applicator and operator may not be required to take a reexamination upon renewal of licensing."

Section 2602. Section 80-8-208, MCA, is amended to read:

"80-8-208. Dealer's examination. Each applicant applying for a dealer's license ~~and/or his employee(s)~~ and the applicant's employees in charge of pesticide sales ~~shall~~ must be required to pass a reasonable examination administered by the department. Dealers applying for relicensing may not be required to take an additional examination if they have met the department's requirements."

Section 2603. Section 80-8-301, MCA, is amended to read:

"80-8-301. Report of loss or damage -- effect of failure to report. (1) A person suffering loss or damage resulting from the use or application of any pesticide by any person shall, within 30 days from the time the occurrence of the loss became known to ~~him~~ the person, file with the department of agriculture a verified report of loss setting forth, so far as known to the claimant, the following:

- (a) name and address of claimant;
- (b) type, kind, and location of property alleged to be injured or damaged;
- (c) date the alleged injury or damage occurred;
- (d) name of person applying the pesticide and allegedly responsible for the loss or damage;
- (e) name of the owner or occupant of the property for whom ~~such~~ the pesticide application was made.

(2) The filing of ~~such~~ a report or the failure to file ~~such~~ a report ~~shall~~ may not be alleged in any complaint ~~which~~ that might be filed in a court of law, and the failure to file ~~shall~~ may not of itself be considered any bar to the maintenance of ~~any~~ a criminal or civil action.

(3) The failure to file ~~such~~ a report ~~shall~~ is not be a violation of this chapter. However, if the person failing to file ~~such~~ a report is the only one injured from ~~such~~ the use or application of a pesticide by any person, the department may refuse to hold a hearing for the denial, suspension, or revocation of a license issued under this chapter until ~~such~~ the report is filed. The filing of ~~such~~ a report ~~shall~~ does not constitute institution of a civil or criminal suit in any court, state or federal."

Section 2604. Section 80-8-303, MCA, is amended to read:

"80-8-303. Embargo. (1) Whenever a duly authorized agent of the department of agriculture finds or has probable cause to believe that any pesticide or device is adulterated or misbranded, has not been registered under the provisions of 80-8-201(5), fails to bear on its label the information required by this chapter, or is a white powder pesticide and is not colored as required under this chapter, ~~he~~ the agent shall affix to ~~such~~ the article a tag or other appropriate marking giving notice ~~thereof of the failure~~ and stating that the article has been detained or embargoed and warning all persons not to remove or dispose of ~~such~~ the article by sale or otherwise until permission for removal or disposal is given by ~~such~~ the agent or the court. ~~Any~~ A person who removes or disposes of ~~such~~ a detained or embargoed article by sale or otherwise, without prior permission, or who removes or alters the tag or marking, is guilty of a misdemeanor and may be charged accordingly or may be subjected to appropriate administrative proceedings, or both.

(2) When an article detained or embargoed under subsection (1) has been found by ~~such~~ the agent to be in violation of subsection (1), ~~if and~~ after 30 days the violation has not been resolved, ~~he~~ the agent may petition the district court in whose jurisdiction the article is detained or embargoed for a condemnation of ~~such~~ the article. When ~~such~~ the agent has found that an article ~~so~~ detained or embargoed is not adulterated or misbranded, ~~he~~ the agent shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is in violation of this chapter or rules adopted ~~thereunder~~ under this chapter, ~~such~~ the article ~~shall~~ must after entry of the decree be destroyed at the expense of the claimant ~~thereof of the article~~, under the supervision of ~~such~~ the agent, and all court costs and fees and storage and other proper expenses ~~shall~~ must be assessed against the claimant of ~~such~~ the pesticide or device or ~~his~~ the claimant's agent, ~~provided that~~ However, when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after ~~such~~ costs, fees, and expenses have been paid and a good and sufficient bond has been executed, conditioned upon the proper labeling or processing of ~~such~~ the pesticide or device, may by order direct that ~~such~~ the article be delivered to the claimant ~~thereof of the article~~ for ~~such~~ labeling or processing under the supervision of an agent of the department. The expense of ~~such~~ supervision ~~shall~~ must be paid by the claimant. The article ~~shall~~ must be returned to the claimant of the pesticide or device on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of ~~such~~ supervision have been paid."

Section 2605. Section 80-10-101, MCA, is amended to read:

"80-10-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Brand" means a term, design, or trademark used in connection with one or several grades of commercial fertilizer.

(2) "Commercial fertilizer" includes any substance containing one or more recognized plant nutrients ~~which that~~ is used for its plant nutrient content and ~~which that~~ is designed for use or claimed to have value in promoting plant growth, yield, or quality of the crop.

(a) "Bulk fertilizer" ~~is~~ means commercial fertilizer, ~~(dry or liquid), that is~~ distributed in nonpackage form or in containers of greater than 1,000 pounds.

(b) "Fertilizer materials" ~~is~~ means a commercial fertilizer ~~which that~~ either:

(i) contains important quantities of not more than one of the primary plant nutrients, including (nitrogen, phosphoric acid, and potash);

(ii) has approximately 85% of its plant nutrient content present in the form of a single chemical compound;
or

(iii) is derived from a plant or animal residue or byproduct or a natural material deposit ~~which that~~ has been processed in ~~such~~ a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.

(c) "Mixed fertilizers" ~~is~~ means a commercial fertilizer, ~~(dry or liquid), containing that contains~~ any combination or mixture of fertilizer materials.

(d) "Packaged fertilizer" ~~is~~ means commercial fertilizer, ~~(dry or liquid), that is~~ distributed in sealed containers of 1,000 pounds or less.

(e) "Specialty fertilizer" ~~is~~ means a commercial fertilizer, ~~(dry or liquid), that is~~ distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries and includes commercial fertilizers used for research or experimental purposes.

(3) "Distribute" means to offer for sale, sell, barter, or otherwise supply commercial fertilizers.

(4) "Distributor" means ~~any~~ a person who distributes.

(5) "Grade" means the percentages of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis. However, fertilizer materials, bonemeal, manures, and similar raw materials may be guaranteed in fractional units.

(6) "Licensee" means ~~any~~ a person who has obtained a license from the department so ~~he~~ that the person may legally distribute commercial fertilizer other than specialty fertilizers or soil amendment in this state.

(7) "Manipulated manures" means substances composed primarily of excreta, plant remains, or mixtures

of ~~such~~ substances ~~which~~ that have been processed in any manner, including the addition of plant nutrients, drying, grinding, and other means.

(8) "Manufacture" means the formulation, mixing, blending, or further processing of commercial fertilizers or soil amendments.

(9) "Manufacturer" ~~is~~ means a person who manufactures commercial fertilizer or soil amendments.

(10) "Official sample" means any sample of commercial fertilizer taken by the department and so designated by the department.

(11) "Percent or percentage" means the percentage by weight.

(12) "Person" means an individual, partnership, association, firm, or corporation.

(13) "Registrant" means the person who registers commercial fertilizer ~~and/or~~ or soil amendment.

(14) "Soil amendment" means any material not included under commercial fertilizer or those products subject to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, ~~which~~ that is added to soil or to plants for purposes of influencing the growth, yield, or quality of the crop, soil flora or fauna, or other soil characteristics.

(15) "Ton" means a net weight of 2,000 pounds ~~avoirdupois~~.

Section 2606. Section 80-10-201, MCA, is amended to read:

"80-10-201. Registration. (1) Each brand and grade of fertilizer and each soil amendment except unmanipulated animal and vegetable manures must be registered by or on behalf of the manufacturer before distribution in this state. The application for registration must be submitted to the department on a form furnished or approved by the department and must be accompanied by a nonrefundable fee of \$20 per grade for each fertilizer and for each soil amendment with exception of specialty fertilizers, which must be registered at a nonrefundable fee of \$35 each. Upon approval, the department shall furnish a copy of the registration to the applicant. All registrations expire on December 31 of each year.

(2) (a) The application for registration must include:

(i) the brand and grade;

(ii) the guaranteed analysis;

(iii) the source of each plant food element guaranteed;

(iv) the name and address of the registrant;

(v) a copy or facsimile of each label and of promotional material when requested by the department; and

(vi) analytical information on nutrient ingredients and nonnutrient ingredients as required by rule.

(b) The department shall require the applicant to furnish replicated data, performed by a reputable investigator whose work is recognized as acceptable by the director of the agricultural experiment station or ~~his~~ the director's designee, verifying any claims for effectiveness or agricultural value of any fertilizer or soil amendment product that is not generally recognized as having the values claimed at the use rates recommended.

(3) A distributor may not be required to register any brand or grade of commercial fertilizer that is already registered under this section by another person.

(4) A manufacturer may not reregister a product until full payment of the assessment fees provided for in 80-10-103 and 80-10-207 has been received by the department."

Section 2607. Section 80-10-204, MCA, is amended to read:

"80-10-204. Labeling. (1) Any commercial fertilizer distributed in this state in packages ~~shall~~ must have affixed to or printed on the container a label setting forth in clearly legible and conspicuous form:

- (a) the net weight;
- (b) the name and address of the manufacturer or distributor guaranteeing the analysis;
- (c) the brand and product name;
- (d) the grade;
- (e) the guaranteed analysis; and
- (f) other requirements as established by rule.

(2) Any bin in the state in which commercial fertilizer is stored for distribution must have affixed to or printed on it a label setting forth in clearly legible and conspicuous form:

- (a) the guaranteed analysis of the product in the bin; and
- (b) other requirements established by rule.

(3) All commercial fertilizer delivered in this state in bulk, whether a manufactured grade or blended grade, ~~shall~~ must be accompanied by a clearly legible document ~~which shall~~ that must be supplied to the purchaser at the time of delivery and at the time ~~his~~ the purchaser's invoice is delivered. The document ~~shall~~ must show:

- (a) net weight;
- (b) name and address of the distributor or manufacturer guaranteeing the analysis;
- (c) guaranteed analysis or, on blended fertilizer, the net weight and guaranteed analysis of each ingredient added; and
- (d) other requirements as established by rule.

(4) When distributed in containers, soil amendments ~~shall~~ must have a label affixed to or printed on the container. When delivered in bulk, the label ~~shall~~ must be clearly legible and ~~shall~~ must accompany the delivery of the product. This label ~~shall~~ must be supplied to the purchaser at the time of delivery and at the time of invoicing. The label ~~shall~~ must contain the following information:

- (a) net weight;
- (b) name and address of the registrant or licensee who is responsible for the product;
- (c) brand and product name;
- (d) guaranteed analysis;
- (e) other requirements, such as particle size, as established by rule."

Section 2608. Section 80-10-211, MCA, is amended to read:

"80-10-211. Cancellation or refusal of registration or licenses. (1) The department may cancel the registration of any commercial fertilizer or soil amendment and may refuse to register any commercial fertilizer or soil amendment upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasion or attempted evasion of this chapter or any rules adopted under it. However, ~~no~~ a registration may not be revoked or refused until the registrant is given the opportunity to amend ~~his~~ the application or correct other practices.

(2) The department may cancel any license or refuse to license any person when it has satisfactory evidence that the person has used fraudulent or deceptive practices in the evasion or attempted evasion of this chapter or any rules adopted under it. However, ~~no~~ a license may not be revoked or refused until the person involved is given the opportunity to appear for a hearing by the department."

Section 2609. Section 80-10-303, MCA, is amended to read:

"80-10-303. Violations -- enforcement proceedings -- judicial review. (1) If it appears from the examination of ~~any~~ commercial fertilizer or from the inspection of ~~any~~ an anhydrous ammonia facility that this chapter or the rules adopted under this chapter have been violated, the department shall give notice of the violations to the registrant, licensee, distributor, or possessor from whom the sample was taken. A person notified ~~shall~~ must be given an opportunity to be heard under rules of the department. If it appears after a hearing, either in the presence or absence of the person notified, that this chapter or rules issued under this chapter have been violated, the department may certify the facts to the proper prosecuting attorney.

(2) A person who violates this chapter or the rules adopted under this chapter or who obstructs, prevents,

or attempts to prevent the department from performing its duty under this chapter is guilty of a misdemeanor and shall be fined not less than \$300 or more than \$500 for the first violation and not less than \$300 or more than \$1,000 for a subsequent violation. In all prosecutions under this chapter involving the composition of a lot of commercial fertilizer, a certified copy of the official analysis of the department is prima facie evidence of the composition.

(3) ~~Nothing in this~~ This chapter ~~requires~~ does not require the department to report for prosecution or for the beginning of seizure proceedings minor violations of this chapter when it believes that the public interest will be best served by a suitable notice of warning in writing.

(4) A prosecuting attorney to whom a violation is reported shall prosecute the violator in a court of competent jurisdiction without delay.

(5) The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule adopted under the chapter notwithstanding the existence of other remedies at law. The injunction ~~shall~~ must be issued without bond.

(6) If a person adversely affected by an act, order, or ruling made by the department under this chapter is not entitled to a hearing before the department to determine ~~his~~ the person's rights, ~~he~~ the person may within 45 days sue in the district court of any county where the alleged violation giving rise to the department's act, order, or ruling occurred; for a new trial of the issues bearing upon the act, order, or ruling. After the trial, the court may issue and enforce those orders, judgments, or decrees that it considers proper, just, and equitable."

Section 2610. Section 80-10-503, MCA, is amended to read:

"80-10-503. Rulemaking authority and requirements. (1) The department shall adopt rules for the design, construction, repair, alteration, location, installation, and operation of anhydrous ammonia facilities. ~~Such~~ The rules must be in substantial conformity with nationally recognized safety standards for the storage and handling of anhydrous ammonia. The rules ~~shall~~ must require the owner to place ~~his~~ the owner's name and phone number on ~~his~~ the owner's anhydrous ammonia tank or tanks. The department may adopt additional rules necessary for the protection and safety of persons employed in anhydrous ammonia facilities, persons using anhydrous ammonia, and the public.

(2) The rules must include a provision under which new or existing facilities may apply for a temporary or permanent variance from any requirement of the rules. The rules must provide criteria for granting or denying a variance request and must provide for written notice and public hearing on any variance request.

(3) The department shall coordinate its rulemaking activities with other executive branch agencies and departments by providing them with timely information on the adoption of the rules, inviting and encouraging their participation, giving due weight and consideration to their comments and testimony, and coordinating interdepartmental meetings on matters pertaining to the adoption of the rules."

Section 2611. Section 80-11-204, MCA, is amended to read:

"80-11-204. Election of chairman presiding officer -- time of meetings. At the first meeting of the administrative committee, it shall elect a ~~chairman~~ a presiding officer from among its members. The committee shall meet at least once every 3 months and at ~~such~~ other times as called by the ~~chairman~~ presiding officer or by any three members of the committee."

Section 2612. Section 80-11-305, MCA, is amended to read:

"80-11-305. Compensation -- per diem. Each committee member is entitled to \$25 compensation for each day ~~he~~ that the member is engaged in the transaction of official business, together with actual and necessary travel expenses, as provided for in 2-18-501 through 2-18-503."

Section 2613. Section 80-11-308, MCA, is amended to read:

"80-11-308. Payment of assessment. All assessments levied and imposed under 80-11-307 must be paid to the department of agriculture by the person, either grower or dealer, by whom the alfalfa seed is first handled in the primary channels of trade and must be paid at ~~such times as~~ that the department may by rule prescribe but not later than 60 days from the date on which the grower received payment for the alfalfa seed. If the party first handling the alfalfa seed in the primary channels of trade is a person other than the grower, ~~he~~ that party may charge against or recover from the grower of ~~such~~ the alfalfa seed the full amount of any assessment levied and imposed under 80-11-307."

Section 2614. Section 80-11-311, MCA, is amended to read:

"80-11-311. Records required. ~~Every~~ Each dealer shall maintain accurate records of all alfalfa seed handled, packed, shipped, or processed by ~~him~~ the dealer. The records ~~shall~~ must be in ~~such~~ the form and contain ~~such~~ the information ~~as~~ that the department may by rule prescribe, ~~shall~~ must be preserved for a period of 2 years, and are subject to inspection at any time upon request of the department or its agents."

Section 2615. Section 80-11-404, MCA, is amended to read:

"80-11-404. Compensation -- per diem. Each committee member is entitled to \$25 compensation for each day ~~he~~ that the member is engaged in the transaction of official business, together with actual and necessary travel expenses as provided for in 2-18-501 through 2-18-503."

Section 2616. Section 80-11-405, MCA, is amended to read:

"80-11-405. Election of chairman presiding officer -- time of meetings. At the first meeting of the committee, it shall elect a ~~chairman~~ presiding officer from among its members. The committee shall meet at least once annually and at ~~such~~ other times as called by the ~~chairman~~ presiding officer or by any three members of the committee."

Section 2617. Section 80-11-416, MCA, is amended to read:

"80-11-416. Records required. ~~Every~~ Each first purchaser of mint oil shall maintain accurate records of all mint oil handled, packed, shipped, or processed by ~~him~~ the purchaser. The records must be in the form and contain the information the committee may by rule prescribe. The records must be preserved for 2 years and are subject to inspection at any time upon request of the committee or its agents."

Section 2618. Section 80-12-202, MCA, is amended to read:

"80-12-202. Immediate repayment. If an applicant who has obtained the approval of the authority for the issuance of a bond to fund ~~his~~ the applicant's loan for the acquisition of farm or ranch land sells the land for which the loan was made to any person, firm, or corporation other than ~~his~~ the applicant's spouse, children, or corporation wholly owned by them, the loan must be repaid in full."

Section 2619. Section 80-12-203, MCA, is amended to read:

"80-12-203. Qualifications of applicants. (1) To be eligible for a loan approved by the authority for issuance of a bond, an applicant ~~must~~:

(a) shall declare ~~his~~ the intention to maintain ~~his~~ the applicant's residence in Montana during the length of the loan;

(b) must have been approved by a financial institution; and

(c) must have a net worth not to exceed \$250,000.

(2) Applications for loans to be approved by the authority for issuance of bonds may be submitted by

individuals, partnerships, associations, or joint ventures. All persons involved in the application must meet the requirements of subsection (1). Corporations, as defined in 35-1-113, may not apply."

Section 2620. Section 80-12-211, MCA, is amended to read:

"80-12-211. Income tax deduction for land sale to beginning farmers. A landowner who sells land consisting of 80 acres or more to a beginning farmer at 9% or less interest on a long-term contract is entitled to a reduction in ~~his~~ the landowner's taxable income in an amount equal to 100% of any income or capital gain, or both, realized and otherwise subject to state income taxes from the sale, up to a maximum of \$50,000, ~~provided~~ if the transaction is approved by the authority for this purpose."

Section 2621. Section 80-12-310, MCA, is amended to read:

"80-12-310. Continuing validity of authority members' signatures. If ~~any~~ an authority member whose signature appears on bonds or coupons ceases to be a member before the delivery of the bonds, ~~his~~ the signature continues to be valid and sufficient for all purposes."

Section 2622. Section 80-15-218, MCA, is amended to read:

"80-15-218. Notice to buyer. A person who sells agricultural land that is subject to the provisions of a specific agricultural chemical ground water management plan shall provide the buyer with written notice about ~~his~~ the buyer's obligations under the plan and shall forward a copy of the notice to the department. The department is not responsible for enforcement of this section."

Section 2623. Section 81-1-202, MCA, is amended to read:

"81-1-202. Duties. The stock inspectors and detectives shall arrest all persons who in their presence violate the stock laws of this state. ~~Every~~ Each stock inspector and detective, on information that a person has committed an offense against the laws of this state by engaging in illegal branding or theft of stock or an offense against the laws of this state for the protection of the rights and interests of stock owners, ~~must~~ shall make the necessary affidavit for the arrest and examination of the person and on a warrant issued for the person immediately arrest the person and bring ~~him~~ the person before the proper officer and notify the department of ~~his~~ the person's acts."

Section 2624. Section 81-1-301, MCA, is amended to read:

"81-1-301. Administrator -- appointment and qualifications. (1) The board shall appoint a person to be directly responsible to it for the administration of the laws relating to animal health.

(2) ~~He~~ The person must have a doctor of veterinary medicine degree from an accredited college or school; and ~~he~~ must be licensed to practice veterinary medicine in this state."

Section 2625. Section 81-1-302, MCA, is amended to read:

"81-1-302. Duties of administrator. The administrator, subject to the rules of the board, may act for and perform the duties imposed by law on the board when the board is not in session, but any order or regulation promulgated by ~~him shall be~~ the administrator is subject to review, modification, or annulment by the board."

Section 2626. Section 81-2-101, MCA, is amended to read:

"81-2-101. Authority of department agents. In the performance of ~~his~~ official duties, an agent or officer of the department may enter on or in a lot, yard, land, building, room, premises, enclosure, car, wagon, boat, or other place or vehicle used for the treatment, storage, manufacture, display, or transportation of animals, meat, or dairy products intended for sale or disposal as food. The agent or officer may enter anywhere where ~~there may be found~~ livestock may be found that are affected with or ~~which that has~~ have been exposed to or ~~which that~~ the officer has reason to believe ~~is~~ are either affected with or ~~has~~ have been exposed to an infectious, contagious, communicable, or dangerous disease or disease-carrying insects."

Section 2627. Section 81-2-109, MCA, is amended to read:

"81-2-109. Expenses, how paid -- lien and foreclosure. (1) If there is no violation of law or department rule, the expense of inspecting, testing, supervision of quarantine, supervision of dipping, supervision of disinfection, and supervision of other treatment of diseased or exposed livestock by the department and the sanitary inspection of dairies, packinghouses, meat depots, slaughterhouses, milk depots, and other premises ~~shall~~ must be paid for by the department. However, the owner of the livestock or property is liable for all expenses, except the salary of the designated supervising officer representing the department, when the owner, agent, or person in charge of the livestock or property has violated the law or rules of the department.

(2) The expenses for which an owner, agent, or person in charge is liable under subsection (1) include:

(a) all investigatory expenses, including travel, meals, and lodging of all investigating officers representing the department; and

(b) all other expenses, extraordinary or otherwise, that in the judgment of the department are reasonably

necessary to ensure that there has been or will be compliance with all applicable laws and rules.

(3) The department, at the conclusion of an investigation of a violation, shall serve notice on the violator, informing ~~him~~ the violator of all expenses for which ~~he~~ the violator is liable. The notice must state that if a response is not sent within 30 days of receipt of the notice, the notice is prima facie evidence of the reasonableness of the expenses and of the violator's liability for them.

(4) A showing by the department that a response to the notice required by subsection (3) was not received within 30 days of receipt of the notice is prima facie evidence of the reasonableness of the expenses stated and of the liability of the violator for those expenses.

(5) These expenses are a lien on the livestock or other property, and the department may retain possession of the livestock until the charges and expenses are paid. The lien is not dependent on possession and may be foreclosed in the name of the agent of the department by sale at public auction of the stock or as many as may be necessary to pay the sum of the costs, after 10 days' notice by posting in three public places in the county. The lien may also be foreclosed by an action in a court of competent jurisdiction against the owner of the livestock to recover the amount of charges and expenses."

Section 2628. Section 81-2-112, MCA, is amended to read:

"81-2-112. Prohibition by governor on importation of animals from localities where disease exists -- penalty. (1) Whenever the governor has good reason to believe that any disease dangerous or inimical to the livestock or poultry industry or dangerous to dogs or other animals has become epidemic in certain localities in any other state, or territory, the District of Columbia, or any other country, ~~he~~ the governor shall issue a proclamation designating ~~such~~ the localities and prohibiting the importation ~~therefrom~~ from those localities into this state, except under ~~such~~ restrictions ~~as he~~ that the governor may ~~deem~~ consider proper, of any livestock, poultry, dogs, or other animals or articles or commodities likely to convey ~~such~~ the disease or diseases.

(2) ~~Any~~ A person who, after the publication of ~~such~~ the proclamation, knowingly receives any livestock, dog, fowl, or other animal or article or commodity designated in ~~such~~ the proclamation as likely to convey disease from any of the prohibited districts and transports or conveys the ~~same~~ animal, article, or commodity within the limits of this state is punishable by imprisonment in the county jail for not less than 60 days or more than 8 months ~~and by~~ or a fine of not less than \$300 or more than \$5,000, ~~or by both, such fine and imprisonment~~ and is further liable for any and all damages and loss that may be sustained by any person or persons by reason of the disobedience of ~~such~~ the proclamation."

Section 2629. Section 81-2-201, MCA, is amended to read:

"81-2-201. Classification of animals as to compensation for slaughter. Animals slaughtered under the direction of the department by order of the board are divided into two classes for the purposes of compensation:

(1) Animals determined by the department to be affected with an incurable disease; ~~which~~ that are destroyed by order of the board; are designated as animals of class 1, and unless otherwise provided, each of the animals ~~shall~~ must be paid for on the basis of 75% of its appraised value. The county in which the animal was owned at the time it was determined to be affected with an incurable disease is liable in part, as later provided, for an indemnity to be paid for the animal. The ownership and county are determined by an affidavit of the owner of the animal or ~~his~~ the owner's agent. Each animal directed to be destroyed ~~shall~~ must be appraised by a representative or an authorized agent of the department with the owner agreeing in writing as to the value of the animal. When appraised, due consideration ~~shall~~ must be given to its breeding value as well as its dairy or meat value and the condition of the animal as to the disease and the present and probable effect of the disease on the animal. In the absence of an agreement, there ~~shall~~ must be appointed three competent, disinterested parties, one appointed by the department, one by the owner, and a third by the first two, to appraise each animal, taking into consideration its breeding value as well as its dairy or meat value and the condition of the animal as to the disease and the present probable effect of the disease on the animal. The judgment of the majority is the judgment of the appraisers and is binding on both parties as the final determination of indemnity to be paid for each animal. The total compensation of each group of appraisers is limited to \$5 for the group appraisal, one-half of which ~~shall~~ must be paid by the department. The total amount of indemnity paid by the state and a county for an animal may not exceed the actual sound value of an animal of its class, and the total combined amount of indemnity paid for the animal by the state and a county may not exceed the sum of \$100 for a registered purebred animal or the sum of \$50 for a grade animal. Animals presented for appraisal as purebreds ~~shall~~ must be accompanied by their registration papers at the time of appraisal, or they ~~shall~~ must be appraised as grades. If purebreds are less than 3 years old and not registered, the department may grant a reasonable time for their registration and presentation of their registration papers to the appraiser. Registration papers ~~shall~~ must accompany the claim for indemnity.

(2) Animals of class 1 ~~shall~~ must be paid for on the basis of their full appraised value as determined in this section if no evidence of incurable disease is disclosed by autopsy, bacteriologic, serologic, microscopic, or other findings. The total combined amount of indemnity paid by the state and a county for an animal may not exceed the actual sound value of an animal of its class. The total combined amount of indemnity paid by the state

and a county for the animal may not exceed \$100 for a registered purebred animal or \$50 for a grade animal.

(3) Animals ~~which~~ that are determined by the department to be affected with or exposed to foot-and-mouth disease, rinderpest, contagious pleura pneumonia, surra, or other infectious, contagious, communicable, or dangerous disease, which is not of its nature necessarily fatal, and that are destroyed by order of the department as a sanitary safeguard; are designated as animals of class 2, and each animal ~~shall~~ must be paid for on the basis of its full appraised value. The appraised value ~~shall~~ must be determined in the manner set out in subsection (1) ~~of this section~~. The appraisal of the animals ~~shall~~ must be based on the meat, dairy, or breeding value of the animal, but ~~where~~ when appraisal is based on breeding value of the animal, ~~no~~ an appraisal may not exceed three times its meat or dairy value. The total amount of indemnity paid by the state for an animal may not exceed the actual sound value of an animal in its class. ~~No~~ An indemnity for a class 2 animal may not be paid by a county. In the case of destruction of an animal afflicted with brucellosis, also known as (Bang's disease), ~~no~~ an indemnity ~~shall~~ may not be paid for the animal unless the board, in its discretion, determines the best interests of this state will be served by payment of an indemnity. In this event, the board shall set out standards of indemnity by rules and may not pay in excess of \$100 for a registered purebred animal or \$50 for a grade animal. In all cases ~~where~~ in which the federal government or an agency other than the state compensates the owner in whole or in part for livestock destroyed as a sanitary safeguard, the amount of compensation from the state ~~shall~~ must be determined under 81-2-210.

(4) Animals ~~which~~ that are injured or killed while they are being inspected or tested under an order of the department or its agent, ~~which~~ and that do not come within either class 1 or class 2; may be paid for at their full appraised value if the claim for the animal is recommended for payment at a meeting of the board. ~~Where~~ When it is shown that the injury or death of the animal was not proximately due to the negligence of the owner or ~~his~~ the owner's agent, the whole claim, when approved, ~~shall~~ must be paid out of department funds. The limit of indemnity for an animal paid for by the state may not exceed that fixed by this section for class 2 animals ~~of class 2.~~"

Section 2630. Section 81-2-204, MCA, is amended to read:

"81-2-204. Presentation of claims for indemnity. Claims against the state and county ~~which~~ that arise from the destruction of animals or property by order of the department ~~shall~~ must be made on forms provided by the department. They must contain an affidavit by the owner or ~~his~~ the owner's agent with knowledge of the animal or property, certifying to the ownership of the animal or property, the county in which they are owned, and that the animal or property has been destroyed under the law and the rules of the department. These claims must

be accompanied by a certificate from the department that the animal or property was ordered destroyed. The claims ~~shall~~ must also be accompanied by a certificate of ~~appraisement~~ appraisal as appraisal is determined under 81-2-201, together with an account of sale showing the net proceeds from the sale of the animal, if any, paid to the owner of the animal."

Section 2631. Section 81-2-206, MCA, is amended to read:

"81-2-206. Verification and payment of claims. (1) All claims against the department must be verified by oath of the claimant or ~~his~~ the claimant's agent with knowledge of the facts.

(2) Claims against the state arising under this part, if found correct, ~~shall~~ must be processed and paid from funds of the department."

Section 2632. Section 81-2-208, MCA, is amended to read:

"81-2-208. Sale of condemned carcasses -- disposition of proceeds. ~~Where~~ When the carcass of an animal ordered destroyed under this chapter is found on official postmortem inspection to be fit for human consumption, the owner ~~shall~~ must receive the net proceeds from the sale of the carcass. The proceeds ~~shall~~ must be deducted from ~~his~~ the owner's claim against the state and county for the slaughter. A representative of the department may, when considered advisable or necessary or when it is desired by the owner, sell the carcass on terms ~~he~~ that the representative considers to be in the best interests of this state, and the net proceeds obtained from the sale ~~shall~~ must be paid to the owner. This procedure does not invalidate the owner's claim for indemnity for any balance due ~~him~~ the owner."

Section 2633. Section 81-2-209, MCA, is amended to read:

"81-2-209. When no indemnity. (1) The owner of an animal or property destroyed under this chapter is entitled to indemnity, except in the following cases:

- (a) animals belonging to the United States;
- (b) animals brought into this state ~~which~~ that violate this chapter or rules of the department;
- (c) animals ~~which~~ that the owner or claimant knew to be diseased or had notice of the disease at the time they came into ~~his~~ the owner's or claimant's possession;
- (d) animals ~~which~~ that had the disease for which they were slaughtered or ~~which~~ that were destroyed because of exposure to the disease at the time of their arrival in this state. However, a class 2 animal shipped into this state under department rules and accompanied by the proper certificate of health from a recognized state

or federal veterinarian may be paid for when payment is authorized by the department.

(e) animals ~~which that~~ have not been in this state for at least 120 days before the discovery of the disease, ~~however~~ However, class 2 animals ~~which that~~ have not been in the state ~~for~~ 120 days may be paid for when payment is authorized by the department;

(f) when the owner or agent has not used reasonable diligence to prevent disease or exposure to disease;

(g) when the owner or agent has not complied with the rules of the department with respect to animals condemned;

(h) when animals condemned are not destroyed within 60 days after they are determined to be affected with or exposed to a disease ~~which that~~ requires them to be destroyed by order of the department.

(2) ~~No compensation~~ Compensation or indemnity will not be paid for the destruction of livestock affected with tuberculosis or other infectious, contagious, communicable, or dangerous disease unless the entire herd or band of affected livestock is under the supervision of the department for the eradication of the disease."

Section 2634. Section 81-2-303, MCA, is amended to read:

"81-2-303. Owner guilty of misdemeanor, when. A person in a disease control area who does not gather ~~his~~ the person's livestock after being notified by the department or its agent to have the livestock available or who refuses to have the livestock inspected, tested, treated, or vaccinated or who violates this part is guilty of a misdemeanor."

Section 2635. Section 81-2-502, MCA, is amended to read:

"81-2-502. Licenses. (1) It is unlawful to handle, prepare, cook, or otherwise treat garbage to feed to swine or other animals or to feed garbage to swine or other animals without first securing a license for that purpose from the department ~~of livestock~~. One license issued to the entrepreneur, corporation, or individual responsible for a particular garbage feeding enterprise covers all garbage feeders concerned with the enterprise. The license provided for in this section expires on December 31 of the year in which it is issued. The department shall establish a fee to be charged for all licenses issued under this part. All license fees collected ~~shall~~ must be paid into the state special revenue fund for the use of the department.

(2) This part does not apply to a person who feeds only ~~his~~ the person's own household garbage to swine or other animals."

Section 2636. Section 81-2-602, MCA, is amended to read:

"81-2-602. Report of sales or distribution. A person, firm, or corporation ~~which~~ that has secured permission from the department to sell or distribute tuberculin for animal use in this state shall, on the same day it sells, furnishes, or supplies tuberculin, report in writing to the department the name and address of the person and a statement of the amount of tuberculin supplied to ~~him~~ the person."

Section 2637. Section 81-2-703, MCA, is amended to read:

"81-2-703. Documents required for importation -- exemptions. (1) Except as provided in subsection (6), ~~no~~ an animal, animal semen, or animal biologic may not be brought into the state without a permit and ~~also~~ a health certificate.

(2) The department shall issue a permit if no significant danger to the public health will ensue upon importation of the animal, animal semen, or animal biologic into the state. ~~No~~ A permit may not be issued for livestock infected with or exposed to brucellosis, tuberculosis, or any other infectious, contagious, or communicable animal disease, except that cattle with a positive reaction to a recognized test for brucellosis may be permitted entry when destined directly for slaughter at a slaughterhouse under the supervision of the United States department of agriculture ~~supervision~~.

(3) The department may waive the requirement for a health certificate or a permit as provided in subsection (7).

(4) The requirements of subsection (1) apply regardless of species, breed, sex, class, age, point of origin, place of destination, or purpose of movement.

(5) All required documents must be attached to the waybill or be in possession of the driver of the transporting vehicle or of the person in charge of the animals. When a single permit or health certificate is issued for animals being moved in more than one vehicle, the driver of each vehicle ~~shall~~ must have in ~~his~~ the driver's possession a copy of the permit and, ~~where~~ when applicable, a health certificate.

(6) Animals, animal semen, or animal biologics being moved through the state with no intent to unload or deliver in the state are exempted from this part. In an emergency situation, ~~such~~ transitory cargo may be unloaded in compliance with the quarantine rules promulgated by the department.

(7) A waiver of the requirement for a health certificate or a permit ~~shall~~ must be based upon evidence that there will be no significant danger to the public health if the exemption is granted."

Section 2638. Section 81-3-106, MCA, is amended to read:

"81-3-106. Publication of notice of rerecording brands. Between January 1 and June 30 in each rerecording year, the department shall publish, in at least one issue of at least one newspaper of general circulation in each county of this state in which a newspaper is published, a notice to the effect that the year is a year for rerecording marks and brands and that no mark or brand continues of record unless rerecorded. The department shall also mail to each person in whose name a mark or brand stands of record a similar notice addressed to the person at ~~his~~ the person's post-office address as shown by the records in the department."

Section 2639. Section 81-3-203, MCA, is amended to read:

"81-3-203. Duties of state stock inspectors and deputy stock inspectors. (1) State stock inspectors and deputy state stock inspectors, upon the application of the owner or the duly authorized agent of the owner of livestock, shall inspect the livestock ~~which~~ that is intended for sale, removal, shipment, or slaughter at a licensed slaughter plant and issue a certificate of inspection ~~therefor~~ if it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to the possession ~~thereof~~ of the livestock.

(2) The inspection ~~shall~~ must include an examination of the livestock and all marks and brands ~~thereon~~ on the livestock to identify ownership of the livestock. The certificate of inspection ~~shall~~ must be made in triplicate and ~~shall~~ must specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock or of the applicant for inspection and the purchaser or transferee, if applicable, the class of the animal, the marks and brands, if any, upon the animal, and any other information upon the form of certificate ~~as~~ that the department may from time to time require. One copy of the certificate ~~shall~~ must be retained by the inspector, one copy ~~shall~~ must be furnished by the inspector to the owner or shipper of the livestock, and one copy ~~shall~~ must be filed by the inspector with the department within 5 days.

(3) If it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to the possession ~~thereof~~ of the livestock, the state stock inspectors or deputy state stock inspectors, upon application of an owner or ~~his~~ the owner's agent of the livestock to be consigned and delivered directly to a licensed livestock market or licensed livestock slaughterhouse located in another county of the state or delivered directly to a shipping point duly approved by the department where a livestock inspector is available for inspection in an adjoining county, shall issue to the person a separate market consignment permit or transportation permit for each owner when the owner or owners or their duly authorized agents sign the permit certifying the brands, description, and destination of the livestock. The market consignment permit or transportation permit ~~shall~~ must be made in triplicate; ~~shall~~ and must specify the date and time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock and the name and address of the person

actually transporting the livestock if different than the owner, the kind of livestock, the marks and brands, if any, upon the livestock, a description of the vehicle or vehicles to be used to transport the livestock to include the license number of the vehicles, and any other information upon the form of permit ~~as that~~ the department may from time to time require. ~~Any A permit so issued shall~~ must be good for shipment within 36 hours from the date and time of issue; ~~however~~ However, permits not used within this time limitation must be returned to the issuing officer to be canceled and to release the permittee from performance. One copy of the permit ~~shall~~ must be retained by the inspector, one copy ~~shall~~ must be filed by the inspector with the department within 5 days of the date of issue, and one copy ~~shall~~ must be furnished by the inspector to the owner or shipper of the livestock, which copy of the permit ~~shall~~ must accompany the shipment and be delivered to the state stock inspector at the livestock market or shipping point where the livestock ~~is~~ are delivered.

(4) Upon application of an owner or ~~his~~ the owner's agent, when it appears with reasonable certainty that the applicant is the owner of the livestock or has lawful right to the possession ~~thereof of the livestock~~, a state stock inspector shall issue a transportation permit ~~which that~~ will allow the movement of the livestock into an adjoining county to land owned or controlled by the owner or ~~his~~ the owner's agent for purposes of grazing. The transportation permit ~~shall~~ must state the breed, description, marks and brands, if any, head count, and description of land to and from which the livestock will be moved. The permit is valid as provided in 81-3-211(6)(d). A state stock inspector may enter the premises where livestock ~~so~~ moved have been transported and inspect any livestock moved under the transportation permit or any livestock commingled ~~therewith~~ with the transported livestock.

(5) ~~Any A~~ person transporting strays or livestock not lawfully under ~~his~~ the person's control is guilty of a misdemeanor and punishable as provided in 81-3-231."

Section 2640. Section 81-3-204, MCA, is amended to read:

"81-3-204. Seizure of livestock -- retention of livestock -- sale -- disposal of proceeds. (1) All state stock inspectors inspecting any livestock before or after shipment or removal from any county in this state, upon a change of ownership, or at the preslaughter inspection at a licensed slaughterhouse may inspect and seize either at the point of sale, shipment, destination, or slaughter or en route any livestock or proceeds ~~thereof which~~ from livestock that the inspector believes ~~is~~ are stolen or upon which brands have been altered or obliterated or ~~which that~~ does not conform to the description contained on the tally sheet furnished by the shipper ~~thereof~~ or to the description contained in any certificate of inspection or release issued before shipment or removal of the livestock.

(2) Upon taking possession of livestock under this section, a state stock inspector may retain the livestock in ~~his~~ the inspector's possession for 15 days to make further investigation relative to its ownership. A state stock inspector may either at once or at any time within 15 days sell the livestock at a licensed livestock market or in the open market for the best available price and remit the proceeds, less the cost of keeping and sale, to the department together with a full description of the livestock sold, giving marks and brands, if any, and a statement of the reason for the seizure and sale. The proceeds ~~shall~~ must be deposited by the department with the state treasurer and credited to the department fund, where it is subject to claim by the owner of the livestock in the same manner and for the same length of time as is provided by law for the making of claims for moneys arising from the sale of stray stock."

Section 2641. Section 81-3-205, MCA, is amended to read:

"81-3-205. Fees for inspection and livestock transportation permits. (1) For the service of inspection of all livestock except horses, mules, or asses before removal from a county or before change of ownership, the inspector making the inspections ~~shall~~ must receive a fee established by the department for each head inspected. For the issuance of a market consignment permit or transportation permit, ~~(other than a permanent permit),~~ before removal from a county for all livestock, the inspector issuing the permits ~~shall~~ must receive a fee established by the department for each permit issued and ~~shall~~ must receive in addition ~~his~~ the inspector's necessary actual expenses, to be paid by the owner or the person for whom the inspection is made or permit issued. For the issuance of a permanent horse transportation permit, the state stock inspector taking the application for permit shall receive a fee established by the department for each permit issued. All inspection and permit fees and expenses ~~shall~~ must be collected by the inspector at the time of inspection or issuance of permit, ~~and~~ all the fees and expenses collected by a deputy state stock inspector ~~shall~~ must be retained by ~~him~~ the deputy, and all ~~such~~ fees and expenses collected by a state stock inspector ~~shall~~ must be sent by ~~him~~ the inspector to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department.

(2) For the service of inspection before any livestock except a horse, mule, or ass is sold or offered for sale at a licensed livestock market or slaughtered at a licensed slaughterhouse, a state stock inspector or deputy state stock inspector making the inspection ~~shall~~ must receive a fee established by the department for each head inspected. All fees ~~shall~~ must be paid by the owner or by the person for whom the inspection is made. For releasing an animal so that it may be removed from the premises of a licensed livestock market, the state stock inspector making the release ~~shall~~ must receive a fee established by the department for each head inspected from the owner or the person for whom the release is made. All fees for inspection and release at the market ~~shall~~

must be collected at the time the inspection or release is made by the state stock inspector making the inspection or release and ~~shall~~ must be sent by ~~him~~ the inspector to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department. All fees for preslaughter inspection made at a licensed slaughterhouse by the state stock inspector ~~shall~~ must be paid to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department. Preslaughter inspection fees paid to a deputy state stock inspector ~~shall~~ must be retained by ~~him~~ the deputy.

(3) (a) For the service of inspection of horses, mules, or asses before removal from a county or before change of ownership, the inspector making the inspection ~~shall~~ must receive a fee established by the department for each head inspected and ~~shall~~ must receive in addition ~~his~~ the inspector's necessary actual expenses, to be paid by the owner or the person for whom the inspection is made. All fees and expenses collected by a state stock inspector must be sent by ~~him~~ the inspector to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department.

(b) For the service of inspection before a horse, mule, or ass is sold or offered for sale at a licensed livestock market, a state stock inspector making the inspection ~~shall~~ must receive a fee established by the department for each head inspected. All fees ~~shall~~ must be paid by the owner or the person for whom the inspection is made to the state stock inspector.

(4) All inspection and release fees and expenses ~~shall~~ must be paid to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department unless paid to a deputy state stock inspector. State stock inspectors ~~shall~~ must be paid for their services and receive their expenses as fixed by the department."

Section 2642. Section 81-3-214, MCA, is amended to read:

"81-3-214. Entry permit. A transportation permit for the entry of livestock into Montana must be obtained by the owner or ~~his~~ the owner's agent from a state stock inspector prior to the entry of the livestock into Montana. The department shall establish a fee for the permit, to be remitted by the department to the state treasury for credit to the state special revenue account of the department. The department shall provide by rule for the issuance and control of transportation permits authorized by this section."

Section 2643. Section 81-3-223, MCA, is amended to read:

"81-3-223. Action by dissatisfied owner -- costs. ~~Should~~ If the owner of the animal ~~so~~ seized and killed ~~feel~~ under this part is dissatisfied with the valuation made, ~~he~~ the owner may maintain an action against the

department or, if the animal is seized by a sheriff, against that sheriff's county, and ~~should he fail if the owner fails~~ to recover damages in any greater amount than that allowed under 81-3-222, ~~he~~ the owner shall bear all costs that may be incurred in the maintenance of the action."

Section 2644. Section 81-3-231, MCA, is amended to read:

"81-3-231. Penalties. (1) A person is guilty of a misdemeanor and is punishable as provided in subsection (5) ~~of this section~~ if ~~he~~ the person removes livestock or causes livestock to be removed from a county in this state:

- (a) without having the livestock inspected before removal if an inspection is required by law;
- (b) without obtaining a market consignment permit or transportation permit if the permits are required by law;
- (c) ~~and does obtain~~ after obtaining a market consignment permit for livestock but does not deliver the livestock transported ~~thereunder~~ under the permit to the livestock market designated in the market consignment permit;
- (d) ~~and does obtain~~ after obtaining a transportation permit for the livestock but does not deliver the livestock transported ~~thereunder~~ under the permit to the destination as shown on the transportation permit and fails to have the transported livestock ~~so transported~~ inspected at the point of destination.

(2) A person who sells livestock or offers livestock for sale at a livestock market without having the livestock inspected or who removes livestock or causes livestock to be removed from a livestock market without obtaining a release is guilty of a misdemeanor and is punishable as provided in subsection (5) ~~of this section~~.

(3) A person who has ~~in his~~ charge of livestock being removed from a county in the state for which an inspection certificate, a market consignment permit, a transportation permit, or a market release certificate has been issued and who fails to have in ~~his~~ the person's possession when accompanying the livestock the inspection certificate, market consignment permit, transportation permit, or market release certificate as issued for the livestock; or who, having the certificate of inspection, market consignment permit, transportation permit, or market release certificate, fails to exhibit it to a sheriff, deputy sheriff, constable, highway patrol officer, state stock inspector, or deputy state stock inspector ~~at his~~ upon request is guilty of a misdemeanor and is punishable as provided in subsection (5) ~~of this section~~.

(4) Except as specifically otherwise provided, a person violating any of the provisions of this part is guilty of a misdemeanor and is punishable as provided in subsection (5) ~~of this section~~.

(5) Upon conviction under this section, a person, firm, association, or corporation shall be fined not less

than \$50 or more than \$500 or imprisoned in the county jail for a period of not more than 6 months, or both ~~fined and imprisoned~~. Of all fines assessed and collected under this section, except those assessed and collected in a justice's court, 50% ~~shall~~ must be paid into the state treasury and credited to the state special revenue fund for the use of the department and 50% ~~shall~~ must be paid into the general fund of the county in which the conviction occurred."

Section 2645. Section 81-3-233, MCA, is amended to read:

"81-3-233. Penalty for removal of livestock from state without inspection -- exception. ~~Any~~ A person, other than the owner or his the owner's agent or employee, who, without consent of the owner, removes or causes to be removed from this state any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal, or filly without having the ~~same~~ animal inspected ~~where such~~ when inspection is required by law is guilty of a felony and shall be punished by a fine of not more than \$2,000, by imprisonment in the state prison for a term of not more than 3 years, or by both ~~such fine and imprisonment~~. The provisions of this section do not apply to ~~any~~ a person who removes from this state ~~any~~ an animal specified by this section for the purpose of obtaining emergency treatment for ~~such~~ the animal by a licensed veterinarian."

Section 2646. Section 81-4-104, MCA, is amended to read:

"81-4-104. Barbed wire fences to be kept in repair. The owners of barbed wire fences ~~must~~ shall keep the same in repair, and ~~any~~ a person ~~receiving~~ who receives notice in writing that ~~his~~ the person's barbed wire fence or any part ~~thereof~~ of the fence is down or in such condition as to be likely to injure any livestock and ~~who~~ fails or refuses to repair ~~such~~ the fence is liable to pay damages in an amount equal to the value of any cattle, horses, mules, or other domestic animals ~~which~~ that may be injured by coming into contact with the fence."

Section 2647. Section 81-4-108, MCA, is amended to read:

"81-4-108. Disposal of proceeds of sale of wire after payment of expense. The proceeds of ~~such~~ a sale ~~shall~~ under 81-4-107 must be used to defray the cost of collecting and selling ~~said~~ the wire, and the balance, if any, ~~shall~~ must be placed by the county treasurer in a special fund and ~~shall~~ must be held ~~by him~~ subject to claim by any person establishing to the satisfaction of the board of county commissioners that ~~he~~ the person was the lawful owner of ~~said~~ the wire and entitled to the remaining proceeds of ~~such~~ the sale. If ~~no~~ a person ~~claims~~ said does not claim the money within 1 year of the date of sale, the ~~same~~ shall money must be deposited in the general fund of the county."

Section 2648. Section 81-4-207, MCA, is amended to read:

"81-4-207. Castration of animals running at large -- notice to owner -- expense and charges. (1)

Any ~~A~~ person may take up and secure any ~~such~~ animal found running at large on the open range. After taking it up ~~he~~ the person shall, without unnecessary delay, post at the United States post office or as near as may be to the place where the animal was taken up a notice truly dated and subscribed by ~~him~~ the person or ~~his~~ the person's agent to the effect that the animal, describing it by marks and brands, (if any), color, and sex, was taken up on the day named while it was running at large on the open range in the county, (naming the county), and that, unless claimed and removed within 5 days ~~next~~ after the date of the posting, the animal will be castrated at the expense of the owner ~~thereof~~. ~~Should~~ If the owner, person, firm, corporation, or association having management or control of ~~such~~ the animal ~~be~~ is known to the person who took the animal up, personal service of ~~such~~ the notice upon the owner, person, firm, corporation, or association having management or control of the animal ~~shall~~ be is the equivalent to the posting. The notice, if personally served, may state that, unless the animal is claimed and removed within 2 days ~~next~~ after the date of the notice served personally, the animal will be castrated at the expense of the owner ~~thereof~~.

(2) If ~~such~~ the animal ~~so~~ taken up ~~be~~ is not claimed and removed within ~~said~~ 5 days or ~~said~~ 2 days, as the case may be, it may lawfully be castrated in the usual manner and doing no more harm than is necessary. The expense of castration ~~shall~~ must be paid by the owner. If ~~such~~ the animal ~~be~~ is claimed within the time herein prescribed, the claimant shall pay to the person who took the animal up the reasonable expense of ~~the~~ keeping and ~~feed~~ feeding the animal since it was taken up and also the sum of \$5 for the taking up and giving of the notice ~~aforementioned~~. Upon making ~~such~~ the payments, the claimant shall immediately remove and take away ~~said~~ the animal."

Section 2649. Section 81-4-208, MCA, is amended to read:

"81-4-208. Killing of animal running at large -- notice -- posting and service. (1) If any ~~such~~ an animal ~~so~~ running at large cannot, by reasonable effort, be captured, taken up, or corralled, it may lawfully be killed unless the owner or person having the management or control of it ~~shall take~~ takes the animal off the open range and ~~restrain~~ restrains it from running at large ~~thereon~~ within 10 days ~~next~~ after ~~the~~ giving of notice as ~~hereinafter~~ provided in this section. The notice ~~shall~~ must be signed by one or more taxpayers of the vicinity of the range ~~whereon~~ such on which the animal be is at large and must be substantially as follows:

"To whom it may concern:

Take notice, that a certain (stallion, ridgeling, unaltered male mule, or jackass, as the case may be) is

running at large on the open range (identify the range by general description) in County, Montana. Unless ~~said~~ the animal ~~be is~~ removed ~~therefrom~~ from the range and restrained from running at large on open range; within 10 days ~~next~~ after the date of this notice, it will be killed.

(Date)

(Signature or signatures)"

(2) The notice ~~shall~~ must be posted at the post office nearest the place where the animal was last seen on the range and ~~like~~ similar notices must be posted in two other of the most public places in the vicinity of ~~said~~ the range, and ~~like~~ the notice ~~shall~~ must at once be mailed to the owner or person having management or control of the animal; if ~~his~~ the owner's or person's name and address ~~be~~ are known."

Section 2650. Section 81-4-212, MCA, is amended to read:

"81-4-212. Castration of violating bulls. Any A bull found running at large on the open range or national forest reserve in violation of the provisions of 81-4-210 through 81-4-213 may be caught and castrated by any person finding ~~such a~~ the bull, provided that any purebred dairy bull found running at large may be taken up and the party holding the bull shall notify the owner in person, ~~and if.~~ If the owner of ~~such~~ the purebred bull does not take possession of ~~said~~ the bull within 24 hours after being notified, the party holding ~~such~~ the bull may castrate ~~him~~ the bull."

Section 2651. Section 81-4-220, MCA, is amended to read:

"81-4-220. Marking -- right of action against trespassing stock. ~~No~~ A person owning or possessing agricultural or grazing land or patented or unpatented mining claims lying within ~~said~~ the national forest reserves of this state or on the public range lying adjoining to any ~~said~~ national forest reserve, the boundaries of which ~~said~~ lands are not marked as required by the provisions of 81-4-218 through 81-4-220, ~~shall~~ may not have any claim or cause of action or right of action against the owner of sheep, cattle, or other livestock under the charge of a herder for trespass committed by ~~such~~ the livestock upon ~~said~~ that land, and ~~such~~ this is the rule regardless of whether the ~~said~~ trespassing livestock ~~so~~ trespassing strayed ~~thereon~~ on the land on their own inclination and without being driven or whether ~~said~~ the livestock were herded or driven on ~~said~~ the land; ~~provided that no~~ However, a person or persons ~~can~~ may not claim exemption for trespassing under the provisions of this section ~~where~~ such ~~if~~ the person or persons ~~shall~~ have actual knowledge of the boundary lines of ~~any~~ lands ~~herein~~ referred to in this section. ~~In no event shall damages~~ Damages, other than nominal damages, may not be assessed against ~~said~~ the trespass unless the landowner or ~~his~~ the landowner's duly authorized agent ~~shall~~, within 6 months after ~~said~~ the trespass has been committed, ~~give~~ said gives the trespasser written notice

demanding a sum certain for damages sustained by reason of ~~such the~~ trespass."

Section 2652. Section 81-4-308, MCA, is amended to read:

"81-4-308. Retrieval of impounded animals a -- misdemeanor -- penalty. Any A person who takes or rescues ~~any an~~ animal impounded as provided in 81-4-307 from the possession of the person ~~in whose~~ with custody ~~the same may be of the animal;~~ without ~~his~~ the possessor's consent; ~~shall be is~~ guilty of a misdemeanor and upon conviction ~~therefor shall be subject to a fine of fined~~ not less than \$100 or more than \$500 or ~~shall be~~ confined in the county jail for not more than 60 days, or both ~~such fine and imprisonment.~~"

Section 2653. Section 81-4-322, MCA, is amended to read:

"81-4-322. Horse herd districts -- size -- location -- petition -- notice and hearing -- abolishment.

(1) Horse herd districts may be created in any county in the state of Montana upon the petition of owners or possessors of 55% of the land of ~~such the~~ district. ~~Such The~~ district ~~shall must~~ contain 12 square miles or more lying not less than 1 mile in width outside of incorporated cities or towns. ~~Such The~~ petition ~~shall must~~ designate the months of the year when horse herd district regulations are effective.

(2) Upon presentation and filing of a petition properly signed and reciting the outside boundaries and description of the proposed district, together with the post-office address of the signers ~~thereof~~, with the clerk and recorder in the county in which the ~~said the~~ district is being created, the county commissioners of ~~such the~~ county upon receipt ~~thereof of the petition~~ shall set a date for hearing protests and verification of signatures ~~thereto~~ and shall give not less than 20 days' notice of the ~~same hearing~~ by three publications in a newspaper of general circulation in the county of the proposed district. ~~Should If it appear~~ appears to ~~such the~~ county commissioners, after ~~such the~~ hearing, that the signatures attached to ~~such the~~ petition were genuine, they shall immediately make an order declaring ~~such the~~ horse herd district created and established, after which the county commissioners ~~must shall~~ give notice by two weekly publications in some newspaper in the county, nearest the district, stating the period when ~~such the~~ horse herd district will be in effect and when ~~such the~~ district ~~shall is~~ not ~~be~~ in effect. ~~Such The~~ order ~~shall may~~ not be effective until 30 days have expired after the order.

(3) ~~Such herd~~ Herd districts may be abolished at any time upon proceedings as ~~hereinbefore~~ set forth for the establishment of ~~such a~~ herd district.

(4) The estimated expense of all publications required by 81-4-321 through 81-4-328 ~~shall must~~ be paid by the petitioners, and no part ~~thereof shall of the expenses may~~ be paid by the county.

(5) Upon petition of ~~any an~~ owner or possessor of land lying contiguous and adjoining any horse herd

district ~~heretofore created~~ and upon like hearing and notice as ~~hereinabove~~ provided for in this section, ~~such the~~ lands ~~shall must~~ be included in ~~such the horse~~ herd district and become a part ~~thereof of the district~~.

(6) ~~Should~~ If the signature of a lessee ~~appear~~ appears on the petition creating or abolishing any horse herd district, the owner or owners of ~~said the~~ land may appear either in person or by agent and enter their protest, and the board of county commissioners shall remove the name of the lessee from ~~said the~~ petition, and ~~no a~~ person ~~shall may not~~ be permitted to withdraw ~~his the person's~~ name after the hour set for hearing ~~same the~~ petition."

Section 2654. Section 81-4-326, MCA, is amended to read:

"81-4-326. Retention and sale of horses for damages and care -- procedure. (1) The owner or occupant of the land upon which ~~such~~ wrongful entry is made under 81-4-325 may take into ~~his the owner's or~~ occupant's possession ~~such the~~ horse or horses and shall reasonably care for the ~~same horse or horses~~ while in ~~his~~ possession and may retain possession of ~~said the~~ horse or horses and ~~shall have~~ has a lien and claim ~~thereon on the horse or horses~~ as security for payment of ~~such the~~ damages and reasonable charges for the care of ~~said the~~ horse or horses while in ~~his the owner's or occupant's~~ possession. The person taking up ~~said the~~ horse or horses shall within 48 hours after taking possession ~~thereof~~ notify ~~said the~~ owner, owners, or persons in charge ~~thereof of the horse or horses~~ by a notice in writing, describing ~~said the~~ horse or horses taken up, including marks and brands, if any, the amount of damages claimed, ~~and~~ the charge per head per day for caring for and feeding the ~~same horse or horses~~, and ~~describing~~, either by legal subdivisions or other general description, the location of the premises upon which ~~said the~~ horse or horses are held and requiring ~~him that person~~ within 48 hours after receiving ~~said the~~ notice to take the ~~said~~ horse or horses away after making full payment for all damages and costs of ~~said the~~ horse or horses. ~~Such The~~ notice ~~shall must~~ be given by personal service on the ~~said~~ owner, owners, or person in charge ~~thereof of the horse or horses~~ or by leaving ~~said the~~ notice at ~~his that person's~~ usual place of residence with some member of ~~his that person's~~ family over ~~the age of~~ 14 years of age or by sending ~~said the~~ notice by prepaid ~~registered or~~ certified mail addressed to ~~his that person's last known last-known~~ place of residence. ~~Said service~~ Service by ~~registered or~~ certified mail ~~shall be deemed is considered~~ complete upon the deposit of the notice in the post office.

(2) Upon demand, the owner or occupant of the land shall release and deliver possession of ~~such the~~ horse or horses to the owner or person entitled ~~thereto~~ upon payment of damages and charges, but ~~said~~ payment of damages and charges ~~shall may~~ not act as a bar to the prosecution of ~~said the~~ person, owner, or person in control of ~~such the~~ horse or horses; as ~~hereinbefore~~ provided in subsection (1). If the owner or claimant of ~~such~~

~~the~~ horse or horses is not known to the person taking up ~~such the~~ horse or horses or the ~~said~~ owner or claimant ~~shall refuse~~ refuses to pay the amount of damages and charges ~~as herein provided~~, the ~~said~~ person taking up ~~such the~~ horse or horses shall, within 72 hours from the time ~~said the~~ horse or horses were ~~so~~ taken up, deliver to the sheriff or a constable of the county in which the horse or horses were ~~so~~ taken up a statement containing the information required to be given in the notice ~~hereinbefore set out, and in.~~ In addition thereto, he the person shall mail by prepaid ~~registered or~~ certified mail a copy of ~~said the~~ statement addressed to the nearest state livestock inspector. Upon receipt of ~~such the~~ statement, the sheriff or constable shall proceed to advertise and sell at public auction the horse or horses ~~so~~ taken up."

Section 2655. Section 81-4-327, MCA, is amended to read:

"81-4-327. Sale of horses -- disposition of proceeds. (1) Prior to ~~such a~~ sale as authorized by 81-4-326, the sheriff shall have ~~said the~~ horses classified as follows:

(a) Class 1 ~~shall~~ must include:

(i) horses not bearing a registered brand and ~~which that~~ in the opinion of the stock inspector are of a value not to exceed \$10 per head; and

(ii) horses bearing a registered brand but ~~which that~~ the owner has failed to redeem as ~~herein~~ provided in this part, after notice given, and ~~which that~~ in the opinion of the stock inspector are of a value not to exceed \$10 per head.

(b) Class 2 ~~shall~~ must include horses bearing registered brands and ~~which that~~ in the opinion of the stock inspector are of a value in excess of \$10 per head.

(2) Horses in class 1 ~~shall~~ must be sold on 10 days' notice posted at the courthouse of each county in which any portion of the district lies and posted in three other public places in ~~such the~~ county, one of which ~~shall~~ must be in that portion of the district included in the county.

(3) Horses in class 2 ~~shall~~ must be sold on notice posted for 21 days and otherwise as notices are required to be posted for the sale of horses in class 1, and ~~such the~~ notice ~~shall likewise~~ must be published once a week for 2 successive weeks before ~~said the~~ sale in some newspaper published in the county seat of each county including that includes any part of ~~said the~~ district, if there ~~be~~ such is a newspaper, and if there ~~be~~ is no newspaper published in any county comprising a part of ~~such the~~ district, ~~then such the~~ notice ~~shall~~ must be published in any newspaper of general circulation in the county or counties including such that include the district. The notice required to be published for the sale of horses in class 2 ~~shall~~ must describe each horse to be sold, giving the approximate age, description, and brands, if any. The proceeds of the sale ~~shall~~ must be applied by

the sheriff to the discharge of the claim and the costs of the proceedings in selling the property and enforcing the claim, and the remainder, if any, ~~shall~~ must be deposited with the county treasurer who shall keep the same in a special fund to be designated as the "horse herd district fund", ~~(giving the number of district if there is more than one)~~ district.

(4) A separate fund, ~~styled as above~~ of the type specified in subsection (3); ~~shall~~ must be kept by the county treasurer for each of ~~said the~~ said districts created in ~~his that~~ that county. The county treasurer shall make a record of the description of each horse, the amount received for ~~same the horse~~, and the amount of deductions; ~~which~~ The record shall must be open to public inspection; ~~and any person making claim of ownership of such a horse to the board of county commissioners at any time within 1 year from the date of sale and submitting proof of ownership to such the board with such the claim to the satisfaction of such the board shall be is~~ is entitled to receive ~~such the~~ such excess received from the sale of ~~such that~~ such horse. Any money received from the sale of ~~any such a~~ such horse ~~which shall that is not be so~~ which shall must at the expiration of ~~said that~~ said period be transferred to the general fund of the county."

Section 2656. Section 81-4-405, MCA, is amended to read:

"81-4-405. Service upon owner. If ~~such the~~ the owner ~~be of livestock described in this part is~~ is known and if ~~his the owner's~~ the owner's post-office address ~~shall be is~~ is known ~~as hereinbefore specified, such the~~ is notice ~~shall~~ must be served upon ~~him or her~~ the owner personally."

Section 2657. Section 81-4-406, MCA, is amended to read:

"81-4-406. Service on department of livestock. If the owner of livestock described in this part is unknown or if the owner is known but ~~his the owner's~~ the owner's post-office address is unknown, the notice ~~shall~~ must be served on the department ~~of livestock.~~"

Section 2658. Section 81-4-410, MCA, is amended to read:

"81-4-410. Provisions mandatory. The provisions ~~hereof of this part~~ hereof are mandatory, and the owner of ~~such livestock will~~ may not lose title or right of possession to ~~his the owner's~~ the owner's stock unless the provisions ~~hereof of this part~~ hereof are strictly complied with."

Section 2659. Section 81-4-505, MCA, is amended to read:

"81-4-505. Roundup foreman supervisor -- duties -- bond. (1) All roundups ~~shall~~ must be under the

control and supervision of the board of county commissioners of the county in which the ~~same shall be~~ roundup is held. Roundup districts ~~shall~~ must be numbered in the order of their creation. Each roundup ~~shall~~ must be conducted by ~~some~~ a person designated by the board of county commissioners, whose official designation ~~shall~~ must be "roundup ~~foreman~~ supervisor, roundup district, County, state of Montana".

(2) ~~Such person~~ The roundup supervisor shall maintain ~~his~~ headquarters at the place designated by the board of county commissioners in its order as the headquarters of ~~such~~ the roundup. ~~Such~~ The roundup ~~foreman~~ supervisor ~~shall have~~ has the power to administer oaths and affirmations in all matters coming within the scope of ~~his~~ official duties.

(3) The board of county commissioners shall require from ~~such~~ the roundup ~~foreman~~ supervisor an official bond, in an amount not less than \$2,500 and not to exceed \$5,000; ~~which~~ The bond ~~shall~~ must be conditioned as official bonds of county officers and ~~shall be~~ is subject to all provisions of law applicable to ~~such~~ county officer bonds."

Section 2660. Section 81-4-506, MCA, is amended to read:

"81-4-506. Sale of abandoned horses. All abandoned horses taken up in ~~any~~ such ~~a~~ roundup ~~shall~~ must be delivered to the roundup ~~foreman~~ supervisor in charge of ~~such~~ the roundup and ~~shall~~ must be ~~by him~~ offered by the supervisor for sale at public auction and sold to the highest bidder for cash, if there ~~be~~ is any bidder ~~or bidders therefor~~, and any ~~such~~ abandoned horses ~~se~~ offered for sale and for which no bid is made ~~shall~~ must be destroyed or otherwise disposed of in the discretion of the board of county commissioners; unless reclaimed as ~~herein~~ provided in this part."

Section 2661. Section 81-4-507, MCA, is amended to read:

"81-4-507. Gathering horses in roundup district before roundup unlawful -- rights of owner. It ~~shall~~ be is unlawful for ~~any~~ a person or persons to round up from the range any horse or horses in ~~any~~ a roundup district after ~~such~~ the districts have been designated by the county commissioners until after ~~such~~ the roundup. However, an owner of horses on which the taxes have been paid in this district may gather the ~~same~~ horses by notifying the roundup ~~foreman~~ supervisor and being accompanied by ~~such~~ foreman the supervisor or a representative of ~~such~~ foreman the supervisor in gathering ~~such~~ the horses."

Section 2662. Section 81-4-508, MCA, is amended to read:

"81-4-508. Claim of owner -- cost of keeping and feeding horses. ~~Any~~ A person claiming to be the

owner of ~~any such an~~ abandoned horse or horses may serve written notice upon the roundup ~~foreman~~ supervisor in charge of ~~such the~~ roundup of ~~his the~~ claim of ownership; at any time before sale or other final disposition of ~~such the~~ horse or horses. ~~Such The~~ claim of ownership ~~shall must~~ be verified by the oath of the claimant or someone on ~~his the~~ claimant's behalf, and the sale or other final disposition of ~~such the~~ horse or horses ~~shall~~, ~~as to such horse or horses~~, must be postponed from time to time as may be necessary to enable the claimant to make proof of ~~his the~~ claim as ~~herein~~ provided in 81-4-509. ~~Such The~~ postponement ~~shall may~~ not be ~~had~~ allowed unless the claimant ~~shall pay~~ pays to the roundup ~~foreman~~ supervisor in charge of ~~such the~~ roundup or ~~deliver~~ delivers to ~~him the~~ supervisor satisfactory security for the estimated cost of keeping and feeding ~~such the~~ horse or horses until sale or other final disposition or delivery to the owner."

Section 2663. Section 81-4-509, MCA, is amended to read:

"81-4-509. Proof of ownership -- payment of taxes and penalties -- decision of commissioners on claim. ~~Any A~~ person claiming ~~any an~~ abandoned horse or horses as provided in 81-4-508 shall, within 5 days after serving the notice provided for in 81-4-508; or within ~~such a~~ further time ~~as that~~ the board of county commissioners ~~shall allow~~ allows, upon good cause shown, submit to ~~such the~~ board proof of ~~his~~ ownership and shall deposit with ~~said the~~ board the amount of any unpaid taxes and penalties ~~which that~~ may be assessed against ~~such the~~ horse or horses, together with the sum of a \$5 roundup fee. The board shall decide all ~~such~~ cases in preference to all other matters coming before it and at the earliest possible moment. If the claim ~~shall be is~~ allowed, the roundup ~~foreman~~ supervisor in charge of ~~such the~~ roundup ~~shall must~~ immediately be notified of ~~such the~~ decision and ~~he the~~ supervisor shall ~~forthwith~~ deliver ~~such the~~ horse or horses ~~as to which ownership shall be so proved~~ to the owner upon payment of any amount due from ~~such the~~ owner for the estimated cost of keeping and feeding ~~such the~~ horse or horses ~~as aforesaid~~. The deposit made by ~~such the~~ owner of taxes, penalties, and ~~the~~ roundup fee ~~shall must~~ be delivered by the board to the county treasurer. If ~~such the~~ board ~~shall deny~~ denies the claim of ownership, it shall ~~forthwith~~ notify the person in charge of ~~such the~~ roundup of its decision and ~~such the~~ horse or horses as to which ~~such the~~ claim ~~shall be is~~ denied ~~shall must~~ be offered for sale at the earliest convenient session of the sales being held under ~~such the~~ roundup, ~~and if. If the horses are~~ not sold, the ~~same shall~~ they must be destroyed or otherwise disposed of as though no claim had been presented."

Section 2664. Section 81-4-512, MCA, is amended to read:

"81-4-512. Disposition of proceeds -- abandoned horse fund -- use of fund. All ~~moneys~~ money paid by reclaiming owners of any ~~such~~ horse or horses ~~shall must~~ be paid to the county treasurer and ~~by him~~ kept in

a fund to be designated as the "abandoned horse fund, roundup district No. (giving number of district in which ~~such the~~ horse or horses were rounded up)". A separate fund, ~~styled as above specified, shall must~~ be kept by the county treasurer for each roundup district created in ~~his that~~ county. All ~~moneys money~~ received from the sale of ~~any such~~ horses ~~shall must~~ be paid to the county treasurer, and if ~~such the~~ sum received from the sale of any ~~such~~ horse ~~shall does~~ not exceed the taxes, ~~the~~ penalties, and the roundup fee, the whole ~~thereof shall amount~~ ~~must~~ be immediately deposited in the abandoned horse fund for the district in which ~~such the~~ horse or horses were rounded up. ~~But if~~ ~~If~~ the sum received from the sale of ~~any such a~~ horse ~~shall exceed shall exceeds~~ the taxes, ~~the~~ penalties, and ~~the~~ roundup fee, the amount of ~~such the~~ taxes, ~~the~~ penalties, and ~~the~~ roundup fee ~~shall~~ ~~must~~ be ~~forthwith~~ deposited in the abandoned horse fund for ~~such the~~ district and the excess ~~shall must~~ be kept by the treasurer in a separate fund, ~~and he~~. The treasurer shall make a record of the description of ~~such the~~ horse, the amount received for the ~~same horse~~, and the amount of deductions for ~~the~~ taxes, ~~the~~ penalties, and ~~the~~ roundup fee, ~~which~~ The record ~~shall must~~ be open to public inspection. ~~Any~~ A person making claim to the board of county commissioners, at any time within 6 months from the date of sale, of ownership of ~~such the~~ horse and submitting proof of ownership to ~~such the~~ board with ~~such the~~ claim, to the satisfaction of ~~such the~~ board, ~~shall be is~~ entitled to receive ~~such the~~ excess received from the sale of ~~such the~~ horse. Any money received from the sale of ~~any such a~~ horse in excess of ~~the~~ taxes, ~~the~~ penalties, and ~~the~~ roundup fee, ~~which shall that is not be~~ ~~so~~ claimed within 6 months after ~~such the~~ sale, ~~shall~~ at the expiration of ~~said that~~ period, ~~become becomes~~ the property of ~~such the~~ county and ~~shall must~~ be transferred to the abandoned horse fund for the district in which ~~any such the~~ horse was rounded up."

Section 2665. Section 81-4-513, MCA, is amended to read:

"81-4-513. Report of roundup foreman supervisor -- disposition of copies. The roundup ~~foreman~~ supervisor in charge of the roundup shall keep an accurate record of all proceedings under the order for the roundup. Within 30 days after the roundup is completed, the ~~foreman~~ supervisor shall prepare in triplicate and verify by oath a full, true, and accurate report of all the proceedings under the order for the roundup. The report must include a complete financial statement, the number and description of horses impounded, and the manner of disposition of the horses. One copy of the report must be filed with the clerk of the board of county commissioners, and the filing is notice of the contents of the report and prima facie proof of the facts stated in the report. ~~One copy~~ Copies of the report must be filed with the department of revenue; and ~~one copy must be filed~~ with the county treasurer; for their information and appropriate action."

Section 2666. Section 81-4-603, MCA, is amended to read:

"81-4-603. Taking up and disposition of estrays -- advertisement. (1) A stock inspector authorized by the department shall take into his possession an estray found in his ~~his~~ the inspector's district and shall either ship or arrange for the shipment of the estray to a licensed livestock market for sale, or ~~he~~ the inspector may hold the estray ~~in his possession~~ and care for the estray in the cheapest and most practicable manner for a period of not less than 30 days or more than 60 days, during which time ~~he~~ the inspector shall advertise that ~~he~~ the inspector holds the estray and that, unless claimed by the owner, ~~he~~ the inspector will on a date ~~to be~~ specified in the notice sell the estray at a public auction to the highest bidder for cash.

(2) The notice ~~shall~~ must be published in the newspaper doing the county printing of the county in which the estray is found and in addition to that paper in a paper published in the town or city nearest the place in which the estray is held. This notice ~~shall~~ must be published at least once a week for 4 consecutive weeks and ~~shall~~ must contain a statement of the date of the sale, the place where the sale is to be held, and a general description of the estray, including the sex and the approximate age, together with an illustration of the brand and the position of the brand on the estray and a description of the place or locality where the estray was found or taken.

(3) The proceeds from the sale ~~shall~~ must be disposed of under 81-4-605 and 81-4-606.

(4) The owner of the estray may appear and claim it at any time before the sale or shipment, as provided in this part, upon payment to the department of the cost of caring for the estray as determined by the department."

Section 2667. Section 81-5-103, MCA, is amended to read:

"81-5-103. Abandonment of sheep -- penalty. Every A person who, ~~having~~ has, by virtue of his employment as herder, driver, or otherwise, the charge or custody of ~~any~~ sheep; ~~shall and who~~ willfully ~~abandon~~ abandons the ~~same~~ sheep or ~~allow~~ allows them to stray from ~~his~~ the person's charge or custody shall, upon conviction, be punished by a fine of not less than \$100, ~~or~~ by imprisonment of not less than 3 months or more than 1 year, or by both ~~such fine and imprisonment~~; ~~provided, that~~ However, if the person ~~so in the~~ who has charge or custody of ~~such~~ the sheep ~~shall have given to~~ gave the owner of ~~such~~ the sheep; or ~~his~~ the owner's authorized agent; at least 5 days' notice of ~~his~~ the intention to quit ~~his~~ his employment, ~~he shall~~ the person may not be ~~deemed~~ considered to have abandoned ~~such~~ the sheep, within the meaning of this section, by leaving the ~~same~~ sheep after the expiration of ~~such~~ the period."

Section 2668. Section 81-6-102, MCA, is amended to read:

"81-6-102. Organization of committee -- officers -- meetings. ~~Said~~ The county livestock protective

committee shall upon appointment and annually ~~thereafter~~ after appointment organize by election of a ~~chairman~~ presiding officer and a secretary. Meetings of the committee ~~shall~~ must be held at the call of the ~~chairman~~ presiding officer or any two members of the committee. Minutes of all meetings of the committee ~~shall~~ must be kept by the secretary. ~~Such~~ The minutes ~~shall~~ must be presented at the ensuing meeting of the committee and upon approval ~~thereof shall~~ must be signed by the ~~chairman~~ presiding officer and secretary and immediately ~~thereafter~~ deposited with the county clerk and recorder and kept available for public inspection."

Section 2669. Section 81-7-102, MCA, is amended to read:

"81-7-102. Department to supervise destruction of predatory animals -- cooperation with other agencies -- administration of money. (1) The department of ~~livestock~~ shall conduct the destruction and control of predatory animals capable of killing, destroying, maiming, or injuring domestic livestock or domestic poultry and the protection and safeguarding of livestock and poultry in this state against depredations from these animals. The department shall formulate the practical programs for accomplishing these objectives in this state and for carrying out the programs in an efficient and practical manner responsive to the need for control in each area of this state.

(2) The department shall adopt rules applicable to predatory animal control that are necessary and proper for the systematic destruction of the predatory animals by hunting, trapping, and poisoning operations and payments of bounties. The department shall make field, area, range, or other orders and instructions, including orders and instructions to hunter and trapper personnel and others, that are appropriate in the various areas at different seasons of the year, taking into consideration the habits, presence, migrations, or movements of the animals and their attacks on livestock and poultry, either singly or in packs or bands.

(3) The department shall cooperate with authorized representatives of the federal government, including the biological survey and the fish and wildlife service, the department of fish, wildlife, and parks, boards of county commissioners, voluntary associations of stockgrowers, sheepgrowers, ranchers, farmers, ~~and sportsmen~~ hunters, and anglers, and corporations and individuals, in the systematic destruction of predatory animals by hunting, trapping, and poisoning operations.

(4) Section 81-7-103 and this section do not interfere with or impair the power and duties of the department of fish, wildlife, and parks in the control of predatory animals by the department of fish, wildlife, and parks as authorized by law or the obligation of the department of fish, wildlife, and parks to expend its funds in cooperation with the department for predatory animal control as required by law. Funds of the department of fish, wildlife, and parks for the cooperative predatory animal control must be administered and expended by the

department of fish, wildlife, and parks."

Section 2670. Section 81-7-115, MCA, is amended to read:

"81-7-115. Duty of county clerk. (1) The county clerk shall, on receipt of each certificate, file the certificate in the order in which it is received and safely keep it until the arrival of the skin or skins mentioned in the certificate. On receipt of the skin or skins, ~~he~~ the county clerk shall call ~~to his assistance~~ upon either the county treasurer or, in ~~his~~ the treasurer's absence, the clerk of the district court who, with both present in order to prevent fraud, shall examine each scalp or mountain lion lower jaw skin. If the examination discloses that the scalps or lower jaw skins agree with the number and kind of scalps or lower jaw skins mentioned in the certificate, the county clerk shall, in the presence of the treasurer or clerk of the district court, destroy the scalps or lower jaw skins by fire.

(2) The county clerk shall then make out and deliver to the person named in that certificate a second certificate showing the statement of the facts contained in the certificate to the sheriff, undersheriff, or deputy sheriff, with the additional statement of the examination made by ~~him~~ the clerk and that ~~he~~ the clerk found the scalps or lower jaw skins to agree with the number and kind mentioned in the certificate of the sheriff, undersheriff, or deputy sheriff. ~~In no case may a~~ A bounty certificate may not be issued by the county clerk for more scalps or lower jaw skins than are actually received and counted ~~by him~~.

(3) ~~The county clerk shall receive, for~~ For each scalp or skin of a mountain lion lower jaw ~~which he~~ accounts accounted for, the county clerk must receive the sum of 5 cents to be paid quarterly by the state treasurer out of the bounty fund.

(4) The county clerk shall keep a record of all certificates received and issued, showing the date and description of the number and kind of hides and the names of the persons presenting the hides, and this record is an official record. County clerks are required to send a report and statement to the department on or before the 20th of each month."

Section 2671. Section 81-7-203, MCA, is amended to read:

"81-7-203. County bounty fund. The tax collected under this part ~~shall~~ must be credited by the county treasurer to a fund to be known as "county bounty fund" and ~~shall~~ must be paid out by ~~him~~ the treasurer upon properly drawn warrants issued ~~thereon~~ on the fund by the county clerk."

Section 2672. Section 81-7-204, MCA, is amended to read:

"81-7-204. Presentation of skins -- affidavit. ~~Any~~ A person claiming bounty on ~~any~~ a predatory animal under this part shall present the green skin or pelt of ~~such the~~ the animal, with all four feet attached ~~thereto~~, to ~~any~~ one of the bounty inspectors provided for in 81-7-202 and shall make an affidavit that ~~such the~~ the animal was killed within the county where the bounty is claimed; ~~which~~ The affidavit ~~shall~~ must be corroborated by at least two reputable stockowners of ~~such the~~ the county to the effect that they know or have good cause to believe that ~~such the~~ the animal was killed within ~~such that~~ that county. For the purpose of this part, each bounty inspector provided for in this part ~~shall be~~ is empowered to administer oaths. The bounty inspector shall endorse upon ~~such the~~ the affidavit ~~his the inspector's~~ the inspector's approval or disapproval of ~~such the~~ the claim and shall cut from ~~such the~~ the skin or pelt the four feet. The person applying for ~~such the~~ the bounty shall then present the affidavit, with the endorsements ~~thereon~~, to the county auditor or, in counties not having an auditor, to the county clerk, who shall attach the ~~same~~ affidavit to a claim against ~~said the~~ the county bounty fund and present it to the board of county commissioners for action, the same as any other claim against the county."

Section 2673. Section 81-7-403, MCA, is amended to read:

"81-7-403. Dogging livestock. Any person who permits or directs any dog owned by ~~him~~ the person or in ~~his~~ the person's possession to chase or run any cattle or other livestock of which ~~he~~ the person is not the owner or the person in charge upon the open range or government lands or away from any watering place upon the open range is guilty of a misdemeanor and ~~punishable~~ shall be punished by a fine of not more than \$500."

Section 2674. Section 81-7-501, MCA, is amended to read:

"81-7-501. Aerial hunting prohibited -- exceptions. (1) Except as provided in 81-7-505, ~~no~~ a person, except an employee of the state, its subdivisions, or the federal government; who is acting within the scope of ~~his the person's~~ the person's employment, may not engage in the aerial hunting of predatory animals, as defined in 81-7-101, without first obtaining a permit from the department of livestock. The permit must specify the species of predatory animals to be hunted and the geographic areas over which aerial hunting may take place.

(2) A person issued a permit as required by this section may not engage in aerial hunting of predatory animals in violation of the terms of ~~his the~~ the permit, the rules promulgated by the board of livestock, or the terms of this part."

Section 2675. Section 81-8-215, MCA, is amended to read:

"81-8-215. Quarantine of diseased animals. If the livestock inspector at a sale finds any livestock

afflicted with an infectious or contagious disease, ~~he~~ the inspector shall immediately take possession of the livestock and place it the livestock in quarantine, to be disposed of as directed by the department."

Section 2676. Section 81-8-232, MCA, is amended to read:

"81-8-232. Posting of certificate or license. Every A person who is certified or licensed under the provisions of this part shall conspicuously post at ~~his~~ the person's place of business for inspection by any other person the certificate or license issued by the department."

Section 2677. Section 81-8-235, MCA, is amended to read:

"81-8-235. Penalties for financial violations. (1) A person found, after notice and hearing, to be in violation of 81-8-234 shall be assessed a civil penalty by the department of not less than \$100 or more than \$5,000; ~~or have his~~ the person's license or certificate suspended or revoked, or both.

(2) A person found, after notice and hearing, to have committed a subsequent violation of 81-8-234 after the department has assessed a penalty pursuant to subsection (1) shall be fined not less than \$250 or more than \$5,000 and have ~~his~~ the person's license or certificate suspended or revoked.

(3) A person, whether or not licensed under this part, who issues or delivers a check or other order upon a real or fictitious depository in payment for a livestock purchase knowing that it will not be paid by the depository is guilty of a felony and on conviction ~~may~~ shall be imprisoned for not more than 5 years or be fined not more than \$10,000, or both. If the person has an account with the depository, failure to make good the check or other order within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that ~~he~~ the person knew it would not be paid by the depository."

Section 2678. Section 81-8-251, MCA, is amended to read:

"81-8-251. Certificate to operate livestock market required -- application. (1) A person may not operate a livestock market unless ~~he~~ the person first obtains from the department a certificate declaring that public convenience and necessity require the operation.

(2) The application for a certificate of public convenience ~~shall~~ must be in writing, verified by the applicant, and filed with the department. ~~It shall~~ The application must specify the following:

(a) the names of the persons applying for a certificate together with their permanent addresses. If the applicant is a firm, association, partnership, or corporation, the names of its directors, officers, and members, if applicable;

- (b) the place where the applicant proposes to operate a livestock market;
- (c) a complete description of the property and facilities proposed to be used for the livestock market;
- (d) the commissions or charges the applicant proposes to impose on the consignors' livestock for services rendered ~~to them~~ by the applicant in the operation of the livestock market;
- (e) the location of other livestock markets within a radius of 200 miles of the proposed livestock market and the names and addresses of the operators ~~thereof~~ of those markets;
- (f) a detailed statement of the facts upon which the applicant relies to show public convenience and necessity for the livestock market, including the trade area to be served, the economic benefits to the livestock industry, the services to be offered, and the anticipated revenue from inspection that may be derived by the state;
- (g) if the applicant is a foreign corporation, its principal place of business outside the state, the state in which it is incorporated, and a showing that it is in compliance with the laws relating to foreign corporations doing business in this state;
- (h) a detailed financial statement showing that current assets exceed current liabilities and that long-term assets exceed long-term liabilities;
- (i) any additional information the department may require."

Section 2679. Section 81-8-261, MCA, is amended to read:

"81-8-261. Inspection of public markets. Livestock inspectors, including stock inspectors of a county or district, the sheriff of a county, or a representative of the department of livestock, may enter upon the premises where livestock ~~is~~ are being held or sold and ~~shall~~ must be accorded every facility by the owners ~~thereof~~ of the premises in determining whether a violation of the law is being committed or is likely to be committed. The inspection may not unnecessarily interfere with the conduct of the sales. Livestock sold at the market may not be delivered to the purchaser until ~~he~~ the purchaser has first received an inspection certificate issued by one of the officers mentioned in this section, showing clearly and explicitly that the person making the inspection is satisfied as to the ownership of the livestock and the health of all livestock ~~so~~ sold."

Section 2680. Section 81-8-263, MCA, is amended to read:

"81-8-263. Duties when ownership in doubt. An operator of a livestock market shall, when notified by the authorized brand inspector that there is a question as to whether any designated livestock sold through the market ~~is~~ are lawfully owned by the consignor ~~thereof~~ of the livestock, hold the proceeds received from the sale of the livestock for a reasonable time, not to exceed 30 days, to permit the consignor to establish ownership.

If at the expiration of that time the consignor fails to establish his lawful ownership of the livestock, the proceeds must be transmitted by the operator of the livestock market to the department. The department may dispose of the proceeds in accordance with Title 81, chapter 4, part 6, of Title 81, relating to the distribution of estray money, and the department's receipt ~~therefor shall relieve~~ for the proceeds relieves the operator of the livestock market from further responsibility for the proceeds. Proof of ownership and account of all sales of livestock must be transmitted by the authorized brand inspector to the department."

Section 2681. Section 81-8-274, MCA, is amended to read:

"81-8-274. Suspension or revocation of license. (1) Whenever the department finds that ~~any a~~ any a livestock dealer has violated the provisions of this part or rules adopted under this part, the department may, by order, suspend the license of ~~such the~~ such the person for a period not to exceed 1 year, and if the violation is repeated, the department may, by order, after hearing, permanently revoke the license of ~~such the~~ such the person.

(2) Before ~~any a~~ any a license issued under this part may be suspended or revoked, the licensee ~~shall must~~ shall must be furnished with a copy of the complaint ~~made against him~~ and a hearing ~~shall must~~ shall must be ~~had held~~ before the department to determine whether the license should be suspended or revoked. The licensee ~~shall must~~ shall must be given notice of the time and the place of ~~such the~~ such the hearing. The notice may be served by ~~registered or~~ certified mail at the post-office address listed in the application. The hearing must be held not less than 10 days or more than 30 days after the mailing of the notice. At the time and place set for the hearing, the department shall take and receive evidence, under oath, with respect to the complaint; and, upon ~~such the~~ such the evidence received, shall promptly dismiss the proceedings or revoke or suspend the license."

Section 2682. Section 81-8-278, MCA, is amended to read:

"81-8-278. Records. A livestock dealer shall maintain records that disclose all purchases and sales of livestock. A livestock dealer shall, at all reasonable times, give the department access to and let the department copy any of the records relating to ~~his the~~ the dealer's business."

Section 2683. Section 81-8-312, MCA, is amended to read:

"81-8-312. Possession under a mortgage -- how acquired. ~~In all cases where~~ If it is necessary under the laws of this state for a party to any mortgage, assignment, bill of sale, or other contract, between November 1 and the ~~next~~ next succeeding May 15, to take possession of any ~~such~~ such cattle or horses in order to preserve ~~his the~~ the party's rights under ~~any such a~~ any such a mortgage, assignment, bill of sale, or other contract, it is sufficient for ~~such the~~ such the

party to file a copy of the instrument under which ~~he~~ the party claims, with a notice of ~~such~~ the claim appended ~~thereto to the copy~~, with the general recorder of marks and brands within 5 days after it becomes necessary for ~~him~~ the party to ~~so~~ take custody and possession of the ~~same~~ cattle or horses."

Section 2684. Section 81-8-315, MCA, is amended to read:

"81-8-315. Sale of property under supplementary writ. When an officer into whose hands a writ of execution is placed has served the ~~same~~ writ in accordance with 81-8-311; and made ~~his~~ a return in accordance with the facts, at any time ~~thereafter~~ after service and return, within the time limited as ~~hereinbefore~~ provided in 81-8-313 to hold the property taken or levied upon under ~~such~~ the writ, another writ of execution may be issued, which must be supplementary to the first writ, and in pursuance of which the officer or person charged with the service ~~thereof~~ of the substitute writ may sell the property held by the ~~said~~ first writ; as ~~hereinbefore~~ provided in this part."

Section 2685. Section 81-8-702, MCA, is amended to read:

"81-8-702. Montana quality label. The department of livestock may make use of an outline map of the state of Montana and the word "Montana", printed, lithographed, inscribed, engraved, or otherwise impressed on the labels, tags, seals, or containers of agricultural or food products; by a person who has ~~availed himself~~ taken advantage of the continuous official inspection service offered by the department of livestock; as an indication that the product has been inspected by the officers, agents, or licensed inspectors of the department and that the products are of the quality and description as indicated on the label, tag, seal, or container. The outline map with the word "Montana", when made use of under this part, ~~shall be~~ is known as the "Montana quality label". When an authorized department, agent, or officer of the United States collaborates with the department of livestock in the inspection of a product, the Montana quality label may, with the consent of the appropriate department, agency, or officer of the United States, be superimposed on an outline map of the United States on the label, tag, seal or container, indicating inspectional collaboration between the department of livestock and the department, agency, or officer of the United States."

Section 2686. Section 81-8-704, MCA, is amended to read:

"81-8-704. Procurement and use of labels -- information concerning -- disposal of moneys. The department of livestock may make, print, or otherwise prepare a quantity of labels, tags, and seals with the Montana quality label printed, lithographed, inscribed, engraved, or impressed on them; sufficient to supply the

demand for them. The department may furnish labels, tags, and seals at reasonable prices to a producer, processor, packer, or dresser who has ~~availed himself of~~ been granted the continuous official inspection service. This part, ~~however,~~ does not preclude the department from permitting, under its rules, a producer, processor, packer, or dresser to make, prepare, or cause to be made or prepared the labels, tags, or seals to be used on ~~his~~ the person's own product or to print, stamp, or otherwise place or cause to be placed the Montana quality label on products or containers ~~which that~~ have been subject to continuous inspection; if the labels, tags, seals, stamps, or other devices are of a design ~~which that~~ the department prescribes. The department ~~of livestock~~ may, in cooperation with the United States department of agriculture or otherwise, make use of available and appropriate means to disseminate information concerning the Montana quality label and the products ~~which that~~ may lawfully bear it and to popularize its use. All ~~moneys~~ money derived from furnishing the labels, tags, and seals or from permitting the use of the Montana quality label ~~shall~~ must be deposited in the state treasury to the credit of the general fund."

Section 2687. Section 81-9-111, MCA, is amended to read:

"81-9-111. Hide certificates -- inspection of hides before disposal -- person slaughtering cattle to exhibit hides. (1) ~~Every~~ A person or persons, firm, corporation, or association slaughtering cattle for its own use ~~must~~ shall before selling, destroying, or otherwise disposing of the hide or hides from ~~such the~~ cattle have the ~~same~~ hides inspected by an officer authorized to make ~~such the~~ inspection and secure a certificate of inspection as ~~herein~~ provided for in this part.

(2) It ~~shall be~~ is unlawful for ~~any a~~ person or persons, firm, corporation, or association to sell, offer for sale, destroy, or otherwise dispose of any hide or hides from slaughtered cattle ~~which that~~ have not been inspected and identified by an authorized inspector.

(3) It ~~shall be~~ is the duty of ~~any a~~ person or persons, firm, corporation, or association slaughtering cattle; for ~~his~~ the person's, firm's, corporation's, or association's own use or otherwise, upon demand of an authorized inspector, to exhibit the hide or hides of ~~such the~~ animal or animals for inspection, or a certificate issued by a hide buyer, or some evidence of inspection by an authorized inspector."

Section 2688. Section 81-9-112, MCA, is amended to read:

"81-9-112. Inspection and marking of hides and meat of slaughtered cattle -- records -- bill of sale -- when inspection not necessary. (1) All slaughtering establishments required to be licensed under 81-9-201 shall maintain the hide of an animal in its entirety with tail and ears attached for each animal slaughtered until

inspected by a state or deputy state stock inspector in the county where the animal was slaughtered. The inspector shall mark the hide in the manner prescribed by the department. This inspection may be waived for those animals inspected by a state or deputy state stock inspector on a preslaughter inspection.

(2) Each dressed carcass of ~~such an~~ animal ~~shall~~ must be stamped with an ink stamp in a manner specified by the department. The inspector shall keep a record and issue a certificate of inspection as specified by the department, giving the name and address of the establishment or person, the serial number of the inspection of the hide, the brand on the hide, the date of inspection, and the place where the inspection was made. The inspector shall forward a copy of the inspection certificate to the department and issue one copy to the person requesting the inspection.

(3) When ownership of the carcass and hide presented is claimed on a bill of sale, the officer making the inspection shall demand and must receive the original bill of sale, which ~~shall~~ must be attached to the inspector's certificate sent to the county clerk and recorder. When the bills of sale cover cattle not included in the inspection, the inspector shall issue to the owner of the bill of sale a receipt for the bill of sale. The receipt ~~shall~~ must describe the balance of the cattle covered by the original bill of sale.

(4) ~~Any A~~ person who kills beef or veal in good faith for ~~his~~ the person's own use ~~shall~~ is not be required to have ~~such the~~ meat inspected or stamped."

Section 2689. Section 81-9-114, MCA, is amended to read:

"81-9-114. Duty to report violations. A person required to be licensed under 81-9-201 shall report any violation of 81-9-112 to the department or the sheriff of the county where the violation occurred and of which the person has knowledge. Upon failure to do so, the ~~person shall suffer a revocation of his~~ person's license must be revoked and ~~no a~~ license ~~shall~~ may not again be issued to the person until the expiration of 1 year from the date of revocation."

Section 2690. Section 81-9-218, MCA, is amended to read:

"81-9-218. Exemptions. (1) The following persons are exempt from 81-9-201, 81-9-216 through 81-9-220, and 81-9-226 through 81-9-236:

(a) a person who slaughters livestock or poultry or prepares or processes livestock or poultry products for ~~his~~ the person's own personal or household use; and

(b) a person who transports dead, dying, or diseased animals or poultry for the purpose of treatment, burial, or disposal in a manner that would prevent the carcasses from being used as human food.

(2) A person engaged in the custom slaughtering of livestock or poultry delivered by the owner for custom slaughter or a person engaged in the preparation of the carcasses and parts and meat food products of ~~such the~~ livestock or poultry when slaughtered or prepared for exclusive use in the owner's household by the owner or members of ~~his the owner's~~ household or ~~his the owner's~~ nonpaying guests or employees is exempt from 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, ~~provided if~~ the carcasses, parts, or meat food products or containers of ~~such the~~ articles are:

- (a) kept separate from carcasses, parts, or meat food products prepared for sale;
- (b) plainly marked "Not for Sale" immediately after being slaughtered or prepared and remain plainly marked until delivered to the owner; and
- (c) prepared and packaged in a sanitary manner and in a sanitary facility."

Section 2691. Section 81-9-220, MCA, is amended to read:

"81-9-220. Rules. The board, upon the recommendation of the chief, shall adopt rules consistent with the requirements of the rules of the U.S. department of agriculture governing meat inspection. The rules must:

- (1) require antemortem and postmortem inspections, quarantines, segregation, and reinspections with respect to the slaughter of livestock and poultry and the preparation of livestock and poultry products at all official establishments;
- (2) require the identification of livestock and poultry and the marking and labeling of livestock or poultry products as "Montana Inspected and Passed" if they are found upon inspection not to be adulterated;
- (3) require the destruction for food purposes of all livestock, poultry, livestock products, and poultry products that have been found to be adulterated;
- (4) set standards for ingredients of livestock products, meat, and poultry products;
- (5) set standards for labeling, marking, or branding of meat, livestock products, and poultry products;
- (6) set standards for the weights or measures of meats, livestock products, and poultry products not inconsistent with standards established under Title 30, chapter 12;
- (7) set standards for the filling of containers for meat, livestock products, and poultry products;
- (8) regulate the false or fraudulent advertising of meat, livestock products, and poultry products;
- (9) provide for periodic investigations of the sanitary conditions of each official establishment and withdraw or otherwise refuse to license and inspect those establishments where the sanitary conditions are such as to render adulterated any meat products prepared or handled ~~therein in that establishment~~;
- (10) prescribe sanitation requirements for all official establishments;

(11) require all persons subject to 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 to maintain full and complete records of all transactions involving meat, livestock products, or poultry products and to make the records available on request to the chief or ~~his~~ the chief's inspectors at any reasonable time;

(12) prescribe additional standards, methods, and procedures ~~as~~ that are necessary to effect the purposes of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236; and

(13) provide for the licensing and inspection of mobile slaughter facilities to ensure that the requirements of this part are met with respect to all operations conducted at mobile slaughter facilities."

Section 2692. Section 81-9-230, MCA, is amended to read:

"81-9-230. Antemortem and postmortem inspection required. (1) Official establishments must have an antemortem inspection. The inspector assigned to each establishment shall examine each animal immediately prior to slaughter for the purpose of eliminating all unfit animals and segregating for more thorough examination all animals suspected of being affected with a condition that might influence their disposition on postmortem inspection. The unfit animals may not enter the slaughtering facilities of the plant. The suspected animals ~~which~~ that after inspection are permitted to be slaughtered must be handled separately from the regular kill and given a special postmortem examination.

(2) Official establishments must have a postmortem inspection. The postmortem inspection must be made at the time the animals are slaughtered. The inspectors shall examine the cervical lymph glands, the skeletal lymph glands, the viscera and organs, with their lymph glands, and all exposed surfaces of the carcasses of all cattle, buffalo, sheep, swine, and goats. The examination must be conducted in the slaughtering facilities of the establishment during the slaughtering operations.

(3) The chief or any of ~~his~~ the chief's inspectors may have a laboratory designated by the board make pathogenic examination of animals or parts thereof for completion of antemortem or postmortem inspection."

Section 2693. Section 81-9-235, MCA, is amended to read:

"81-9-235. Suspension or revocation of inspection service or establishment number -- hearing -- appeal. (1) ~~Any~~ A license issued by the board or ~~any~~ a state meat inspection service or establishment number may be suspended or revoked by the board for noncompliance with 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 or any rule adopted pursuant to 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236.

(2) State meat inspection service or establishment numbers may be suspended or revoked only after a hearing before the board upon reasonable notice. Notice must be given to the licensee by service of the

complaint upon ~~him~~ the licensee.

(3) The decision of the board is final in any matter relating to renewal, suspension, or revocation of state meat inspection service or an establishment number unless the person aggrieved, within 10 days after the date of the decision, appeals to the district court of the district in which the licensed premises are located. The court shall hear and determine the matter within 10 days after the date of filing the appeal. After ~~such~~ the decision, the person aggrieved may, ~~in compliance with the statutory provisions relating thereto,~~ appeal the decision of the district court to the supreme court of the state, but the suspension or revocation of state meat inspection service or an establishment number remains in effect pending the outcome of the appeal."

Section 2694. Section 81-9-313, MCA, is amended to read:

"81-9-313. Dead or fallen animal records. (1) When a licensed renderer or ~~his~~ the renderer's agent receives a dead or fallen animal, ~~he~~ the renderer or agent shall present a dead or fallen animal record to the person, corporation, or association ~~which~~ that has requested ~~him~~ the renderer or agent to remove the dead or fallen animal. The record ~~shall~~ must be on forms prescribed by the department and contain information the department may, by rule, require.

(2) The report ~~shall~~ must be executed in quadruplicate. The original copy ~~shall~~ must accompany the carcass and hide until the hide is officially inspected for marks and brands. The duplicate ~~shall~~ must be retained by the licensed renderer for the time ~~which~~ that the department in its discretion requires. The triplicate ~~shall~~ must be filed within 7 days after its execution and without cost in the office of the county clerk and recorder of the county in which the animal is received by the licensed renderer or ~~his~~ the renderer's agent. The quadruplicate ~~shall~~ must be retained by the person, corporation, or association ~~which~~ that requested removal of the dead or fallen animal."

Section 2695. Section 81-9-314, MCA, is amended to read:

"81-9-314. Animals to be tagged. At the time of the execution of the dead or fallen animal record; provided for ~~above~~ in 81-9-314, the licensed renderer or ~~his~~ the renderer's agent who receives a dead or fallen animal shall tag ~~such~~ the animal with one of the serially numbered identification tags provided in 81-9-312 and shall at the same time record the number of ~~said~~ the tag in the proper space provided ~~therefor~~ on the dead or fallen animal record."

Section 2696. Section 81-9-315, MCA, is amended to read:

"81-9-315. Production of dead or fallen animal record on demand -- animal not to be removed during transportation -- investigation. (1) On demand of a livestock inspector, sheriff, undersheriff, deputy sheriff, or other peace officer, a licensed renderer or ~~his~~ the renderer's agent who has received a dead or fallen animal shall produce for inspection ~~of the officer~~ an executed dead or fallen animal record identifying each dead or fallen animal ~~which he~~ that the renderer or agent is transporting when the demand is made. Failure to produce the executed dead or fallen animal record on demand constitutes a misdemeanor punishable as provided in 81-9-317.

(2) Under no circumstances may a licensed renderer or ~~his~~ the renderer's agent endanger the public health by removing or being required to remove any dead or fallen animals from the vehicle in which they are being transported until the vehicle arrives at a licensed rendering plant where the dead or fallen animal ~~shall~~ must be handled and disposed of in conformity with the rules of the department.

(3) If a livestock inspector, sheriff, undersheriff, deputy sheriff, or other peace officer has probable cause to believe the dead or fallen animals being transported by a licensed renderer or ~~his~~ the renderer's agent were obtained by a commission of a felony, ~~he~~ the officer may take the licensed renderer or ~~his~~ the renderer's agent, as well as the vehicle, into custody and proceed with the licensed renderer or ~~his~~ the renderer's agent to the rendering plant of the licensed renderer, where inspection of marks and brands and immediate investigation ~~shall~~ must be made."

Section 2697. Section 81-9-316, MCA, is amended to read:

"81-9-316. Disposal of hides -- inspection -- filing of record. When a licensed renderer or ~~his~~ the renderer's agent disposes of the hides from dead or fallen animals, the hides ~~shall~~ must be handled and inspected for marks and brands in conformity with Title 81, chapter 9, part 4 ~~of this chapter~~. The sheriff, deputy sheriff, person designated by the board of county commissioners, or ~~the~~ agent of the department who makes the inspection for marks and brands in conformity with Title 81, chapter 9, part 4, ~~of this chapter~~ shall complete the original dead or fallen animal record ~~which~~ that accompanies the hide by inserting ~~his~~ the person's inspector's tag number. ~~He~~ The person shall file the completed original dead or fallen animal record without cost in the office of the county clerk and recorder, together with the duplicate certificate of inspection required to be filed under Title 81, chapter 9, part 4 ~~of this chapter~~."

Section 2698. Section 81-9-402, MCA, is amended to read:

"81-9-402. Hide certificate -- identification. (1) A seller of an animal hide shall obtain a hide certificate

from the person receiving the hide. The department shall prescribe the form of the certificate, which ~~shall~~ must include the marks and brands on each hide. The party receiving the hide ~~must~~ shall designate where it will be kept for 30 days following delivery. The certificate must be signed by the seller or ~~his~~ the seller's agent and the person receiving the hide.

(2) The original certificate ~~shall~~ must be sent by the party receiving the hide to the department within 5 days after purchase. One copy ~~shall~~ must be retained by the seller; and one; must be retained by the hide buyer. On reasonable notice, an inspector or other agent of the department or a peace officer may inspect the hide certificate copy of the seller or buyer.

(3) The department shall prescribe an identification tag to be affixed to each hide by the person receiving the hide when it is delivered. Hide certificates, tags, and glue ~~shall~~ must be furnished by the department at cost to any person requiring the certificates, tags, and glue. Only those certificates, tags, and glue distributed by the department may lawfully be used under this part."

Section 2699. Section 81-9-403, MCA, is amended to read:

"81-9-403. Seizure and sale of hides when ownership cannot be determined -- disposition of proceeds. (1) A state stock inspector or other officer who has authority to make an inspection of a slaughtered beef, veal, or hide of a beef or veal may seize and hold the hide when on inspection the officer finds that the brand is so altered, obliterated, or defaced that the original brand cannot be determined by a reasonable inspection or when ~~he~~ the inspector or officer finds that ownership cannot be established by the brand or by other satisfactory proof.

(2) If, within 15 days after the seizure of the hide, proof of ownership cannot be established either by brand, bill of sale, or otherwise, the inspector or officer may sell the hide at the best available price and remit the proceeds, less the cost of processing, storing, and selling, to the department together with a full report of ~~his~~ the investigation. The report ~~shall~~ must contain a statement of the reason for the seizure and sale together with any tendered proof of ownership of any party. The proceeds ~~shall~~ must be deposited by the department with the state treasurer and credited to the stock estray fund, where it ~~shall be~~ is subject to claim by a party showing proper proof of ownership in the same manner as provided in 81-4-605."

Section 2700. Section 81-20-204, MCA, is amended to read:

"81-20-204. Certificate of candling or packing. ~~Every~~ A person buying eggs for resale at retail, except persons or firms who do not buy and sell more than 25 cases of eggs per month, shall candle all eggs offered

to ~~him~~ which the person that have not been candled under supervision of a licensed egg grader and shall refuse to buy eggs unfit for human food as defined in 81-20-205. "~~Rejects~~" ~~shall~~ Rejects must be returned to the producer, if possible, or, if requested, the candling ~~shall~~ must be done in the presence of the producer. A certificate ~~shall~~ must be placed in or on every case of eggs, if candled and graded, in a manner ~~which that~~ permits its easy reading and ~~shall~~ must state the exact grade and size, the date of candling or other date approved by the department of ~~livestock~~, and the name and address of the packer. If the eggs are not candled or graded, the certificate should state "not candled or graded", the name of the dealer, and when packed. The certificate ~~shall~~ must be printed in letters large enough to be easily read."

Section 2701. Section 81-20-209, MCA, is amended to read:

"81-20-209. Revocation of license. A license issued by the department of ~~livestock~~ under this part may be revoked by the department when the holder of the license fails to comply with the laws of this state ~~which that~~ apply to the conduct of ~~his~~ the business under the license. If a firm, person, or corporation whose license has been revoked by the department continues to buy, sell, or deal in eggs without a license, ~~he~~ the firm, person, or corporation is guilty of a misdemeanor and is subject to the penalties provided for in 81-20-208."

Section 2702. Section 81-21-102, MCA, is amended to read:

"81-21-102. Licensing of milk plants and dairies selling milk or cream for public consumption.

(1) It is unlawful for the following businesses to operate in this state without first obtaining a license from the department:

- (a) a dairy selling milk or cream for public consumption in the form in which it is originally produced;
- (b) a condensed, evaporated, or powdered milk plant;
- (c) a fluid milk plant.

(2) A license expires on December 31 of the year issued. The department may, following the procedures in the Montana Administrative Procedure Act, deny, suspend, or revoke a license when it determines that a person to whom the license is issued has failed to comply with the rules of the department or has failed to conduct ~~his~~ the person's establishment in a sanitary manner. All license fees collected ~~shall~~ must be deposited into the general fund.

(3) The department may issue a restraining order prohibiting a dairy from selling or giving away milk or cream not produced or handled under the laws of this state or the rules of the department. It is unlawful for a dairy, while restrained, to sell or give away for public consumption milk or cream produced or handled by the

dairy, and it is also unlawful for a dairy products manufacturing plant, milk plant, or cream station to purchase or use the cream or milk from a dairy while the dairy is restrained.

(4) The department shall establish license fees for the following facilities:

(a) a condensed, evaporated, or powdered milk factory;

(b) a fluid milk plant; and

(c) a dairy.

(5) A person violating this section is guilty of a misdemeanor."

Section 2703. Section 81-22-203, MCA, is amended to read:

"81-22-203. Renewal, suspension, or revocation of license -- grounds -- hearing -- appeal to district court. (1) The department may revoke, deny renewal of, or suspend, ~~or revoke~~ a license issued under this part or its rules for cause or failure to comply with this chapter or with the rules, testing procedures, or methods adopted under this chapter or when the department has reason to believe that the licensee's products may be detrimental to or jeopardize the health and welfare of the public.

(2) Before revoking, denying renewal of, or suspending a license, the department shall give written notice of its intention to revoke, deny, or suspend the license and its reasons ~~therefor~~ for the revocation, denial, or suspension. The department shall give the licensee a time limit of 10 days from receipt of the notice during which the licensee may request a hearing to show cause why ~~his~~ the license should not be revoked, denied, or suspended. The notice ~~shall~~ must be sent by certified mail, or personal service may be made on the licensee by a representative of the department. Failure of the licensee to request a hearing within the time allowed by the department is considered as ~~his~~ the licensee's desire not to contest the department's reasons for ~~suspending, revoking, denying, or revoking~~ suspending the license.

(3) If the licensee ~~does request~~ requests a hearing, the department shall appoint a time and place for an administrative hearing in the county where the licensee is licensed.

(4) The date established for the hearing ~~must~~ may be not less than 10 days or more than 30 days after receipt of the licensee's request for the hearing. A request for a hearing ~~shall serve~~ serves as a bar to prosecution until a decision from the department becomes final. The licensee at the hearing may testify or present evidence having a bearing on the revocation, denial, or suspension; ~~or revocation of his~~ the license, and after hearing all the evidence, the department shall make a determination. If a license is ~~suspended~~ revoked, denied, or ~~revoked~~ suspended, it may not be reinstated until examination or inspection by the department shows that the cause for ~~suspension~~ revocation, denial, or suspension has been eliminated or corrected.

(5) It is unlawful for a licensee to carry on the business or operations for which ~~he~~ the licensee was licensed, during the term of suspension or revocation, and if ~~he~~ the licensee does so, the licensee is subject to the penalties provided in the chapter.

(6) A licensee who is aggrieved by the decision of the department in matters pertaining to ~~suspension~~ revocation, denial, or ~~revocation~~ suspension of a license may appeal, within 30 days after the date of determination by the department, to the district court of the county in which ~~he~~ the licensee was licensed, if in the state, or in the case of a business firm of any nature in the state, of the county of its principal place of business.

(7) If a license is revoked a new license must be obtained from the department, but a new license may be issued only when the cause for revocation has been corrected."

Section 2704. Section 81-22-205, MCA, is amended to read:

"81-22-205. Examination and licensing of persons engaged in testing. (1) A person may not operate a butterfat, protein, solids, or other component content test where milk or cream is bought and paid for on the basis of these values without first passing an appropriate examination and obtaining the license required by the department. A person desiring to operate these tests shall apply to the department for permission to take the butterfat, protein, solids, or other component content test operator's examination. The examination ~~shall~~ must be given to the applicant by the department. On passing the examination to the satisfaction of the department, the applicant ~~shall~~ must be issued a license authorizing ~~him~~ the applicant to conduct these tests in this state. The department shall establish a fee to be paid for each license and for each renewal.

(2) Milk and cream tester's licenses may be revoked, suspended, or denied ~~where~~ when testing is not conducted under official test procedures or under department rules. If the tester regularly or habitually reports results below the actual values of the butterfat, protein, solids, or other compound component values, the licensee is subject to the penalties provided in this chapter. A person who alters the results of an official test is subject to the penalties provided in this chapter."

Section 2705. Section 81-22-207, MCA, is amended to read:

"81-22-207. License -- issuance and penalty. (1) All licenses issued under this part are issued as a matter of privilege, rather than as a matter of right, and only after proper qualifications under the rules of the board.

(2) All licenses issued under this part are valid, unless ~~sooner~~ suspended or revoked for cause, from the date of issue through December 31 of the year in which issued. All licenses ~~shall~~ must be renewed by ~~the first~~

January 31 following the date of the license expiration on payment of the required fee.

(3) All licenses issued under this part ~~shall~~ must be posted in conspicuous view at the place of business.

(4) Licenses issued under this part are not transferable from place to place or person to person.

(5) Penalties of \$5 per month or fraction of a month from January 31 of each year may be imposed by the department for a failure to apply for a license under this part. Regulatory action may not be taken against a ~~dairyman~~ dairy producer licensed under this part until 2 years following the adoption of rules under this chapter."

Section 2706. Section 81-22-402, MCA, is amended to read:

"81-22-402. Employment of grader, weigher, and sampler -- revocation of operator's license. (1)

Persons receiving or purchasing milk or cream and persons collecting milk or cream on milk or cream routes shall provide a licensed grader, weigher, and sampler at each receiving station or for each route.

(2) A person who knowingly employs an unlicensed person as a grader, weigher, and sampler or one whose license has been revoked or suspended is subject to revocation of ~~his~~ that person's own license to operate a manufactured dairy products plant or cream or milk receiving station or to the penalties prescribed in this chapter."

Section 2707. Section 81-22-415, MCA, is amended to read:

"81-22-415. Pasteurization labeling. It is unlawful for a person to sell, offer for sale, exchange, or to have in ~~his~~ the person's possession ~~for these purposes~~ milk, cream, or a manufactured dairy product in a container or package marked; or labeled; or in any way designating the contents of the container or package as "pasteurized"; unless it has been treated by an approved process of pasteurization as required by the department."

Section 2708. Section 81-23-201, MCA, is amended to read:

"81-23-201. Licenses to producers, producer-distributors, distributors, and jobbers. In ~~any~~ a market where the provisions of this chapter apply, it is unlawful for a producer, producer-distributor, distributor, or jobber to produce, transport, process, store, handle, distribute, buy, or sell milk unless the dealer is properly licensed as provided by this chapter. It is unlawful for a person to buy, sell, handle, process, or distribute milk ~~which he~~ that the person knows or has reason to believe has been previously dealt with or handled in violation of any provision of this chapter. The department may decline to grant a license or may suspend or revoke a license already granted; upon due cause and after hearings."

Section 2709. Section 81-23-305, MCA, is amended to read:

"81-23-305. Financing prohibitions -- producer and retailer. (1) A producer, producer-distributor, distributor, or jobber licensed under this chapter may not advance or loan money or credit to or furnish money or credit for or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts, or other commercial paper for or on behalf of a retailer. A producer, producer-distributor, distributor, or jobber may not be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer. A producer-distributor, distributor, or jobber licensed under this chapter may not advance or loan money or credit to or furnish money or credit for or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts, or other commercial paper for or on behalf of a producer. A producer-distributor, distributor, or jobber may not be financially interested, either directly or indirectly, in the conduct or operation of the business of a producer. This section does not prohibit a producer from belonging to, participating in, or patronizing a cooperative corporation or a producer, producer-distributor, distributor, or jobber from operating ~~his the person's own wholly-owned~~ wholly owned dairy products or other retail store or home-delivery retail routes.

(2) This section does not prohibit a producer from requesting and a distributor from granting an advance payment for milk before the regular date of payment for milk or limit in any way the right of a producer to assign part or all of ~~moneys which are~~ money that is or may become due to ~~him~~ the producer from a distributor."

Section 2710. Section 81-23-403, MCA, is amended to read:

"81-23-403. Disposition of fines. (1) All fines assessed by a court, other than a justice's court, for violation of this chapter ~~shall~~ must be paid by the court to the department.

(2) All fines received by the department ~~shall~~ must be deposited with the state treasurer and ~~shall~~ must be placed by ~~him~~ the treasurer in the state special revenue fund. Fines assessed for violations of this chapter are earmarked for the purposes of this chapter."

Section 2711. Section 82-1-105, MCA, is amended to read:

"82-1-105. Exploration permit. (1) Upon compliance with the provisions ~~herein contained~~ of this section, namely the filing of a notice of intention to engage in the exploration and a certificate ~~(or photostatic a copy thereof)~~ of the certificate from the secretary of state certifying the name and address of the resident agent for service of process for the person, firm, or corporation desiring to engage in the exploration and certifying that the required surety bond has been filed with the secretary of state, the county clerk and recorder shall issue to the

person, firm, or corporation a "geophysical exploration permit".

(2) The permit ~~shall~~ must show:

- (a) the name of the person, firm, or corporation and the principal place of business;
- (b) if a firm or corporation, the names and addresses of its officers;
- (c) the name and address of the resident agent for service of process for the person, firm, or corporation;
- (d) that a notice of intention to engage in geophysical exploration has been duly filed; and
- (e) that a good and sufficient surety bond has been filed by the person, firm, or corporation, naming the surety company and giving its address.

(3) The permit ~~shall~~ must be signed by the county clerk and recorder or ~~his~~ the clerk and recorder's deputy and bear the official county seal. The permit ~~shall be~~ is valid and effective for all geophysical crews of the permittee during the calendar year in which it is issued.

(4) The cost of the permit ~~shall be~~ is \$5 per calendar year or any portion ~~thereof of the calendar year~~ for which issued, and the ~~revenues~~ revenue realized ~~therefrom shall from the permit~~ must go to the county ~~so~~ issuing the permit. ~~Such~~ The funds ~~as are realized shall~~ must be applied toward payment of the cost of printing the permits, which ~~shall~~ must be printed at the county seat, and excesses ~~shall~~ must ~~go into~~ be deposited in the county's general fund.

(5) If printed forms are not available at the time any person, firm, or corporation desires the permit and qualifies for its issuance, a typewritten or other form of reproduction of the permit may be used, the fee of \$5 ~~nevertheless shall~~ must still be paid for its issuance, and this fee ~~shall~~ must be disposed of in the same manner.

(6) The permit or a ~~photostatic~~ copy thereof ~~shall~~ of the permit must be carried by the person or by the agent of the firm or corporation at all times during the period of the geophysical exploration and ~~shall~~ must be exhibited upon demand of any county or state official."

Section 2712. Section 82-1-108, MCA, is amended to read:

"82-1-108. Filing record of work performed. (1) Within 3 months from the day that any firing of shotpoints in seismic exploration is done by ~~any~~ a person, firm, or corporation within this state, ~~such~~ the person, firm, or corporation shall file with the county clerk and recorder of the county in which the work was done a record showing each township and range within the county in which the work was performed and the approximate date on which the work was performed.

(2) ~~Such~~ The person, firm, or corporation shall file with the county clerk and recorder a record showing the location of each shotpoint and date fired within a maximum area of any square, 4-section area of land, upon

written request of the county clerk and recorder. The request must be based upon the complaint of a property owner that physical damage to ~~his~~ the owner's property has resulted from the use of the seismograph and explosives in seismic operations at some location within the maximum 4-square mile area, and the request ~~shall~~ must designate the name and address of the complaining person and the approximate date and nature of the alleged damages. The required record of operations in response to the request of the county clerk and recorder ~~shall~~ must be supplied within 30 days from the date on which the request is received."

Section 2713. Section 82-1-202, MCA, is amended to read:

"82-1-202. Action to compel release -- procedure without court action. (1) If the lessee or assignee ~~thereof of a lease~~ neglects or refuses to execute a release as provided by this part, the owner of the leased premises may sue in any court of competent jurisdiction to obtain the release, and in ~~such that~~ that action ~~he also the~~ owner may also recover from the lessee, ~~his or the lessee's~~ the lessee's successor; or assigns the sum of \$100 as damages, all costs, together with a reasonable attorney ~~fee fees~~ fees for preparing and prosecuting the suit, and any additional damages that the evidence in the case warrants. Writs of attachment may issue as in other cases. If in the action the plaintiff fails to establish the forfeiture of the lease, ~~an~~ an attorney ~~fee fees~~ fees must be allowed to the lessee or assignee of the lease. Issues in regard to attorney fees ~~shall~~ must be determined in the same manner as other issues in ~~such those~~ those actions.

(2) When, by its terms, an oil or gas lease has expired and is subject to forfeiture for nonperformance and more than 3 years have elapsed since the expiration, the owner of the leased premises, in addition to all other remedies, may serve a written notice on the lessee or on the assignee ~~thereof of the lease,~~ of the lease, ~~and the which~~ which notice ~~shall~~ must state:

- (a) the names of the lessor, lessee, and assignee ~~thereof of the lease~~ of the lease if assigned;
- (b) the date of the lease and the date of the expiration ~~thereof of the lease~~ of the lease;
- (c) the description of the lands leased;
- (d) the place, book, and page where the lease is recorded; and
- (e) that if the lessee or assignee fails to execute a release of record of the lease or abstract of the lease, the lease ~~shall~~ must be terminated and is of no effect and ~~shall~~ must cease to be a lien upon the lands described ~~therein in the lease,~~ in the lease, unless the lessee or the assignee ~~thereof of the lease,~~ of the lease, within 60 days from the date of service of the notice, files, in the county clerk's office in the county where the lease or abstract of ~~such the~~ the lease is recorded, an affidavit stating that the lease is in effect and delivers a copy ~~thereof of the lease~~ of the lease to the owner of the leased lands.

(3) If the lessee or the assignee ~~thereof~~ of the lease resides in the county where the lease or abstract of the lease is recorded, the notice ~~shall~~ must be personally served on that person. If the lessee or the assignee ~~thereof~~ of the lease does not reside in that county but ~~his~~ the lessee's or assignee's address appears on the records in that county clerk's office or is otherwise known, the notice ~~shall~~ must be mailed by certified mail to that person at that address, and in addition ~~thereto~~ the notice ~~shall~~ must be published once a week for 2 consecutive weeks in a newspaper of general circulation in the county in which the lands are situated. If the address of the lessee or assignee is unknown, the notice ~~shall~~ must be published in the manner provided ~~above~~ in this subsection. The date of service of the notice, if served personally, the date of mailing, if served by mail, and the first date of publication of the notice, if published, must be at least 60 days before the date of termination referred to in the notice.

(4) Upon the expiration of the time mentioned in the notice, if the affidavit of the lessee or assignee has not been filed as ~~herein~~ provided in this section, the owner of the leased lands shall file an affidavit of service of the notice in the county clerk's office of the county in which the lands are located, and the affidavit ~~shall~~ must be kept as a permanent file in ~~his~~ the clerk's office, ~~and this~~. This proof of notice when ~~so~~ filed is prima facie evidence of the sufficiency of the notice, and from the filing ~~thereof~~ of the notice the lease is terminated and the lands are released from the lien ~~thereof~~ of the lease."

Section 2714. Section 82-1-203, MCA, is amended to read:

"82-1-203. Demand for release prior to action. At least 20 days before bringing the action provided for in this part, the owner of the leased land, either ~~by himself~~ personally or by ~~his~~ the owner's agent or attorney, shall demand of the holder of the lease, if ~~such~~ the demand by ordinary diligence can be made in this state, that ~~said~~ the lease or abstract of ~~such~~ the lease be released of record. ~~Such~~ The demand must be written. When written, a copy ~~thereof~~, when shown to be ~~such~~ a copy, may be used as evidence in any court with the same force and effect as the original."

Section 2715. Section 82-2-101, MCA, is amended to read:

"82-2-101. Manner of locating claim. ~~Any~~ A person who discovers upon the public domain of the United States, within the state of Montana, a vein, lode, or ledge of rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits or a placer deposit of gold or other deposit of minerals having a commercial value ~~which~~ that is subject to entry and patent under the mining laws of the United States may, if qualified by the laws of the United States, locate a mining claim upon ~~such~~ the vein, lode, ledge, or deposit in the following

manner:

(1) ~~He~~ The person shall post conspicuously at the point of discovery a written or printed notice of location containing the name of the claim, the name of the locator or locators, if there ~~be~~ is more than one, the date of the location, which ~~shall~~ must be the date of posting ~~such~~ the notice, and the approximate dimensions of the area of the claim intended to be appropriated.

(2) Within 30 days after posting the notice of location, ~~he~~ the person shall distinctly mark the location on the ground so that its boundaries can be readily traced. It ~~shall be~~ is prima facie evidence that the location is properly marked if the boundaries are defined by a monument at each corner or angle of the claim, consisting of any one of the following kinds:

(a) a tree at least 8 inches in diameter and blazed on four sides;

(b) a post at least 4 inches square by 4 feet 6 inches in length, set 1 foot in the ground, unless solid rock should occur at a less depth, in which case the post should be set upon ~~such~~ the rock and surrounded in all cases by a mound of earth or stone at least 4 feet in diameter by 2 feet in height. A squared stump of the requisite size, surrounded by ~~such a~~ a mound, ~~shall~~ must be ~~deemed~~ considered the equivalent of a post and mound.

(c) a stone at least 6 inches square by 18 inches in length, set two-thirds of its length in the ground, with a mound of earth or stone alongside at least 4 feet in diameter by 2 feet in height; or

(d) a boulder at least 3 feet above the natural surface of the ground on the upper side. ~~Where~~ When other monuments or monuments of lesser dimensions than those ~~above~~ described in subsections (2)(a) through (2)(c) are used, it ~~shall be~~ is a question for the jury or for the court where the action is tried without a jury as to whether the location has been marked upon the ground so that its boundaries can be readily traced. Whatever monument is used, it must be marked with the name of the claim and the designation of the corner, either by number or cardinal point.

(3) Within 60 days after posting ~~such~~ notice, the locator shall comply with the United States mining laws."

Section 2716. Section 82-2-102, MCA, is amended to read:

"82-2-102. Record of certificate of location. (1) Within 60 days after posting the notice of location, the locator shall record ~~his~~ the location in the office of the county clerk of the county in which the mining claim is situated. The record ~~shall~~ must consist of a certificate of location for each claim containing:

(a) the name of the lode or claim and whether located as a lode or placer claim;

(b) the name of the locator or locators, if there ~~be~~ is more than one, together with the post-office address of ~~such~~ the locator or locators;

(c) the date of location and the description of the claim, with reference to some natural object or permanent monument, ~~as that~~ which that will identify the claim and the section, township, and range ~~wherein in which~~ wherein in which the claim is situated by projected survey lines; if located in unsurveyed country; and

(d) the directions and distances from the discovery point ~~which that~~ which that describe the claim.

(2) The certificate of location must be verified before ~~some~~ an officer authorized to administer oaths by the locator or one of the locators, if there ~~be is~~ is more than one, or by an authorized agent. In the case of a corporation, the verification may be made by ~~any an~~ any an officer ~~thereof of the corporation~~ thereof of the corporation or by an authorized agent. When the verification is made by an agent, the fact of the agency ~~shall must~~ must be stated in the affidavit. A verified certificate of location ~~so verified~~ or a certified copy ~~thereof of the certificate~~ thereof of the certificate is prima facie evidence of all facts properly recited ~~therein in the certificate~~ therein in the certificate. Failure of the locator or locators to record a certificate of location as ~~herein required~~ shall create in this section creates a prima facie presumption of intent to abandon. However, recordation after the 60-day period but before the ground is located by another renews the location and saves the rights of the original locator. Nothing contained in 82-2-112 affects the prima facie presumption created by this section."

Section 2717. Section 82-2-103, MCA, is amended to read:

"82-2-103. Affidavit of performance of annual work. (1) The owner of a lode or placer claim who performs or causes to be performed the annual work or makes the improvements required by the laws of the United States, as permitted and defined by laws of the United States, in order to prevent the forfeiture of the claim, ~~must shall~~, within 90 days after the expiration of the federal annual assessment work period, file in the office of the county clerk of the county in which ~~such the~~ such the claim or claims is situated ~~an the owner's~~ an the owner's affidavit ~~of his own~~ or an affidavit of the person who performed ~~such the~~ such the work or made the improvements, showing:

(a) the name of the mining claim or claims;

(b) the location of the claim or claims by section, township, and range, by projected survey lines if located in unsurveyed country;

(c) the book and page numbers ~~wherein in which~~ wherein in which the original or latest amended relocation for each claim is recorded;

(d) the number of ~~days' days of~~ days' days of work done and the character and value of the improvements placed ~~thereon on the claim~~ thereon on the claim or the verified report required by United States mining law if geological, geophysical, or geochemical work or labor is being relied upon;

(e) the dates between which ~~such the~~ such the work or improvements were effected;

(f) at whose instance the work was done or the improvements were made; and

(g) the actual amount paid for work and improvements and by whom paid when the ~~same was~~ work and improvements were not done by the owner.

(2) Annual assessment work may be performed or caused to be performed at one or more points within a group of contiguous claims and may be utilized to satisfy annual assessment work requirements upon the group of contiguous claims. ~~Said~~ The point or points of work may be performed upon a patented claim. If annual assessment work is performed or caused to be performed at one or more points within a group of contiguous claims, the affidavit of performance of assessment work must be filed for the group of claims. The affidavit, in addition to requirements established by this section for affidavits of performance of assessment work, must contain a description and location of the work done upon the group at a point or points within the group, the specific names of all the claims in the group for whose benefit the work was performed, and the total cost of the work performed.

(3) If group work is claimed for a group of claims crossing county lines, the affidavit required by this section ~~shall~~ must be filed for recording within the required time in each of the counties in which ~~such~~ the claims are located.

(4) An affidavit of performance of annual assessment work must be verified before some officer authorized to administer oaths by the locator or one of the locators, if there ~~be~~ is more than one, or by an authorized agent. In the case of a corporation, the verification may be made by ~~any~~ an officer ~~thereof~~ of the corporation or by an authorized agent. When the verification is made by an agent, the fact of the agency ~~shall~~ must be stated in the affidavit. ~~Such~~ The affidavit or a certified copy ~~thereof~~ of the affidavit is prima facie evidence of the facts ~~therein~~ stated in the affidavit. The failure to file ~~such~~ the affidavits within the period allowed ~~therefor~~ shall be is prima facie evidence that ~~such~~ the labor has not been performed and that the owner of the claim or claims has abandoned and surrendered ~~same~~ the claim or claims."

Section 2718. Section 82-2-105, MCA, is amended to read:

"82-2-105. Relocation of abandoned claim. The relocater of an abandoned or forfeited mining claim may adopt as ~~his~~ the relocater's discovery any shaft or other working existing upon ~~such~~ the claim at the date of the relocation in which the vein, lode, or deposit is disclosed, but in ~~such~~ that shaft or other working, ~~he~~ the relocater shall perform the same discovery work ~~as~~ that is required in the case of an original location."

Section 2719. Section 82-2-106, MCA, is amended to read:

"82-2-106. Rights of relocator. The rights of a relocator of any relocated abandoned or forfeited mining claim ~~hereafter relocated shall~~ date from the posting of ~~his~~ the relocator's notice of location ~~thereon on the claim,~~ and while ~~he~~ the relocator is duly performing the acts required by law to perfect ~~his~~ the location, ~~his~~ the relocator's rights ~~shall~~ may not be affected by any reentry or resumption of work by the former locator or claimant."

Section 2720. Section 82-2-107, MCA, is amended to read:

"82-2-107. Amended location. A locator or claimant may at any time amend ~~his~~ the location and make any change in the boundaries ~~which~~ that does not involve a change in the point of discovery as shown by the discovery shaft by marking the location as amended upon the ground and filing an amended certificate of location conforming to the requirements of an original certificate of location. A defect in a recorded certificate of location may be cured by filing an amended certificate."

Section 2721. Section 82-2-108, MCA, is amended to read:

"82-2-108. Relocation by owner. A locator or claimant may at any time relocate ~~his~~ the locator's or claimant's own claim for any purpose, except to avoid the performance of annual labor ~~thereon on the claim,~~ and, by ~~such~~ the relocation, may change the boundaries of ~~his~~ the claim, or the point of discovery, or both; ~~but such~~ However, the relocation must comply in all respects with the requirements of this ~~law~~ part as to an original location."

Section 2722. Section 82-2-109, MCA, is amended to read:

"82-2-109. Amendment or relocation not a waiver of acquired rights. ~~Where~~ When a locator or claimant amends or relocates ~~his~~ the locator's or claimant's own claim, ~~such~~ the amendment or relocation ~~shall~~ may not be construed as a waiver of any right or title acquired by ~~him~~ the locator or claimant by virtue of the previous location or record ~~thereof of that location,~~ except as to ~~such~~ portions of the previous location ~~as~~ that may be omitted from the boundaries of the claim as amended or relocated. As to the portion of ground included both in the original location and the location as amended or relocated, ~~he~~ the locator or claimant may rely either upon the original location or the location as amended or relocated or upon both; ~~provided that nothing herein contained shall~~ However, this section may not be construed as permitting the locator or claimant to hold a tract ~~which~~ that does not include a valid discovery."

Section 2723. Section 82-2-112, MCA, is amended to read:

"82-2-112. Defective locations good against persons with notice. The period of time prescribed by this ~~law part~~ for the performance of any act ~~shall may~~ not be ~~deemed considered~~ mandatory ~~where if~~ the act is performed before the rights of third persons have intervened, and ~~no a~~ defect in the posted notice or recorded certificate ~~shall may not~~ be ~~deemed considered~~ material; except as against one who has located the same ground or some portion ~~thereof of the same ground~~ in good faith and without notice. Notice to an agent who makes a location ~~in on~~ behalf of another ~~shall must~~ be ~~deemed considered~~ notice to ~~his the agent's~~ principal, and notice to one of several coclaimants ~~shall must~~ be ~~deemed considered~~ notice to all."

Section 2724. Section 82-2-114, MCA, is amended to read:

"82-2-114. Amended locations. If, at any time, the locator of ~~any a~~ mining claim ~~heretofore or hereafter~~ located or ~~his the locator's~~ successors or assigns ~~shall apprehend~~ determine that ~~his the~~ original declaratory statement was defective or erroneous, ~~or determine~~ that the requirements of law ~~had were~~ not ~~been~~ complied with, ~~or shall be desirous of changing his~~ want to change the boundaries or ~~taking take~~ in any part of an overlapping claim ~~which that~~ has been abandoned or ~~in case his if the~~ original declaratory statement was filed prior to the passage of this law and ~~he shall be desirous of securing the locator or the locator's successor's or assigns~~ want the benefit of this part, ~~such the~~ locator or ~~his the~~ successors or assigns may file an additional or amended declaratory statement subject to the provisions of this part; ~~provided that such~~ However, the relocation or filing of the amended or additional declaratory statement ~~shall may~~ not interfere with the existing rights of others at the time of ~~such the~~ relocation or filing of the amended or additional declaratory statement, and ~~no such the~~ relocation or amended or additional declaratory statement or other record ~~thereof shall may not~~ preclude the claimant or claimants from proving any ~~such title as he or they~~ that the claimant may have held under the previous location and notice ~~thereof.~~"

Section 2725. Section 82-2-115, MCA, is amended to read:

"82-2-115. Filing of false mining claims. ~~Every A~~ person who ~~shall offer~~ offers ~~any a~~ location certificate for a placer mining claim or lode claim or affidavit of assessment work to be filed in an office of a county clerk of this state on the person's own behalf ~~of himself~~ or for any other person or ~~any a~~ person who ~~shall procure~~ procures others to do so, knowing that ~~such the~~ claim, ~~or certificate,~~ or affidavit was not preceded by a proper location of the claim physically upon the ground by the establishment of a proper notice of claim and the designation of the surface boundaries of the claim by substantial posts or monuments as required by the laws of the state, shall be punished by imprisonment in the state ~~penitentiary~~ prison for not more than 5 years, ~~or by~~

a fine of not more than \$5,000, or by both."

Section 2726. Section 82-2-203, MCA, is amended to read:

"82-2-203. Proceedings to obtain right-of-way. Whenever ~~such~~ the owner desires to work a mine or mining claim and it is necessary to enable ~~him~~ the owner to do so successfully and conveniently that ~~he~~ the owner should have a right-of-way for any of the purposes mentioned in ~~the foregoing sections 85-2-201 and 85-2-202~~ and if ~~such~~ the right-of-way has not been acquired by agreement between ~~him~~ the owner of the mining claim and the owner of the land or claims over, under, across, and upon which ~~he~~ the mining claim owner seeks to establish ~~such~~ the right-of-way, it is lawful for ~~him~~ the mining claim owner to present to the judge of the district court a complaint asking that ~~such~~ the right-of-way be awarded ~~to him~~. The complaint must be verified and contain a particular description of the character and extent of the right sought, a description of the mine or mining claim of the owner, and the mining claim or claims and the ~~lands~~ land to be affected by ~~such~~ the right-of-way, with the names of the occupants or owners ~~thereof~~, of the affected land and may also set forth any tender or offer ~~hereinafter mentioned.~~"

Section 2727. Section 82-2-205, MCA, is amended to read:

"82-2-205. Court order and appointment of commissioners. Upon the return of the summons or upon any day to which the hearing is adjourned, the defendants may answer, ~~and~~ issue must be joined, and the judge ~~must~~ shall hear the allegations and proofs of the respective parties. If, upon ~~such~~ the hearing, the judge is satisfied that the claims of the plaintiff ~~can~~ may be worked conveniently only by means of the privilege asked for, ~~he must~~ the judge shall make an order adjudging and awarding to the plaintiff ~~such~~ the right-of-way and ~~must~~ shall appoint three commissioners who are disinterested persons and residents of the county to assess the damages to the lands or claims affected by ~~such~~ the order."

Section 2728. Section 82-2-401, MCA, is amended to read:

"82-2-401. Samplerooms required. ~~Any~~ A person, association, or corporation engaged in the business of buying or sampling or smelting for hire ores of gold, silver, copper, lead, zinc, iron, or other valuable metal shall maintain a ~~sampling-room~~ sampling room or house to which the ore shippers; or their agents; or representatives ~~shall~~ must have access at all times during the sampling of ores or while the ~~same~~ sampling is being carried on and in which ~~shall~~ must be maintained samples of all ores ~~he or they~~ that the person, association, or corporation may buy or smelt."

Section 2729. Section 82-2-402, MCA, is amended to read:

"82-2-402. Samples of fifty 50 pounds per ton to be retained until settlement. A person, association, or corporation ~~which that~~ buys ~~any ores ore~~ upon an agreement to pay for ~~them~~ if in ~~an~~ amount dependent upon ~~their~~ the metallic contents or ~~that~~ smelts any ore shall retain from the pulp or crushed ore, as the ~~same ore~~ is sampled, a quantity of not less than 50 pounds out of each ton of ore; ~~which~~ The quantity ~~shall~~ must be selected regularly and at equal intervals from any lot of ore ~~so~~ bought or to be smelted, and the person, association, or corporation shall keep this quantity separate from any other ~~ores ore~~ or pulp for a period of 30 days or until full settlement is made and accepted by the shipper. Until full settlement is made and accepted, the ore shipper; ~~his~~ or the shipper's agents; or representatives may take any part from the quantity ~~so~~ retained ~~any part thereof~~ for the purpose of sampling or assaying that part; ~~however~~ However, the value of any part ~~so~~ taken by the owner or shipper may be deducted from the total value of the ore delivered by ~~him~~ the owner or shipper."

Section 2730. Section 82-2-405, MCA, is amended to read:

"82-2-405. Notice of selection. Upon the selection of the umpire, who ~~shall~~ must be actively engaged in the assaying business in this state, the person, association, or corporation selecting ~~him~~ the umpire shall, within 10 days after the selection is made, post a notice of the selection in a conspicuous place within and ~~without~~ outside the room or house where the sampling of ~~ores ore~~ is carried on by the person, association, or corporation."

Section 2731. Section 82-2-421, MCA, is amended to read:

"82-2-421. Time for payment for ores. (1) ~~Every~~ A person, association, company, or corporation engaged within this state in purchasing ~~ores ore~~, minerals, or metals from or in smelting, milling, or otherwise reducing or preparing the same for market for any other person or persons, association, company, or corporation shall, within 20 days after any ~~such ores ore~~, minerals, or metals ~~shall~~ have arrived at ~~his, their,~~ the person's or its entity's smelter, mill, reduction works, yards, or other place for receiving ~~such ores ore~~, minerals, or metals, make full settlement with and payment of the amount due to the consignor or consignors ~~thereof~~, unless restrained or prevented from making ~~such~~ the settlement and payment by an order, writ, or process of a court of competent jurisdiction.

(2) ~~However, the~~ The provisions of this section ~~shall~~ are not be applicable to any ~~such ores ore~~, minerals, or metals received pursuant to an existing written contract at the time of shipment between the consignor or consignors ~~thereof~~ and the person, association, company, or corporation receiving the same, ~~where~~ when the

time for settlement and payment is provided for in ~~such~~ the contract."

Section 2732. Section 82-4-142, MCA, is amended to read:

"82-4-142. Mandamus to compel enforcement. (1) A resident of this state, ~~with~~ who has knowledge that a requirement of this part or a rule adopted under this part is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule; may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that ~~shall~~ must state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state ~~in and for the county of Lewis and Clark~~ or in the district court of the county in which the land is located. If the court finds that a requirement of this part or a rule adopted under this part is not being enforced, it shall order the public officer or employee whose duty it is to enforce the requirement or rule to perform ~~his~~ the duties. If ~~he~~ the officer or employee fails to do so, the public officer or employee ~~shall~~ must be held in contempt of court and is subject to the penalties provided by law."

Section 2733. Section 82-4-238, MCA, is amended to read:

"82-4-238. Successor operator. ~~Where~~ When one operator succeeds another at an uncompleted operation, either by sale, assignment, lease, or otherwise, the department may release the first operator from all liability under this part as to that particular operation if both operators have been issued a permit and have otherwise complied with the requirements of this part, and the successor operator assumes, as part of ~~his~~ the obligation under this part, all liability for the reclamation of the area of land affected by the former operator."

Section 2734. Section 82-4-355, MCA, is amended to read:

"82-4-355. Action for damages to water supply -- replacement. (1) An owner of an interest in real property who obtains all or part of ~~his~~ the owner's supply of water for beneficial uses, as defined in 85-2-102, from an underground source other than a subterranean stream having a permanent, distinct, and known channel may sue the operator engaged in an operation for which a license is required pursuant to 82-4-332 or for which a permit is required pursuant to 82-4-335 to recover damages for loss in quality or quantity of the water supply resulting from mining or exploration. The owner is required to exhaust the administrative remedy under subsection

(2) prior to filing suit.

(2) (a) An owner described in subsection (1) may file a complaint with the department detailing the loss in quality or quantity of water. Upon receipt of a valid complaint, the department:

(i) shall investigate the statements and charges in the complaint; using all available information, including monitoring data gathered at the exploration or mine site;

(ii) may require the operator, if necessary, to install monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity and quality;

(iii) shall issue a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity and quality;

(iv) shall, if it determines that the preponderance of evidence indicates that the loss is caused by an exploration or mining operation, order the operator, in compliance with Title 85, chapter 2, to provide the needed water immediately on a temporary basis and within a reasonable time replace the water in like quality, quantity, and duration. If the water is not replaced, the department shall order the suspension of the operator's exploration or operating permit until ~~such time as~~ the operator provides substitute water, except that nothing in this section preempts the application of Title 85, chapter 2. The operator may not be required to replace a junior right if the operator's withdrawal or dewatering is not in excess of ~~his~~ the operator's senior right.

(b) If the department determines that there is a great potential that surface or subsurface water quality and quantity may be adversely affected by a mining or exploration operation, the operator shall install a water quality monitoring program; or a water quantity monitoring program, or both, which must be approved by the department prior to the commencement of exploration or mining."

Section 2735. Section 82-10-103, MCA, is amended to read:

"82-10-103. Obligation to pay royalties as essence of contract -- interest. (1) The obligation arising under an oil and gas lease to pay oil or gas royalties to the royalty owner or ~~his~~ the owner's assignee, to deliver oil or gas to a purchaser to the credit of ~~such~~ the royalty owner or ~~his~~ the owner's assignee, or to pay a portion of the proceeds of the sale of ~~such~~ the oil or gas to the royalty owner or ~~his~~ the owner's assignee is of the essence in the lease contract.

(2) If the operator under an oil and gas lease fails to pay oil or gas royalties to the royalty owner or ~~his~~ the owner's assignee within 120 days after the initial oil or gas produced under the lease is marketed and within 60 days for all oil and 90 days for all gas produced and marketed ~~thereafter~~, the unpaid royalties ~~will~~ must bear interest; at the maximum rate of interest authorized under 31-1-107 from the date due until paid. The operator

may remit semiannually to a person entitled to royalties the aggregate of 6 months' royalties whenever the aggregate amount is less than \$50 and annually whenever the aggregate amount is less than \$10.

(3) A royalty owner seeking a remedy for failure to make payments under the lease or seeking ~~such~~ payments under this section shall bring ~~his~~ the action in the district court for the county in which the oil or gas well is located, and that court has jurisdiction over any ~~such~~ actions brought under this section. The prevailing party in any proceeding brought under this section is entitled to recover ~~his~~ court costs and reasonable attorney fees.

(4) This section does not apply if a royalty owner or ~~his~~ the owner's assignee has elected to take ~~his~~ the owner's or assignee's proportionate share of production in kind or whenever there is a dispute as to the title of the minerals or entitlement to royalties, the outcome of which would affect distribution of royalty payments."

Section 2736. Section 82-10-401, MCA, is amended to read:

"82-10-401. Notice required before abandonment of well -- owner's option. ~~No~~ A person shall may not plug and abandon an oil or gas well located within this state without first giving reasonable notice of ~~his~~ the intention to do so to the surface owner of record of the land on which ~~said~~ the well is located. Upon receipt of notice to plug and abandon, the surface owner may, by written notice given within 15 days ~~thereafter~~ after notice, direct that the well pipe for ~~said~~ the well ~~shall~~ must be buried to a depth of not less than 3 feet. The board of oil and gas conservation shall adopt regulations to implement this section."

Section 2737. Section 82-10-402, MCA, is amended to read:

"82-10-402. Inventory of abandoned wells and seismic operations -- reclamation procedures. (1) The board of oil and gas conservation shall maintain a record of the abandoned oil or gas wells, injection wells, sumps, and seismographic shot holes in the state that disturb land, water, or wildlife resources to a degree not in compliance with plugging, pollution prevention, and reclamation rules of the board. This record must be compiled from petitions or written statements from the owners of surface rights or lessees.

(2) The board shall check the record compiled under subsection (1) against its drilling records and shall determine and list the name of the person who abandoned the well, sump, or hole, whenever this information is available. When a listed person ~~se-listed~~ applies to the board for a new drilling permit, the board may issue the permit only after approving a plan by which the applicant will reclaim the land disturbed by ~~his~~ the person's abandoned wells, sumps, or holes within 3 years.

(3) When the person who abandoned a well, sump, or hole cannot be identified or located or when the person does not have sufficient financial resources to pay for complete reclamation, the board may then reclaim

the disturbed land with funds available from the oil and gas production damage mitigation account in a manner consistent with the requirements for the use of the account provided in 82-11-161 and 82-11-164.

(4) As used in subsection (3), "well" includes a class II injection well, as defined in 82-11-101, for which a drilling permit or a permit authorizing use of a well for that purpose was granted by the board after June 30, 1989, and water source wells used in connection with enhanced recovery projects."

Section 2738. Section 82-10-506, MCA, is amended to read:

"82-10-506. Notification of injury. To receive compensation under this part, a surface owner shall give written notice to the oil and gas developer or operator of the damages sustained by the surface owner within 2 years after the injury occurs or would become apparent to a reasonable ~~man~~ person."

Section 2739. Section 82-10-507, MCA, is amended to read:

"82-10-507. Agreement -- offer of settlement. Unless both parties provide otherwise by written agreement, within 60 days after the oil and gas developer or operator receives notice of damages pursuant to 82-10-506, ~~he~~ the developer or operator shall make a written offer of settlement to the person seeking compensation for the damages. The surface owner seeking compensation may accept or reject any offer."

Section 2740. Section 82-11-103, MCA, is amended to read:

"82-11-103. Lands subject to law. This chapter applies to all lands in the state lawfully subject to its police powers, including all state-owned lands. It applies to lands of the United States or to lands subject to the jurisdiction of the United States only to the extent that control and supervision of conservation of oil and gas by the United States on its lands fails to effect the intent and purposes of this chapter and otherwise applies to those lands to the extent that any officer of the United States having jurisdiction or ~~his~~ the officer's duly authorized representative approves any of the provisions of this chapter or an order of the board that affects those lands. This chapter also applies to any lands committed to a unit agreement approved by the secretary of the interior or ~~his~~ the secretary's duly authorized representative, except that the board may, with respect to those unit agreements, suspend the application of this chapter or any part of this chapter so long as the conservation of oil and gas and the prevention of waste as provided in this chapter is accomplished under the unit agreements. The suspension does not relieve an operator or owner from making reports that may be required by the board with respect to operations and production under the unit agreement, and the suspension does not relieve an operator or owner from the payment of taxes on ~~his~~ oil and gas production or payment for permit fees as required by this

chapter."

Section 2741. Section 82-11-117, MCA, is amended to read:

"82-11-117. Confidentiality of records. (1) Any information that is furnished to the board or the board's staff or that is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by the board.

(2) If an owner or operator disagrees with a determination by the board that certain material will not be maintained as confidential, the owner or operator may file a declaratory judgment action in a court of competent jurisdiction to establish the existence of a trade secret if ~~he~~ the owner or operator wishes ~~such~~ the information to enjoy confidential status. The department must be served in ~~any such~~ the action and may intervene as a party.

(3) Any information not intended to be public when submitted to the board or the board's staff must be submitted in writing and clearly marked as confidential.

(4) Data describing physical and chemical characteristics of a liquid, gaseous, solid, or other substance injected or discharged into state waters may not be considered confidential.

(5) The board may use any information in compiling or publishing analyses or summaries relating to water pollution if ~~such~~ the analyses or summaries do not identify the owner or operator or reveal any information that is otherwise made confidential by this section."

Section 2742. Section 82-11-141, MCA, is amended to read:

"82-11-141. Administrative procedure. (1) Unless otherwise provided, the Montana Administrative Procedure Act applies to this chapter.

(2) An order or amendment ~~thereof~~ of an order, except in an emergency, may not be made by the board without a public hearing upon at least 10 days' notice. The public hearing ~~shall~~ must be held at ~~such~~ a time and place as ~~may be~~ prescribed by the board, and any interested person is entitled to be heard.

(3) When an emergency requiring immediate action is found to exist, the board may issue an emergency order without advance notice or hearing ~~which shall be~~ that is effective upon promulgation. An emergency order may not remain in effect beyond the next regular meeting of the board.

(4) (a) If notice is required by the chapter and the Montana Administrative Procedure Act does not apply, the notice ~~shall~~ must be made by publication in one or more issues of a newspaper in general circulation in Helena and a newspaper of general circulation in the county where the land or some part ~~thereon~~ of the land is

situated, and the board may also cause publication to be made in a trade journal or bulletin of general circulation in the oil and gas industry in the state.

(b) At least 20 days prior to the public hearing, a person who applies to establish a well spacing unit under 82-11-201 or who applies to pool all interests in a well spacing unit pursuant to 82-11-202 shall cause written notice of any hearing ~~thereon~~ on the application to be served upon the record owners of the oil and gas and leasehold interests sought to be spaced or pooled. Notice must be given by mailing the written notice, postage prepaid, to their addresses as shown by the record of the county clerk and recorder at the time the notice is given.

(5) If written notice is not possible, proof of service by publication under subsection (4) ~~shall~~ must be made by the affidavit of the printer or publisher of the newspaper, trade journal, or bulletin in which the notice is published or by a ~~foreman~~ supervisor or principal clerk of the newspaper, bulletin, or trade journal.

(6) Except as provided otherwise in this chapter, the board may act upon its own motion or upon the petition of an interested person. On the filing of a petition concerning a matter within the jurisdiction of the board, the board shall promptly fix a date for a hearing ~~thereon~~ on the petition and shall cause notice of the hearing to be given. The hearing ~~shall~~ must be held without undue delay after the filing of the petition. The board shall enter its order within 30 days after the hearing."

Section 2743. Section 82-11-142, MCA, is amended to read:

"82-11-142. Subpoena power -- civil actions. (1) If the Montana Administrative Procedure Act does not apply, the board may subpoena witnesses, administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation conducted by it. Witnesses subpoenaed under this subsection ~~shall~~ must be paid the same per diem and mileage as is provided to be paid to witnesses attending the district courts of this state.

(2) This chapter, a suit by or against the board, a violation charged or asserted against a person under this chapter, or a rule or order issued under this chapter does not impair, abridge, or delay a cause of action for damages or other civil remedy ~~which~~ that a person may have or assert against a person violating this chapter or a rule or order issued under it. A person ~~so~~ aggrieved by the violation may sue for and recover ~~such~~ damages or relief ~~as he~~ that the person otherwise may be entitled to receive.

(3) A person, association, corporation, or agency of the state or federal government may apply to the board protesting a violation or a threatened violation of this chapter. The board shall make an investigation and make a written report to the person, association, corporation, or agency that made the protest. If a violation is

established by the investigation of the board, the board shall take appropriate enforcement action. If the board fails to take appropriate enforcement action or to bring suit to enjoin a threatened violation of this chapter or a rule or order of the board within 10 days after receipt of written request to do so by a person who is or will be adversely affected, the person making the request may bring the suit in ~~his~~ the person's own behalf to restrain the threatened violation in a court in which the board might have brought suit. The board ~~shall~~ must be made a party defendant in the suit in addition to the person threatening to violate this chapter or a rule or order of the board, and the action ~~shall~~ must proceed and injunctive relief may be granted without bond in the same manner as if suit had been brought by the board.

(4) If a person fails or refuses to comply with the subpoena issued by the board or if a witness refuses to testify as to any material matter regarding which ~~he~~ the person may be interrogated, any district court in the state, upon good cause shown by the application of the board, may issue a warrant of attachment for the person and, if after hearing the court finds ~~his~~ the person's failure or refusal to be unjustified, compel ~~him~~ the person to comply with the subpoena and to attend before the board and produce any subpoenaed records, books, and documents for examination and to give ~~his~~ testimony. The court may punish for contempt as in the case of disobedience to a like subpoena issued by the court or for refusal to testify ~~therein~~ in the proceeding."

Section 2744. Section 82-11-151, MCA, is amended to read:

"82-11-151. Emergencies -- notice and hearing. (1) Notwithstanding any other provisions of this chapter, if the administrator or a board member finds that a person is committing or about to commit an act in violation of this chapter or any order or rule issued under it ~~which~~ that, if it occurs or continues, will cause substantial pollution, the administrator under order of the board or the board member is authorized to order the person to stop, avoid, or moderate the act, including immediate closure or shutdown of any well. This authority is limited to acts the harmful effects of which will not be remedied immediately after the commission or cessation of the act or will represent an immediate threat to public health, safety, or welfare.

(2) When any emergency requiring immediate action is found pursuant to subsection (1), the board is authorized to issue an emergency order without notice or hearing, which is effective upon issuance as provided in 82-11-141(3).

(3) The board may have written notice served, personally or by mail, on the alleged violator or ~~his~~ the violator's agent. The notice must state the provision alleged to be violated, the facts alleged to constitute the violation, the nature of corrective action the board requires, and the time within which the action is to be taken. For the purposes of this section, service by mail is complete on the date of mailing.

(4) The notice must indicate that the order is an emergency order.

(5) Pursuant to 82-11-141(3), the board may consider the emergency order at its next regular meeting, without compliance with the notice requirements of this chapter if they cannot be accomplished within the time available, and enter a second emergency order.

(6) Upon issuing an order under subsection (2), the board may fix a place and time for a hearing, not later than 5 days ~~thereafter~~ after issuance unless the person to whom the order is directed requests a later time. The board may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. If the board considers it practicable, the hearing must be held in the county where the violation is alleged to have occurred. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the order.

(7) If the order of the board is affirmed, it must be accompanied by a statement specifying the date or dates by which a violation must cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution. An action for review of the order of the board may be initiated in the manner specified in 82-11-144. The initiation of ~~such~~ an action or taking of an appeal may not stay the effectiveness of the order unless the court finds that the board did not have reasonable cause to issue an order under this section."

Section 2745. Section 82-11-206, MCA, is amended to read:

"82-11-206. Terms and conditions of plan for unit operations. The order ~~shall~~ under 82-11-205 must be upon terms and conditions that are just and reasonable and ~~shall~~ must prescribe a plan for unit operations that ~~shall include~~ includes:

(1) a description of the pool or pools or parts ~~thereof~~ of a pool or pools to be ~~so~~ operated, termed the unit area, but only so much of a pool as has reasonably been defined and determined by drilling operations to be productive of oil or gas may be included within the unit area. If the unit is formed solely for production of gas, a spacing unit on which is located a well producing or capable of producing gas on March 1, 1971, may not be included in the unit area without the written consent of the majority in interest of the working interest owners of the spacing unit and well.

(2) a statement of the nature and purpose of the plan and operations contemplated, together with a copy of the proposed unit agreement and unit operating agreement;

(3) a plan for allocating to each tract in the unit area its fair share of the oil and gas produced from the unit area and not required or consumed in the conduct of the operation of the unit area or unavoidably lost. A plan may not be approved by the board until it has considered the relative value that the share of production bears

to the relative value of all of the separately owned tracts in the unit area, exclusive of physical equipment utilized in unit operations. In considering this relative value, the board shall weigh the economic value of the gas to all persons affected as compared to the economic value of the oil to all persons affected.

(4) a provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operations;

(5) a provision providing how the costs of unit operations, including overhead and capital investments, ~~shall~~ must be determined and charged to the separately owned tracts, including a provision for carrying or otherwise financing any owner who has not executed the proposed unit operating agreement and who elects to be carried or otherwise financed, allowing an interest charge of the ~~then-current~~ then-current prime rate plus 2% for the service. Recovery of the money advanced plus interest ~~shall~~ must be limited to and only ~~shall~~ be recoverable from the owners' share of production. The recovery ~~shall~~ must be as follows:

(a) (i) in the case of a field producing oil or oil and gas, during the period of depletion of the remaining estimated primary reserves from the unit, only from the production that is in excess of the owners' average actual rate of production during the 18 months immediately preceding the effective date of the unit;

(ii) during the period subsequent to the depletion of the remaining estimated primary reserves from the unit, from 100% of the owners' share of production;

(iii) for purposes of this subsection (5)(a), the term "primary reserves" means the oil or gas ~~which~~ that would be produced from the unitized pool or pools as a result of the natural energy ~~therein~~ in the pool or pools and without the introduction of an enhanced recovery program;

(b) in the case of a field producing only gas, from 100% of the owners' share of production;

(c) in the case of any enhanced recovery program that is initiated subsequent to a secondary recovery program, the recovery ~~shall~~ must be from 75% of the owners' increased share of production from ~~such~~ the subsequent program;

(6) a provision for the supervision and conduct of the unit operations, in respect to which each owner ~~shall have~~ has a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of the owner;

(7) a provision ~~whereby~~ by which the unit operator, after having operated for a minimum period of 2 years, ~~can~~ may be challenged by any other owner in the unit, and the challenging owner may succeed to the unit operations upon a showing that:

(a) ~~he~~ the challenging owner can operate more efficiently and economically than the present operator;

- (b) ~~he~~ the challenging owner is qualified and financially responsible;
- (c) a majority of the other owners, both in number and in percentage and exclusive of the challenged operator, approved the challenging owner becoming unit operator; and
- (d) the challenged operator does not initiate the conditions of operations of the challenging owner within 60 days of the challenged operator's receipt of the conditions of operations;
- (8) the time when the unit operations ~~shall~~ must commence and the manner in which and the circumstances under which the unit operations ~~shall~~ must terminate; and
- (9) ~~such~~ additional provisions that are found to be appropriate for carrying on unit operations and for the protection and adjustment of correlative rights."

Section 2746. Section 82-11-209, MCA, is amended to read:

"82-11-209. Units established by previous order. The board may provide by an order for the unit operation of a pool or pools or parts ~~thereof~~ of a pool or pools that embrace a unit established by an order of the board made prior to February 13, 1969. The order, in providing for the allocation of unit production, ~~shall~~ must first treat the unit area previously established as a single tract, and the portion of the unit production ~~so~~ allocated ~~thereto~~ shall to that tract must then be allocated among the tracts included in the previously established unit area in the same proportions as those specified in the previous order. ~~Any~~ A new owner whose interest by the order is added to the unit area and who becomes liable for ~~his~~ the owner's proportionate share of the costs of unit operations is not liable for any unit operating costs incurred prior to the person's entry in the unit. At the time the interest is included in the unit, an equipment inventory ~~shall~~ must be made in order to charge the newly committed interest with its proportionate share of capital investment at its ~~then~~ current value. An oil-in-storage inventory ~~shall~~ must be taken immediately prior to adding the newly committed interest."

Section 2747. Section 82-11-212, MCA, is amended to read:

"82-11-212. Property rights and operator's lien. That portion of the unit production allocated to any tract and the proceeds from the sale ~~thereof~~ of that production must be the property and income of the ~~several~~ persons to whom or to whose credit the ~~same~~ proceeds are allocated or payable under the order providing for unit operations, except that the operator of the unit shall, subject to 82-11-206(5)(a), have a first and prior lien upon each owner's oil and gas rights and ~~his~~ the owner's share of unitized production to secure the payment of ~~such~~ that owner's proportionate part of developing and operating the unit area. ~~Such~~ The lien may be perfected and enforced in the same manner as provided in Title 71, chapter 3, part 5, ~~as amended~~. Upon

demand by any owner of working interest in any tract to which gas has been allocated, the unit operator shall deliver ~~such the~~ allocated share of gas to the owner in kind; ~~but~~ However, the operator and the other owners of interest ~~shall~~ may not be required to bear the cost of providing additional facilities for the delivery of ~~such the~~ gas."

Section 2748. Section 82-11-303, MCA, is amended to read:

"82-11-303. Extension of expiration date. The governor of Montana is further authorized and empowered, for and in the name of the state of Montana, to execute agreements for the further extension of the expiration date of the Interstate Compact To Conserve Oil and Gas and to determine if and when it ~~shall be~~ is ~~in~~ for the best interest of the state of Montana to withdraw from ~~said the~~ compact upon 60 days' notice as provided by its terms. ~~In the event he shall determine~~ If the governor determines that the state should withdraw from ~~said the~~ compact, ~~he shall have~~ the governor has full power and authority to give necessary notice and to take any and all steps necessary and proper to effect the withdrawal of the state of Montana from ~~said the~~ compact."

Section 2749. Section 82-11-304, MCA, is amended to read:

"82-11-304. Governor as member of interstate oil compact commission. The governor ~~shall be~~ is the official representative of the state of Montana on the interstate oil compact commission, provided for in the Interstate Compact To Conserve Oil and Gas, and shall exercise and perform for the state of Montana all the powers and duties as a member of the interstate oil compact commission; ~~provided that he shall have the authority to~~ However, the governor may appoint an assistant representative who shall act in ~~his~~ the governor's stead as the official representative of the state of Montana as a member of ~~said the~~ commission. ~~Said The~~ assistant representative shall take the oath of office prescribed by The Constitution of the State of Montana, which ~~shall~~ must be filed with the secretary of state."

Section 2750. Section 82-11-305, MCA, is amended to read:

"82-11-305. Limitation on power of representative. ~~Nothing in this~~ This part shall ~~shall~~ may not be construed as granting any power to the representative of the state of Montana in ~~his~~ the representative's private or official capacity or to the interstate oil compact commission to prorate, allocate, regulate, or control oil or gas production or refined products ~~thereof~~ of the production within the state of Montana or the markets ~~therefor~~ for the production and ~~shall~~ may not have the effect or be construed as in any manner surrendering to the federal government any rights over or in the production, sale, or transportation of oil or gas or the refined products ~~thereof~~

~~of oil or gas in the state of Montana; nor shall anything in this~~ This part may not be understood or construed to bind or obligate the state of Montana to enact any new legislation or to amend or alter any laws ~~heretofore enacted and now in force~~ pertaining to the oil and gas industries in Montana."

Section 2751. Section 82-11-306, MCA, is amended to read:

"82-11-306. Expenses of representative. The representative or the assistant representative appointed by the governor of the state of Montana to the oil compact commission ~~shall~~ must be allowed and paid ~~his~~ the ~~person's~~ reasonable expenses while engaged in the performance of ~~his~~ the official duties, and ~~his~~ the ~~person's~~ expenses and all other expense incurred in connection with the interstate oil compact and the interstate oil compact commission ~~shall~~ must be paid out of the board of oil and gas conservation revenue fund in accordance with the provisions of 82-11-135, ~~as amended.~~"

Section 2752. Section 82-15-204, MCA, is amended to read:

"82-15-204. Investigation of complaints -- revocation of license. If a complaint ~~shall be~~ is made to the attorney general that ~~any~~ a person, firm, company, association, or corporation is guilty of discrimination as defined by this part, ~~he~~ the attorney general shall ~~forthwith~~ investigate ~~such~~ the complaint in a timely manner, and for that purpose ~~he~~ the attorney general shall subpoena witnesses, administer oaths, take testimony, and require the production of books or other documents, and if, in ~~his~~ the attorney general's opinion, sufficient grounds exist ~~therefor~~, ~~he~~ the attorney general shall prosecute an action in the name of the state in the proper court to annul the charter or revoke the permit or license of ~~such~~ the person, firm, company, association, or corporation, as the case may be, and to permanently enjoin ~~such~~ the person, firm, company, association, or corporation from doing business in this state. If in ~~such~~ the action the court ~~shall find~~ finds that ~~such~~ the person, firm, company, association, or corporation is guilty of discrimination as defined by this part, ~~such~~ the court shall annul the charter or revoke the permit or license of ~~such~~ the person, firm, company, association, or corporation and may permanently enjoin it or them from transacting business in this state."

Section 2753. Section 82-15-205, MCA, is amended to read:

"82-15-205. County attorney to prosecute violations. If ~~any~~ a person ~~shall present~~ presents to the county attorney of any county ~~in the state of Montana,~~ in which county ~~such~~ the discriminatory acts of ~~any~~ a person, firm, company, association, or corporation ~~shall~~ have been committed, a sworn written statement of the price paid, the date, and the parties selling and buying and reasonably reliable information of the price demanded

or collected by ~~such~~ the person, firm, company, association, or corporation for a corresponding or similar article of standard petroleum product sold or offered for sale in another part of the state of Montana or in the nearest adjoining state by ~~such~~ the person, firm, company, association, or corporation, ~~then it shall be the duty of such~~ the county attorney ~~to~~ shall promptly investigate and either commence and prosecute an action or furnish the informant with a written statement of ~~his~~ reasons for not commencing and prosecuting an action under this part."

Section 2754. Section 85-1-622, MCA, is amended to read:

"85-1-622. Penalty. ~~No~~ A member, officer, attorney, or other employee of the board or the department may not, directly or indirectly, be the beneficiary of or receive any fee, commission, gift, or other consideration for or in connection with any transaction or business under this part other than the salary, fee, or other compensation ~~as he~~ that the person may receive as a member, officer, attorney, or employee. A person convicted of violating any provision of this section shall be punished by a fine not to exceed \$2,000 or be imprisoned for not to exceed 2 years, or both."

Section 2755. Section 85-2-132, MCA, is amended to read:

"85-2-132. Change of watercourse name -- public notice. When ~~such~~ a petition under 85-2-131 is filed in the district court, the court or the judge ~~thereof~~ shall designate some newspaper of general circulation in the county; ~~such as~~ that is most likely to give all interested parties ~~interested~~ notice of the proceedings; and shall order that notice be published ~~therein in that newspaper~~ as hereinafter provided; in this section. ~~and in his discretion he~~ The judge may require any other ~~and further~~ notice that ~~to him may seem~~ seems reasonable and shall fix a time at which objections to the granting of the petition for the change of name ~~shall~~ must be heard. A copy of the petition, together with a notice of the time set for hearing objections ~~thereto, shall~~ must be published in the newspaper designated by the court or judge for that purpose at least once a week for 4 successive weeks, and ~~such other and further~~ notice of the proceedings ~~shall~~ must be given ~~as that~~ as that the court or judge may ~~in his discretion~~ require."

Section 2756. Section 85-2-134, MCA, is amended to read:

"85-2-134. Change of watercourse name -- judgment to be filed with county clerk. If the change of name ~~be~~ of a watercourse is ordered, a copy of the judgment, duly certified by the clerk of the court, ~~shall~~ must be filed with the county clerk and recorder of the county in which the watercourse or other natural source of water supply is situated, and the clerk of the court shall, annually, ~~in the month of~~ January, make a return to the office

of the secretary of state of all changes of names made in the district court of ~~his~~ the clerk's county under this section."

Section 2757. Section 85-2-214, MCA, is amended to read:

"85-2-214. Commencement of action. (1) The action for the adjudication of all existing water rights under ~~this part, part 7, and~~ Title 3, chapter 7, Title 85, chapter 2, part 7, and this part is commenced with the issuing of the order by the Montana supreme court to file a statement of a claim of an existing water right as provided in 85-2-212. ~~As to~~ For each claim, the action is considered filed in the judicial district of the county in which the diversion is made or, if there is a claimed right with no diversion, in the judicial district of the county in which the use occurs.

(2) The water judge shall monitor the claim filing procedure for claims within ~~his~~ the judge's water division and make ~~any~~ orders necessary to ~~assure~~ ensure timely and accurate compliance with the claim filing procedure."

Section 2758. Section 85-2-218, MCA, is amended to read:

"85-2-218. Process and criteria for designating priority basins or subbasins. (1) The water judges and the department, in performing their functions in the adjudication process, shall give priority to basins or subbasins designated each biennium by the legislature. Basins or subbasins must be designated according to the following criteria:

(a) recurring water shortages within the basin or subbasin have resulted in urgent water rights controversies that require adjudication to determine relative rights;

(b) federal or Indian reserved rights are nearing determination, either by compact or adjudication, thus making adjudication of other rights in the basin or subbasin important for timely issuance of preliminary or final decrees;

(c) the basin or subbasin's location would help ensure efficient use of department and water court resources; and

(d) the adjudication process in the basin or subbasin is nearing the issuance of a decree.

(2) The water judge may designate a basin for priority adjudication upon petition of 100 or more persons who have filed claims within the basin; or ~~he~~ may designate a subbasin for priority adjudication upon petition of a majority of persons who have filed claims within the subbasin. ~~The~~ However, the basin or subbasin ~~shall~~ may receive priority, ~~however,~~ only if it meets one or more of the criteria in subsection (1).

(3) If adjudication work in one or more of the priority basins or subbasins has been completed or has

been suspended for good cause, the water judge may select other basins or subbasins for priority adjudication; based on the criteria in subsection (1)."

Section 2759. Section 85-2-224, MCA, is amended to read:

"85-2-224. Statement of claim. (1) The statement of claim for each right arising under the laws of the state and for each right reserved under the laws of the United States ~~which that~~ has been actually put to use ~~shall~~ must include substantially the following:

- (a) the name and mailing address of the claimant;
- (b) the name of the watercourse or water source from which the right to divert or make use of water is claimed, if available;
- (c) the quantities of water and times of use claimed;
- (d) the legal description, with reasonable certainty, of the point or points of diversion and places of use of waters;
- (e) the purpose of use, including, if for irrigation, the number of acres irrigated;
- (f) the approximate dates of first putting water to beneficial use for the various amounts and times claimed in subsection ~~(e)~~ (1)(c); and
- (g) the sworn statement that the claim set forth is true and correct to the best of claimant's knowledge and belief.

(2) ~~Any A~~ A claimant filing a statement of claim under subsection (1) shall submit maps, plats, aerial photographs, decrees, ~~or~~ pertinent portions ~~thereof~~ of those documents, or other evidence in support of ~~his~~ the claim. All maps, plats, or aerial photographs should show as nearly as possible to scale the point of diversion, place of use, place of storage, and other pertinent conveyance facilities.

(3) Any statement of claim for rights reserved under the laws of the United States ~~which that~~ have not yet been put to use ~~shall~~ must include substantially the following:

- (a) the name and mailing address of the claimant;
- (b) the name of the watercourse or water source from which the right to divert or make use of water is claimed, if available;
- (c) the quantities of water claimed;
- (d) the priority date claimed;
- (e) the laws of the United States on which the claim is based; and
- (f) the sworn statement that the claim set forth is true and correct to the best of the claimant's knowledge

and belief."

Section 2760. Section 85-2-234, MCA, is amended to read:

"85-2-234. Final decree. (1) The water judge shall, on the basis of the preliminary decree, on the basis of any hearing that may have been held, and on final resolution of all issue remarks, as defined in 85-2-250, enter a final decree affirming or modifying the preliminary decree.

(2) The terms of a compact negotiated and ratified under 85-2-702 must be included in the final decree without alteration unless an objection is sustained pursuant to 85-2-233; ~~provided that~~ However, the court may not alter or amend any of the terms of a compact except with the prior written consent of the parties in accordance with applicable law.

(3) The final decree must establish the existing rights and priorities within the water judge's jurisdiction of persons who have filed a claim in accordance with 85-2-221, of persons required to file a declaration of existing rights in the Powder River basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, and of any federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file claims.

(4) The final decree must establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all water rights and their relative priorities.

(5) The final decree must state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person, federal agency, and Indian tribe named in the decree are based.

(6) For each person who is found to have an existing right arising under the laws of the state of Montana, the final decree must state:

- (a) the name and post-office address of the owner of the right;
- (b) the amount of water included in the right, as follows:
 - (i) by flow rate for direct flow rights, such as irrigation rights;
 - (ii) by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not susceptible to measurement by flow rate; or
 - (iii) by flow rate and volume for rights that a water judge determines require both volume and flow rate to adequately administer the right;
- (c) the date of priority of the right;
- (d) the purpose for which the water included in the right is used;
- (e) the place of use and a description of the land, if any, to which the right is appurtenant;

- (f) the source of the water included in the right;
- (g) the place and means of diversion;
- (h) the inclusive dates during which the water is used each year;
- (i) any other information necessary to fully define the nature and extent of the right.

(7) For each person, tribe, or federal agency possessing water rights arising under the laws of the United States, the final decree must state:

- (a) the name and mailing address of the holder of the right;
- (b) the source or sources of water included in the right;
- (c) the quantity of water included in the right;
- (d) the date of priority of the right;
- (e) the purpose for which the water included in the right is currently used, if at all;
- (f) the place of use and a description of the land, if any, to which the right is appurtenant;
- (g) the place and means of diversion, if any; and
- (h) any other information necessary to fully define the nature and extent of the right, including the terms of any compacts negotiated and ratified under 85-2-702.

(8) Clerical mistakes in a final decree may be corrected at any time on the initiative of the water judge or on the petition of any person who possesses a water right. The water judge shall order the notice of a correction proceeding ~~as he~~ that the judge determines to be appropriate to advise all persons who may be affected by the correction. An order of the water judge making or denying a clerical correction is subject to appellate review."

Section 2761. Section 85-2-405, MCA, is amended to read:

"85-2-405. Procedure for declaring appropriation rights abandoned. (1) When the department has reason to believe that an appropriator may have abandoned ~~his~~ an appropriation right under 85-2-404 or when another appropriator in the opinion of the department files a valid claim that ~~he~~ the appropriator has been or will be injured by the resumption of use of an appropriation right alleged to have been abandoned, the department shall petition the district court ~~which~~ that determined the existing rights in the source of the appropriation in question to hold a hearing to determine whether the appropriation right has been abandoned. Proceedings under this section ~~shall~~ must be conducted in accordance with the Montana Rules of Civil Procedure, and appeal ~~shall~~ must be taken in accordance with the Montana Rules of Appellate Procedure.

(2) At the hearing, the burden of proof ~~shall be~~ is on the department, ~~which~~ must ~~must~~ shall establish by a

preponderance of the evidence that the appropriation has been abandoned under 85-2-404.

(3) The determination of the court ~~shall~~ must be appended to the final decree. The department shall keep a copy of the determination in its office in Helena."

Section 2762. Section 85-2-412, MCA, is amended to read:

"85-2-412. Return of surplus water to stream. ~~In all cases where~~ If, by virtue of prior appropriation, ~~any a person may have~~ has diverted all the water of any stream or to ~~such~~ an extent that there ~~shall~~ may not be an amount sufficient left ~~therein~~ for those having a subsequent right to the waters of ~~such~~ the stream and there ~~shall~~ is, at any time, ~~be~~ a surplus of water so diverted, over and above what is actually and necessarily used by the prior appropriator, ~~such person shall~~ the prior appropriator must be required to turn and cause to flow back into the stream ~~such~~ the surplus water. Upon failure to do so within 24 hours after demand being made upon ~~him~~ the prior appropriator in writing, to ~~him~~ the prior appropriator in person or at ~~his~~ the prior appropriator's place of ~~abode~~ residence, by any person having a right to the use of ~~such~~ the surplus water, the person ~~so~~ diverting the ~~same shall be~~ water is liable to the person aggrieved for the damage resulting ~~therefrom~~ from the diversion; in ~~such a sum as may be~~ determined by court."

Section 2763. Section 85-2-413, MCA, is amended to read:

"85-2-413. Diversion of natural flow of waters -- when permitted. Any A person, ~~owning~~ who owns or is in possession of lands susceptible of irrigation from any stream, the waters of which are so diminished by prior appropriations that a sufficient amount of water for the irrigation of ~~his~~ the person's lands cannot be obtained from the natural flow of the stream, and who ~~shall construct~~ constructs a reservoir or ~~shall purchase~~ purchases or ~~lease~~ leases water from a reservoir owned by the department or another or ~~shall~~ otherwise acquire acquires an interest in ~~such~~ the reservoir or in water stored ~~therein~~ in the reservoir, which is ~~so~~ located so that because of natural or other obstacles the water impounded ~~therein~~ in the reservoir cannot be conducted to the lands ~~which~~ he that the person desires to irrigate, may, ~~provided~~ if the stored water can be discharged into the stream in ~~such~~ a manner that it can be used beneficially by prior appropriators, divert the natural flow of the stream for the irrigation of ~~his~~ the person's lands in lieu of an equal amount of stored water; ~~provided, however~~ However, that ~~such an~~ exchange can of water under this section must be made without injury to ~~said~~ prior appropriators."

Section 2764. Section 85-2-416, MCA, is amended to read:

"85-2-416. Duty of purchaser to dig ditches. Any A person desiring to ~~avail himself of the provisions~~

of purchase surplus water pursuant to 85-2-415 ~~must shall~~, at ~~his~~ the person's own cost and expense, construct or dig the necessary flumes or ditches to receive and convey the surplus water ~~so~~ desired by ~~him~~ the person and pay or tender to the person having the right to the use, sale, or disposal ~~thereof of that water~~ an amount equal to the necessary cost and expense of tapping any gulch, stream, reservoir, ditch, flume, or aqueduct and putting in gates, gauges, or other proper and necessary appliances usual and customary ~~in such cases~~, and until ~~the same shall be~~ that work is done, the delivery of the surplus water ~~shall may~~ not be required as provided in 85-2-415."

Section 2765. Section 85-2-418, MCA, is amended to read:

"85-2-418. Purchaser cannot not to sell surplus water. ~~Nothing in Sections~~ 85-2-415 through 85-2-417 ~~shall may not~~ be ~~so~~ construed ~~as~~ to give the person acquiring the right to the use of water, as ~~therein~~ provided ~~in those sections~~, the right to sell or dispose of the ~~same water~~ after being ~~so~~ used by ~~him~~ the person or to prevent the original owner or proprietor from retaking, selling, and disposing of the ~~same water~~ in the usual and customary manner after it is ~~so~~ used as ~~aforsaid~~ provided in those sections."

Section 2766. Section 85-2-804, MCA, is amended to read:

"85-2-804. Application -- notice -- objections -- hearing. (1) ~~Any An~~ appropriator proposing to divert from the basin water allocated to Montana under the terms of the compact or divert from the basin unallocated compact water within Montana shall file an application with the department. The application must state the name and address of the applicant and facts tending to show that:

- (a) the diversion and ultimate use of the water in Montana is for a beneficial use of water;
 - (b) the diversion and ultimate use of water will not adversely affect the water rights of other persons;
 - (c) the proposed means of diversion, construction, and operation are adequate;
 - (d) the diversion and ultimate use will not interfere unreasonably with other planned uses or developments for which a water right has been established or a permit has been issued or for which water has been reserved;
 - (e) the diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states;
 - (f) the diversion and ultimate use of the water are in the public interest of Montana; and
 - (g) the applicant intends to comply with the laws of the signatory states to the compact.
- (2) ~~Any An~~ appropriator proposing to divert from the basin water allocated to North Dakota or Wyoming

under the terms of the compact or divert from the basin unallocated compact water within North Dakota or Wyoming shall file an application with the department. The application must state the name and address of the applicant and facts tending to show that:

(a) the proposed means of diversion, construction, and operation are adequate;

(b) the diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states; and

(c) the applicant intends to comply with the compact.

(3) Notice of the proposed diversion must be given by the department in the same manner as provided in ~~subsections (1) and (2) of 85-2-307(1) and (2).~~

(4) An objection to an application must be filed by the date specified by the department in the notice.

(5) The objector to an application under subsection (1) shall state ~~his~~ the objector's name and address and facts tending to show that:

(a) the diversion and ultimate use of the water in Montana are not for a beneficial use of water;

(b) the property, rights, or interests of the objector would be adversely affected by the proposed diversion or ultimate use of the water;

(c) the proposed means of diversion, construction, and operation are not adequate;

(d) the diversion and ultimate use will interfere unreasonably with the objector's planned uses or development for which the objector has a water right, a permit, or a reserved water right;

(e) the diversion and ultimate use of the water will exceed the allocated share under the compact of any signatory state; or

(f) the diversion and ultimate use of the water are not in the public interest of Montana.

(6) The objector to an application under subsection (2) shall state ~~his~~ the objector's name and address and facts tending to show that:

(a) the property, rights, or interests of the objector would be adversely affected by the proposed diversion or ultimate use of the water;

(b) the proposed means of diversion, construction, and operation are not adequate; or

(c) the diversion and ultimate use of the water will exceed the allocated share under the compact of any signatory state.

(7) If the department receives an objection to an application, it shall hold a hearing on the application within 60 days from the date set by the department for filing objections. Service of notice of the hearing must be made by certified mail upon the applicant and the objector.

(8) The hearing ~~shall~~ must be conducted under the contested case procedures of the Montana Administrative Procedure Act in Title 2, chapter 4, part 6."

Section 2767. Section 85-3-301, MCA, is amended to read:

"85-3-301. Records of operations maintained by licensees. Every A licensee shall keep and maintain a record of all operations conducted by ~~him~~ the licensee under ~~his~~ the license and each permit, showing:

- (1) the method employed;
- (2) type of equipment used;
- (3) kinds and amounts of material used;
- (4) times and places of operation of the equipment;
- (5) names and addresses of all individuals participating or assisting in the operation;
- (6) any other general information ~~as~~ that the department may require."

Section 2768. Section 85-3-411, MCA, is amended to read:

"85-3-411. Weather modification authority created by petition -- expiration -- reinstatement. (1) Upon receipt of a valid petition signed by at least 51% of the qualified electors of a county, as determined by the vote cast for the office of governor at the ~~last~~ preceding general election, a board of county commissioners may by resolution create a weather modification authority. The board of county commissioners shall appoint five residents of the county as weather modification authority commissioners from those names set forth in the petition and designated by the petitioners to be appointed commissioners. If any of the five candidates named in the petition to be appointed commissioner is unable or refuses for any reason to accept appointment as commissioner or is disqualified by not meeting residence requirements as an elector in the county, the board of county commissioners shall name an appointee to fill the position. Each commissioner shall serve a 5-year term of office. If ~~any~~ a commissioner submits ~~his~~ a resignation in writing to the board of county commissioners or becomes unable or disqualified for any reason after accepting office, the board of county commissioners shall name an appointee to fill the vacancy. The board of county commissioners may remove any commissioner from office whenever it appears, by competent evidence and after hearing, that the commissioner has been guilty of misconduct, malfeasance, crime in office, or gross incompetency. A vacancy occurring otherwise than by expiration of a term of office must be filled for the unexpired term.

(2) ~~Any~~ An authority created pursuant to this section expires 5 years after the date of the initial appointment of the commissioners. Any unexpended funds remaining in the name of the authority after all proper

bills and expenses have been paid must be transferred into the county general fund by the officers of the authority on or before the 5-year termination date provided by this section. However, all unexpended funds remaining in the name of the authority after all proper bills and expenses have been paid ~~shall~~ must remain in the name of the authority if the board of county commissioners of ~~such~~ the county by resolution creates a weather modification authority and all its powers in accordance with 85-3-414.

(3) Nothing in this section prevents renewal of an authority for another 5 years by petition of the qualified electors in the same manner as the initial authority was created.

(4) If more than one petition is filed with the board of county commissioners on or about the same time, the petition with the highest percentage of the qualified county electors voting for the office of governor at the ~~last~~ preceding general election must be selected by the board of county commissioners. However, the petition with the highest percentage must have the signatures of at least 40% of the qualified electors in the county, and the ~~sum~~ total of all qualified electors signing all petitions filed must equal at least 60% of the qualified electors in the county. If the name of the same elector appears on two or more petitions, the name must be stricken from both petitions."

Section 2769. Section 85-3-421, MCA, is amended to read:

"85-3-421. Commissioners -- compensation -- meetings -- officers -- disbursements. (1) A commissioner may not receive ~~no~~ compensation for ~~his~~ the commissioner's services. Certificates of appointment must be filed with the county clerk and recorder.

(2) The powers of each authority are vested in its commissioners. A majority of the commissioners constitutes a quorum for the purpose of conducting the business of the authority, but action may not be taken by the authority except by an affirmative vote of not less than a majority of all the commissioners. A ~~chairman~~ presiding officer, ~~vice-chairman~~ vice presiding officer, secretary, and treasurer must be elected from among the commissioners. An authority may delegate to one or more of its commissioners ~~such~~ powers or duties ~~as~~ that it considers proper.

(3) The secretary shall keep minutes of official meetings and shall include all official business, such as operations requested, and all authorizations for payment of weather modification authority funds.

(4) Disbursements authorized by the authority must be made by check signed by the ~~chairman~~ presiding officer and the treasurer of the authority. Official policies must be entered into the minutes. An annual report must disclose funds received and expended, and a copy of the report must be filed with the county clerk and recorder. The annual report must be presented at a public meeting called for ~~such~~ that purpose."

Section 2770. Section 85-5-102, MCA, is amended to read:

"85-5-102. Appointment of chief commissioner. When the judge of the district court ~~shall appoint~~ appoints two or more commissioners to admeasure and distribute the waters mentioned in ~~the preceding section~~ 85-5-101, ~~he~~ the judge may appoint one of them as chief commissioner and empower ~~him~~ the chief commissioner to exercise direction and control over the other ~~or others~~ commissioners in the discharge of their duties. The judge may depose the ~~one person~~ appointed as chief commissioner from that position and appoint another ~~in his stead~~ as chief commissioner whenever it appears to the judge that better service may be given to the water users by making the change."

Section 2771. Section 85-5-103, MCA, is amended to read:

"85-5-103. Oath and bond. Each water commissioner ~~so~~ appointed by the court shall subscribe and file with the clerk of the district court an oath of office before commencing the discharge of ~~his~~ duties as commissioner and shall ~~likewise~~ file with ~~said~~ the clerk a bond executed by ~~himself~~ the commissioner, with two or more sureties, in ~~such a~~ sum as ~~that~~ the judge of ~~said~~ the court may designate, to ~~insure~~ ensure the faithful discharge of ~~his~~ the commissioner's duties."

Section 2772. Section 85-5-104, MCA, is amended to read:

"85-5-104. Term of office. Every A water commissioner ~~so appointed~~ shall hold his holds office for ~~such~~ the time during the irrigation season of each year ~~as~~ that may be designated by the judge in the order making ~~such~~ the appointment. The judge, ~~in his discretion,~~ shall may fix the date of the commencement of ~~such~~ the term and may, in ~~his~~ in the judge's discretion or when requested in writing by at least three persons entitled to the use of ~~such~~ the waters, change the term for closing of the commissioner's service."

Section 2773. Section 85-5-105, MCA, is amended to read:

"85-5-105. Power and duty to distribute water. Upon the issuance of ~~such an~~ an order, the water commissioner or commissioners shall have authority and it is ~~hereby made his or their~~ the commissioner's or commissioners' duty to admeasure and distribute to the users ~~thereof~~ of water, as their interests may appear and be required, the stored and supplemental ~~waters~~ water stored and as released by the department of natural resources and conservation under provisions of Title 85, chapter 1 ~~of this title,~~ to be diverted into and through ~~said~~ streams a stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply in the same manner and under the same rules as decreed water rights are admeasured and distributed. ~~Such~~ The

water commissioner or commissioners and the owners and users of ~~such the~~ stored and supplemental waters ~~shall be~~ water are bound by and ~~be are~~ subject to the provisions of this chapter ~~and all acts amendatory thereof and supplemental thereto,~~ provided ~~However,~~ that the admeasurements and distribution of ~~such the~~ stored and supplemental waters ~~shall in no way~~ water may not interfere with decreed water rights. The purpose of Title 85, chapter 5, parts 1 through 3, ~~of this chapter~~ is to provide a uniform, equitable, and economical distribution of adjudicated, stored, and supplemental waters."

Section 2774. Section 85-5-108, MCA, is amended to read:

"85-5-108. Authority and arrest power. For the purposes of carrying out the provisions of Title 85, chapter 5, parts 1 through 3 ~~of this chapter~~, each commissioner appointed by the court ~~shall have~~ has the authority to enter upon any ditch, canal, aqueduct, or other source for conveying the waters affected by the decree and to visit, inspect, and adjust all headgates or other means of distributing the waters and ~~shall have~~ has the same powers as a sheriff or constable to arrest any ~~and all persons~~ person interfering with the distribution made by ~~him~~ the commissioner, to be dealt with according to law."

Section 2775. Section 85-5-109, MCA, is amended to read:

"85-5-109. Failure to perform duty as a contempt of court. If ~~any a~~ commissioner ~~shall fail~~ fails to perform any of the duties imposed upon ~~him~~ the commissioner by the order of the judge of the district court, ~~he~~ shall be deemed the commissioner is guilty of a contempt of ~~said~~ court."

Section 2776. Section 85-5-110, MCA, is amended to read:

"85-5-110. Appointment of water mediators -- duties. (1) The judge of the district court may appoint a water mediator to mediate a water controversy in a decreed or nondecreed basin under the following circumstances:

- (a) upon request of the governor;
 - (b) upon petition by at least 15% of the owners of water rights in a decreed or nondecreed basin; or
 - (c) in the discretion of the district court having jurisdiction.
- (2) A water mediator appointed under this section may:
- (a) discuss proposed solutions to a water controversy with affected water right holders;
 - (b) review options related to scheduling and coordinating water use with affected water right holders;
 - (c) discuss water use and water needs with persons and entities affected by the existing water use;

(d) meet with principal parties to mediate differences over the use of water; and

(e) hold public meetings and conferences to discuss and negotiate potential solutions to controversies over use of water.

(3) If the governor requests or a state agency petitions for a water mediator, the governor or agency shall pay all or a majority of the costs of the water mediator, as determined equitable by the district court having jurisdiction.

(4) The governor may use funds appropriated under 75-1-1101 to pay the costs of a water mediator.

(5) ~~Nothing in this~~ This section allows ~~does not allow~~ a water mediator to require any valid water right holder to compromise or reduce any of ~~his~~ the holder's existing water rights.

(6) If an appropriator voluntarily ceases to use all or part of ~~his~~ an appropriation right or voluntarily ceases to use ~~his~~ an appropriation right according to its terms and conditions as a result of the efforts of a mediator appointed under this section, the appropriator may not be considered to have abandoned all or any portion of ~~his~~ the appropriation right."

Section 2777. Section 85-5-202, MCA, is amended to read:

"85-5-202. Repair expenses. The judge may ~~also~~ allow as a charge any expenses necessarily incurred by the water commissioner in the discharge of ~~his~~ duties in the employment of extra labor for the repair of dams, headgates, ditches, or flumes when immediate action is necessary to preserve the rights of the parties entitled to the waters of ~~such a~~ stream or when the judge has, in the order appointing the commissioner, required the commissioner to repair ditches and keep in repair necessary headgates, ditches, or flumes. The water commissioner shall report all ~~such~~ expenses, and the cost ~~thereof shall~~ must be taxed against the party or parties for whose benefit the ~~same~~ expenses were incurred. In the discretion of the court, ~~such the~~ costs or expenses may be assessed against the land upon which or for the benefit of which ~~such the~~ expense had been incurred."

Section 2778. Section 85-5-302, MCA, is amended to read:

"85-5-302. Maintenance of headgates and measuring devices. All persons using water from any stream or ditch ~~whereon~~ for which a water commissioner is appointed are required to have suitable headgates at the point where a ditch taps a stream and shall also, at some suitable place on the ditch and as near the head as practicable, place and maintain a proper measuring box, weir, or other appliance for the measurement of the waters flowing in the ditch. ~~In case~~ If any a person ~~or persons shall fail~~ fails to place or maintain a proper measuring appliance, it is the duty of the water commissioner not to apportion or distribute any water through the

ditch. The commissioner shall notify all parties interested by certified mail or in person 1 week before making the annual repair or cleaning of ~~any a~~ stream or ditch or performing necessary labor or expenses to divert water to ~~any a~~ ditch. The sending of a certified letter to the last-known post-office address of any interested party is prima facie evidence of the fact that ~~he~~ the party was duly notified. Any work in the way of repairing a ditch made necessary by ~~any an~~ emergency may be done without ~~such~~ notice when injury would result from a delay."

Section 2779. Section 85-5-401, MCA, is amended to read:

"85-5-401. Determination of water rights between partners, tenants in common, and corporate stockholders. ~~Whenever~~ If a water ditch used for irrigating purposes is owned by a partnership, tenants in common, or corporation and there is any dispute between the respective owners, tenants in common, or stockholders respecting the use and division of the waters flowing in ~~said the~~ ditch, any partner, tenant in common, or stockholder may commence an action in any court of competent jurisdiction to determine the rights of the respective parties to the use of ~~said the~~ waters and may join in ~~his the~~ petition a prayer request for the appointment of a water commissioner to apportion and distribute the waters of ~~said the~~ ditch according to the rights of the respective owners, tenants in common, or stockholders during the pendency of the action."

Section 2780. Section 85-5-402, MCA, is amended to read:

"85-5-402. Appointment of commissioner prior to final decree. After the filing of the complaint in ~~such an~~ action under 85-5-401, the court may, upon 5 days' notice to the other parties to the action, appoint a commissioner to divide and distribute the waters of ~~said the~~ ditch to the respective parties, according to their respective rights, during the pendency of the action. The court may, upon good cause shown, appoint ~~such a~~ commissioner without notice, and when ~~such a~~ commissioner is appointed without notice, any party to the action may, on 5 days' notice to the plaintiff, move the court or judge to vacate ~~such the~~ appointment or to modify the order as to the distribution of the waters of ~~said the~~ ditch. The court or judge, on ~~such~~ hearing, ~~in his discretion,~~ may affirm, vacate, or modify the order previously made. Each water commissioner ~~so~~ appointed shall subscribe to an oath of office before commencing the discharge of ~~his~~ duties."

Section 2781. Section 85-5-405, MCA, is amended to read:

"85-5-405. Compensation and expenses. The court shall fix the compensation of ~~such the~~ commissioner and the term of ~~his~~ employment and shall make an order apportioning the amount of ~~such~~ compensation among the several owners, tenants in common, or stockholders of ~~said the~~ ditch, according to their

respective rights and interest in ~~said the ditch, which~~ The amounts ~~so~~ apportioned ~~shall~~ must be taxed as costs in the action against the respective parties."

Section 2782. Section 85-5-406, MCA, is amended to read:

"85-5-406. Interference with actions of commissioner. ~~Any~~ A person opening or closing a headgate after being set by ~~such the~~ commissioner or who in any manner interferes with ~~such the~~ commissioner in the discharge of ~~his the commissioner's~~ duties ~~shall be deemed~~ is guilty of contempt of court and may be proceeded against for contempt of court as provided in contempt cases."

Section 2783. Section 85-7-1504, MCA, is amended to read:

"85-7-1504. Bonds for commissioner and secretary. (1) ~~In all cases where~~ When the obligations of the district, either existing or proposed, total \$250,000 or ~~over more,~~ the commissioners of an irrigation district shall each furnish a bond in the penal sum of \$2,500, with corporate surety conditioned for the faithful performance of their duties under this chapter. The secretary shall furnish bond, with corporate surety, in the sum of \$1,000, conditioned for the faithful performance of ~~his the secretary's~~ duties pursuant to this chapter and for the proper safekeeping of the records and documents of the district. In all other cases, ~~the bond for the commissioners shall be in the sum of~~ is \$1,000.

(2) ~~In case~~ If any a district established under this chapter is appointed fiscal agent of the United States or is authorized by the United States to make collections of ~~moneys~~ money for and on behalf of the United States in connection with any federal reclamation project, each commissioner shall execute a further and additional official bond in ~~such a sum as~~ that the secretary of the interior may require, conditioned for the faithful discharge of the duties of ~~his~~ office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under any ~~such~~ appointment or authorization, and ~~any such~~ that bond may be sued upon by the United States or by any person injured by the failure of the commissioner or the district to fully, promptly, and completely perform ~~their~~ respective duties."

Section 2784. Section 85-7-1506, MCA, is amended to read:

"85-7-1506. Liability of officers. For ~~any a~~ willful violation of ~~any an~~ an express duty ~~hereunder~~ under this part on the part of any officer ~~herein~~ named in this part, ~~he shall be the officer~~ is liable upon ~~his the officer's~~ official bond and ~~be~~ is subject to removal from office by proceedings brought by ~~any a~~ tax or assessment payer of the district in the district court of the county ~~wherein~~ in which the office of the board of commissioners of the district

is located."

Section 2785. Section 85-7-1507, MCA, is amended to read:

"85-7-1507. Conflict of interest -- criminal penalty. ~~No~~ A commissioner or any other officer named in this chapter may not in any manner be interested, directly or indirectly, in ~~any~~ a contract awarded or to be awarded by the board or in the profits derived ~~therefrom~~ from a contract. For any violation of this provision, ~~such~~ the officer is guilty of a misdemeanor and ~~his~~ upon conviction ~~thereof shall work forfeiture of his~~ forfeits office and ~~he~~ the officer shall be punished as provided in 45-7-401."

Section 2786. Section 85-7-1508, MCA, is amended to read:

"85-7-1508. Compensation and duties of secretary. The member of the board acting as secretary or any person appointed by the board as secretary for the district ~~shall~~ must receive ~~such~~ compensation for ~~his~~ services as ~~may be~~ allowed by the board. It ~~shall be~~ is the duty of the secretary to keep the books and records of accounts, contracts, securities, and other records; ~~to perform his~~ the duties promptly each month; ~~and to~~ make a monthly reconciliation of ~~his~~ accounts with the county treasurer. It ~~shall be~~ is the duty of the county treasurer to make a monthly report to the secretary of all receipts, disbursements, and balances. A failure by the secretary to comply with the provisions of this section ~~shall cause~~ causes a forfeiture of ~~his~~ the secretary's salary, and ~~he~~ shall the secretary must be removed from office by the board."

Section 2787. Section 85-7-1615, MCA, is amended to read:

"85-7-1615. Manager of operations. The board of control ~~shall have the power to~~ may hire a manager to supervise and conduct the operations of the district or districts over which it presides or to hire a manager for each district under its supervision, whichever it ~~deems~~ considers advisable ~~in the premises~~. The manager or managers shall perform all duties ~~as set out for him or them~~ by the board of control."

Section 2788. Section 85-7-1618, MCA, is amended to read:

"85-7-1618. Custody and disbursement of funds. The county treasurer of the county ~~wherein~~ in which the office of the board is established ~~shall be~~ is the custodian of all funds made available for the use of the board, and ~~he~~ the county treasurer shall pay out ~~such~~ the funds upon the order of the board. ~~Such~~ The orders ~~shall~~ must be signed by the secretary or treasurer of the board of control and countersigned by the president or, in ~~his~~ the president's absence, by the ~~vice-president~~ vice president of the board of control. The board funds ~~shall~~ must be

kept separate and distinct from all other county funds. The county treasurer to whom board funds are entrusted ~~shall be~~ is liable on ~~his~~ the treasurer's bond for the safekeeping of ~~said~~ the funds."

Section 2789. Section 85-7-1703, MCA, is amended to read:

"85-7-1703. Vacancies among commissioners. ~~In case of a~~ If there is a vacancy ~~in~~ on the board of commissioners; from any cause, the vacancy must be filled until the next regular or special election by appointment by the board. The remaining commissioners ~~shall~~ constitute a quorum for the purpose of filling any vacancy. If a vacancy exists for every position on the board, the judge of the district court of the county in which the division or major portion of the division is situated shall make the appointments. The appointee must be an owner of irrigable land within the division of the district ~~he~~ that the appointee represents and must be a resident of the county in which the division of the district or some portion of the division is situated. A commissioner appointed under this section ~~shall hold~~ holds office until ~~his~~ a successor is elected and qualified."

Section 2790. Section 85-7-1811, MCA, is amended to read:

"85-7-1811. Procedure to correct errors and omissions in orders or decrees. (1) The district court ~~shall retain~~ retains jurisdiction of any petition presented to establish an irrigation district or to enlarge and increase its boundaries or to exclude land ~~therefrom~~ from the district for the purpose of correcting any omissions, defects, or errors in the proceedings of ~~said~~ the court. The court ~~shall have power to~~ may correct and, if necessary, ~~to~~ amend the order of the district court establishing the district, any order extending the boundaries ~~thereof~~ of the district, or any order excluding lands ~~therefrom~~ from the district, including the description of lands included or intended to be included in the district or excluded ~~therefrom~~ from the district or intended to be excluded, the boundaries of the divisions into which it is divided, and any other matter ~~which shall be~~ that is before the court on the application to create the district, to enlarge or extend its boundaries, or to exclude lands ~~therefrom~~ from the district. The court ~~shall have and is hereby granted power and authority~~ may, on application of the board of commissioners of the district, ~~to~~ correct and amend the terms of any order or judgment of ~~said~~ the court so that ~~the same shall conform~~ it conforms to the provisions of the statute under the authority of which ~~such~~ the order was made. The board of commissioners of any district may adopt a resolution directing its president and secretary to prepare, execute, and file with the clerk of the district court a petition ~~which shall set~~ that sets forth the following matters:

(a) the name of the district and a reference to the order in which the defect, error, ~~or~~ omission, errors in description of lands included or excluded, or departure from the statute occurred;

(b) a statement of the defects, errors, omissions, irregularities, errors in description of lands included or excluded, or variance from the statutory requirements; and

(c) a prayer request for an order correcting said the defects, errors, omissions, or irregularities.

(2) If the error, defect, omission, irregularity, or variance is in the description of any land or lands embraced in the district, the petition ~~shall~~ must set forth the correct description of said the lands, the names of the holders of title or evidence of title ~~thereto to the lands~~, ascertained in the manner provided in 85-7-101 and 85-7-102, and if any holder is a nonresident of the county or counties in which the district lies, the post-office address of ~~such the~~ nonresident owner, if known. Upon the filing of said the petition, the court shall direct notice of the hearing ~~thereof of the petition~~ to be given in such a manner as ~~shall be deemed~~ determined necessary to protect the rights and interests of the parties and, after a hearing of any parties intervening, shall enter an order correcting the defects, errors, omissions, or irregularities. If the defects, errors, omissions, or irregularities are in the description of the lands embraced in the district, the district court or judge shall direct the clerk of said the court to publish, at least once a week for 2 successive ~~calendar~~ weeks, in some newspaper published in said the county where said the petition is filed, a copy of said the petition, together with a notice stating the time and place fixed by said the district court when and where a hearing on said the petition will be ~~had~~ held, and, if any portion of the lands within said the district lies within any other county or counties, said the petition and notice ~~shall~~ must be published as provided ~~above~~ in this subsection in a newspaper published in each ~~such other county of those counties~~. If ~~there be no~~ a newspaper is not published in such the county, such the petition and notice may be published in an adjoining county. The first publication of said the petition and notice ~~shall~~ must be not less than 30 days prior to the time mentioned in said the notice for said the hearing. If any holder of title or evidence of title to lands within the district is a nonresident of the county or counties in which the district lies, the clerk of said court shall, within 3 days after the first publication ~~aforsaid~~, mail a copy of said the petition and notice to each such nonresident whose post-office address is stated in said the petition. The certificate of the clerk of the district court, under the seal of the court, as to the facts of the publishing and mailing of said the petition and notice, affixed to a copy of said the notice, ~~shall be~~ is sufficient evidence of such the facts.

(3) At the time specified in the notice, the district court in which the petition ~~aforsaid~~ is filed shall hear the petition but may adjourn such the hearing from time to time and may continue the hearing for want of sufficient notice or other good cause. The court, upon application of the petitioners or any person or persons interested, shall permit the petition to be amended and may order further or additional notice to be given. Upon such the hearing, all persons interested may appear and contest the application for the order ~~prayed for~~ requested in the petition, and the contestants and petitioners may offer any competent evidence pertinent to the prayer request

of the petition.

(4) The court may make ~~such~~ changes in the description of the lands embraced within the limits of the district ~~as that~~ may be ~~deemed considered~~ advisable or as fact, right, and justice may require but ~~shall may~~ not exclude from the district any lands described as a part of ~~said the~~ district in the order creating it after the district has issued bonds or entered into a contract with the United States under 85-7-1906. However, ~~such~~ lands may be excluded from a district ~~which that~~ has entered into a contract with the United States under ~~said section 85-7-1906; provided if~~ the secretary of the interior ~~shall give his consent~~ consents to ~~such the~~ exclusion.

(5) If, on final hearing, it is found by the court that the petition does not substantially comply with the ~~foregoing~~ requirements of this section or that the facts ~~therein~~ stated in the petition are not sustained by the evidence, ~~then~~ the court shall dismiss the petition at the cost of the petitioners and shall make and enter an order to that effect. If it is found that ~~said the~~ petition substantially complies with ~~said the~~ requirements of this section and that the facts ~~therein~~ stated in the petition are sustained by the evidence, the court shall make and enter an order in accordance with the ~~prayers~~ request of the petition.

(6) All orders and findings of the district court made under the provisions of this section ~~shall be~~ are conclusive upon all owners of lands within the district and ~~shall be~~ are final unless appealed from to the supreme court within 60 days from the date of entry of ~~such the~~ order. A copy of ~~such the~~ order, ~~duly~~ certified to by the clerk of ~~said~~ court, ~~shall must~~ be filed for record within 30 days after ~~such the~~ order is made and entered with the county clerk and recorder of the county ~~wherein in which~~ the lands included within ~~such the~~ district are situated. There ~~shall must~~ be omitted from ~~such the~~ copy lands not situated in the county in which ~~such the~~ copy is filed."

Section 2791. Section 85-7-1901, MCA, is amended to read:

"85-7-1901. Board plan for acquisition and construction. (1) For the purpose of purchasing or constructing the necessary irrigation canals or works or acquiring the necessary property and rights ~~therefor for~~ canals or works and otherwise carrying out the provisions of this chapter, the board of commissioners of any irrigation district ~~must shall~~, as soon as practicable after ~~such the~~ district has been organized, formulate a general plan for ~~such the~~ purchase, construction, and acquisition of ~~such the~~ property. The board shall cause ~~such~~ surveys, examinations, and plans to be made ~~as shall that~~ demonstrate the practicability of ~~such the~~ plans, as well as of procuring water from other and different sources, and the amount of land that can be irrigated ~~thereunder~~ under the plan, and shall furnish the proper basis for an estimate of the cost of carrying out ~~such the~~ plan and the value of any canal, works, property, or system of irrigation proposed to be purchased.

(2) All ~~such~~ surveys, examinations, maps, plans, and estimates ~~shall must~~ be made by or under the

direction and supervision of an irrigation engineer of well-known standing and competency, and all ~~such~~ necessary surveys, examinations, maps, plans, and estimates must be certified to by ~~him~~ the engineer. When ~~all such the surveys, examinations, maps, plans, and estimates~~ are completed, ~~he~~ the engineer shall submit them with all proper field notes to and file them with the board of commissioners, accompanied by ~~his~~ the engineer's report and recommendation ~~thereon~~. This report ~~shall~~ must include a discussion of ~~said~~ the plans submitted by ~~him~~ the engineer to ~~said~~ the board, of the question of water supply, of the sufficiency of the works proposed to accomplish the desired results, of the practicability of the proposed system from an engineering standpoint, and of the probability of being acquired or constructed within the estimate of the cost stated; and ~~such a~~ a general discussion and recommendation in regard to the engineering and financial features of the whole matter ~~as that~~ in the judgment of ~~such~~ the engineer ~~shall be~~ is desirable for the information of the people of the district. ~~Such~~ The report ~~shall~~ must be accompanied by a map; when ~~such a~~ a map is necessary for a proper explanation or understanding of the ~~same~~ report and recommendation.

(3) Upon receiving ~~such the~~ report, ~~said the~~ board of commissioners shall proceed to determine the amount of money necessary to be raised for the purchase or construction of ~~said the~~ proposed property, canals, or irrigation works and system and within 10 days after arriving at ~~such that~~ determination shall cause the secretary of ~~said the~~ board to notify all persons or corporations holding title or evidence of title to lands within ~~said the~~ district, ~~(ascertained determined as provided in 85-7-101 and 85-7-102),~~ of the filing of ~~said the~~ report and their determination ~~thereon on the report~~. ~~Said~~ The notices ~~shall~~ must be given through the United States mail by letter addressed to ~~such the~~ person or corporation at the ~~last known~~ last-known post-office address of each person or corporation ~~aforsaid~~. A certificate of the secretary of the board as to the fact of mailing ~~said the~~ notice, affixed to a copy of ~~said the~~ notice and recorded in the record book of ~~said the~~ board of commissioners, ~~shall be~~ is sufficient and conclusive evidence of ~~such fact~~ mailing."

Section 2792. Section 85-7-1912, MCA, is amended to read:

"85-7-1912. Exchange of water by board. (1) Whenever any canal constructed, owned, or controlled by the district crosses any creek, stream, water channel, or water course, the water of which is used to irrigate land lying below ~~such the~~ canal, the district ~~shall have the right to~~ may contract with the owner or owners of the right to the use of the water or waters in ~~any such the~~ stream, creek, water channel, or water course for an exchange of water and to supply ~~him~~ the owner with water from the district system. The contract ~~shall~~ must be in writing, signed and acknowledged by all the parties ~~thereto~~ before ~~some~~ an officer authorized to take acknowledgments, and ~~shall~~ must be filed and recorded in the office of the clerk and recorder of the county in

which the creek, stream, water channel, or water course is situated. The acknowledgment ~~shall~~ must be certified by ~~such the~~ officer in the manner that deeds are ~~now~~ required to be certified to entitle them to be recorded. ~~Thereafter, such~~ After recording, the district ~~shall have the right to~~ may supply ~~such the~~ land below the canal, whether ~~such the~~ land is included in the district or not, with water from the works of the district, and the owner or lessee of ~~such the~~ land ~~shall, in such case, must~~ be furnished with the same quantity of water as that to which ~~such the~~ owner or lessee would be entitled out of ~~such the~~ creek, stream, water channel, or water course ~~had~~ if the district works had not been built.

(2) The district ~~shall have the right to~~ may appropriate and take possession of the water ~~so~~ replaced and ~~shall have~~ has the same right to ~~such that~~ water as the owner or lessee of the land had, ~~so~~ as long as ~~such the~~ water ~~shall be~~ is replaced by a like quantity of water from ~~such the~~ works. The appropriating and taking of ~~such the~~ water by the district ~~shall never~~ may not deprive ~~such the~~ owner or lessee of the right to retake and use the ~~same should such water~~ if the owner or lessee at any time ~~be~~ is prevented from having or using ~~a like the same~~ quantity of water from ~~such the~~ works. The district ~~shall~~ also ~~have~~ has the right to make appropriation and take possession of ~~such the~~ water at any point and to sell, lease, or use ~~such the~~ water on any land, either above or below the canal, and the appropriation of ~~such the~~ water at any point or selling, leasing, or using the ~~same shall~~ water may not prejudice the right of the district to the water and ~~shall~~ may not increase the rights of the owner or owners of any other water right on ~~such the~~ creek, stream, water channel, or water course.

(3) All water, the right to the use of which is acquired by the district under any contract with the United States, ~~shall~~ must be distributed and apportioned by the district in accordance with the acts of congress, the rules and regulations of the secretary of the interior, and the provisions of ~~said the~~ contract ~~in relation thereto.~~"

Section 2793. Section 85-7-1924, MCA, is amended to read:

"85-7-1924. Interference with commissioners or distribution system -- penalty. Any A person who in any manner interferes with the commissioners of an irrigation district or their lawful agent or employee in the carrying out of the powers conferred by 85-7-1921 through 85-7-1925 or who changes or tampers with any lock box, headgate, or other device for the apportionment or distribution of water installed by or under the authority of the commissioners or who in any manner obstructs or changes the flow of water in the distribution system of any irrigation district without authority of the commissioners of the district ~~shall~~ is, in the discretion of the commissioners, ~~be~~ subject to a forfeiture of ~~his the person's~~ right to the delivery of water through the distribution system of the district ~~so~~ as long as ~~such the~~ acts continue and is guilty of obstructing a public officer or criminal mischief, as appropriate, and is punishable as provided by ~~45-7-302 or 45-6-101~~ or 45-7-302, as applicable."

Section 2794. Section 85-7-2017, MCA, is amended to read:

"85-7-2017. Hearing and procedure in the district court. (1) Upon the filing of ~~this a~~ petition in the district court, the court shall fix the time for the hearing of the petition, which may not be less than 15 days from the date of filing the petition in the court, and shall order the clerk of the court to give notice of the filing of the petition and the date of the hearing ~~thereon~~ by publication at least once a week for 2 ~~calendar~~ weeks in a newspaper published or of general circulation in the county where the office of the board of commissioners of the district is situated and also by posting a written or printed copy of ~~such the~~ notice in at least three public places in each division of the district, ~~the~~ The first of such publications publication and ~~such~~ posting to may be not less than 15 days prior to the date fixed for the hearing.

(2) The notice ~~shall~~ must state the substance of the petition and the time and place fixed for the hearing ~~thereon on the petition~~ and that any person interested in or whose rights may be affected by the issuance or sale of the bonds, the levy of the special tax or assessment, or the proceedings had or to be had by the board of commissioners with respect to ~~such those~~ matters may, on or before the day fixed for the hearing of the petition, answer the petition and may appear at the hearing and contest the granting of the prayer request of the petition and the entry of any order of confirmation.

(3) The provisions of Title 25 respecting the answer to a verified complaint are applicable to an answer to the petition. The persons ~~so~~ answering the petition are the defendants in the proceeding, and the board of commissioners is the plaintiff. Every material statement of the petition not specifically controverted by the answer ~~shall~~ must be taken as true, and every holder of title or evidence of title to lands included in the district failing to answer the petition ~~shall be~~ is considered to admit as true all the material statements ~~thereof of the petition~~. The procedure in ~~such the~~ action ~~shall be~~ is determined by Title 25.

(4) ~~Any A~~ person interested in or whose rights may be affected by the issuance or sale of the bonds, the levy of the special tax or assessment, or the proceedings had or to be had by the board of commissioners of the district in connection with ~~such the~~ matters and the entry of any order of confirmation may enter ~~his~~ an appearance in ~~such the~~ proceedings and answer the petition and contest the granting of the prayer request of the petition."

Section 2795. Section 85-7-2027, MCA, is amended to read:

"85-7-2027. Disposition of bond proceeds. The county treasurer shall place the proceeds of the sale to the credit of the district, and the proceeds ~~shall~~ may be paid out by the county treasurer only upon the written order of the board of commissioners, signed by the president and secretary under the seal of the district. The

proceeds ~~shall~~ may be spent only for the purpose for which the bonds were issued. If any portion of the funds realized from the sale of bonds is not needed immediately for the purpose for which the bonds were issued, the board of commissioners may direct the investment of the funds and any other surplus funds of the district or any portion ~~thereof of the funds~~ in legal investments backed, insured, or guaranteed by the United States or the state of Montana, including federal and state agency obligations. The county treasurer shall transfer to the credit of the district and place to the credit of the fund or funds, as the board of commissioners may direct, all interest received upon investments of the district entrusted to ~~his~~ the treasurer's care."

Section 2796. Section 85-7-2114, MCA, is amended to read:

"85-7-2114. Apportionment of costs when bonds issued. (1) Whenever a petition for the issuance of bonds of any irrigation district established under the provisions of Title 85, chapter 7, part 1, has been filed as provided in 85-7-2012 through 85-7-2015, the board of commissioners of the district shall examine or cause to be examined each 40-acre tract or fractional lot as designated by United States public survey or platted lot, if land is subdivided in lots and blocks, ~~(or whenever land is owned in less than 40-acre tracts or in less than the platted lot, each such tract)~~ of land in the district or of land in a subdistrict if the bonds are to be issued on behalf of the subdistrict; and cause a careful topographical survey and map to be made in the manner provided for in 85-7-2107. Upon the examination, the board shall determine the number of irrigable acres in each tract and shall apportion and distribute the cost of the works or improvements for which the bonds are to be issued over the tracts within the district or subdistrict according to the irrigable area in each of the tracts or subdivisions; so that each irrigable acre is required to bear the same burden of ~~such~~ the costs as each other irrigable acre in the district or subdistrict, except as otherwise provided by law. The special tax or assessment levied to meet the principal of and interest on the bonds is a lien upon the entire tract of which the irrigable area forms a part or portion as of January 1 of the year in which the special tax or assessment is levied, and the number of irrigable acres in each tract so determined may not be diminished but may be increased during the term for which the bonds are issued or until the bonds are liquidated in full.

(2) Whenever a proceeding for the determination, in whole or in part, of the irrigable area of the lands in the district or subdistrict has already been had or a topographical survey or maps ~~thereof of the lands~~ prepared or a court confirmation of prior proceedings ~~had~~, in part or in full, the board may, in its discretion, adopt all or portions of the prior proceedings and need not cause an additional survey or maps or examination of any of the tracts to be made or redetermine the irrigable area of any tract.

(3) The board shall make the determination after the hearing and shall fix the total acreage and the

irrigable acreage and ~~shall~~ prepare a list of the irrigable area for filing, and the proceedings of the board in connection with the determination, including the hearing and notice of the hearing and order or resolution fixing the irrigable area and the preparation and filing of the list, ~~shall~~ must conform to the requirements set forth in 85-7-2107 through 85-7-2113. At the hearing, the board shall also determine the amount and rate per acre necessary to be levied against each irrigable acre in the district to meet the interest on and principal of the authorized bond issue. The tax levied is a lien upon the entire tract of which the irrigable area forms a part. If ~~any~~ a landowner in the district or subdistrict appears before the board at that time and pays in cash the amount fixed against ~~his~~ the landowner's land as its proportion of the amount found necessary for the purposes for which the bonds were authorized and are to be issued, ~~his~~ that land must be excluded from the lien of the bond issue and the amount of bonds intended to be issued ~~shall~~ must be reduced by the amount of the payment. ~~Any~~ A person interested who fails to appear before the board at the meeting may not ~~thereafter~~ contest the proceedings of the board or any part ~~thereof~~ of the proceedings; except upon special application to the court in the proceedings for the confirmation of the bonds and a showing of reasonable excuse for failure to appear before the board."

Section 2797. Section 85-7-2115, MCA, is amended to read:

"85-7-2115. Objection by landowner. ~~In case~~ If ~~any~~ a landowner ~~makes objection~~ objects to the proceedings of the board in determining the irrigable area in ~~his~~ the landowner's own or any other tract of land or the amount or rate per acre of the special tax and assessment to be levied against each irrigable acre in the district or subdistrict for the purposes of the proposed bond issue and the objection is overruled by the board, the objection without further proceedings must be regarded as appealed to the district court and ~~shall~~ must, with the other proceedings of the board at the meeting, be heard at the proceedings to confirm the bonds, as provided in 85-7-2016 through 85-7-2018; ~~and when~~ When confirmed, the order overruling the objection and confirming the order of the board determining the irrigable area of each tract of land and apportioning the cost of the improvement to each tract ~~shall become~~ becomes final, binding, and conclusive upon the landowner and upon the district; unless appealed from as provided in 85-7-2018."

Section 2798. Section 85-7-2116, MCA, is amended to read:

"85-7-2116. Restrictions on reduction of taxable acreage. Whenever the irrigable area of the lands in ~~any~~ an irrigation district or subdistrict has been determined and confirmed, ~~no~~ the owner or holder of title or evidence of title to lands in the district or subdistrict, during the period when any bonds are issued and outstanding, may not have the taxable acreage of ~~his~~ the owner's or title holder's lands fixed or adjudicated in the

manner provided by 85-7-1841 through 85-7-1845 in a manner or to an extent as to reduce the acreage subject to the payment of the bonds or interest or in a manner as to affect the security of the bonds or interest on the bonds."

Section 2799. Section 85-7-2133, MCA, is amended to read:

"85-7-2133. Role of the county officers in collection of tax or assessment. (1) A certified copy of ~~such the resolution shall~~ authorizing the issuance of bonds under this chapter must be filed with the clerk of the board of county commissioners of each county in which the lands of the irrigation district lie, and the special tax or assessment ~~therein provided for shall~~ in the resolution must be levied and collected as prescribed and when ~~so~~ collected ~~shall~~ must, by the county treasurer having custody of the funds of the district, be placed in a special fund and used solely for the payment of all bonds issued under the provisions of this chapter and interest ~~thereon~~ ~~so~~ on the bonds as long as any of the bonds or interest coupons remain outstanding and unpaid. Whenever the payments are made for amounts due or to become due to the United States under a contract between the district and the United States, accompanying ~~which~~ bonds of the district that have not been deposited with the United States as provided in 85-7-1906, the special fund ~~shall~~ must be known as the United States contract fund.

(2) The county treasurer of the county where the office of an irrigation district is located is the custodian of all funds belonging to the district, and ~~he~~ the treasurer shall pay out ~~such the~~ funds upon the order of the board of commissioners, except payments on bonds and interest for which ~~no~~ an order is not necessary. If any portion of the funds belonging to a district has been collected for the purpose of establishing a reserve fund, the county treasurer shall pay ~~such that~~ portion to the district on order of the district's board of commissioners who may invest the ~~same funds~~ in legal investments backed, insured, or guaranteed by the United States or the state of Montana, including federal and state agency obligations. ~~Where moneys~~ If money of a district in the United States contract fund established pursuant to subsection (1) ~~are~~ is in excess of ~~those~~ the amount needed to pay a district's next ~~succeeding~~ annual contract obligation or obligations to the United States, ~~such the~~ excess or any part ~~thereof~~ of the excess may, upon order of the district's board of commissioners and with the consent of the United States officer administering the contract for which the contract fund has been established, be paid to the district for use in meeting other obligations of the district. ~~Such The~~ orders of the board of commissioners ~~shall~~ must be signed by the president and secretary of the board and ~~shall~~ must bear the official seal of the district."

Section 2800. Section 85-7-2153, MCA, is amended to read:

"85-7-2153. Assignment of debenture certificates. The certificates provided for by ~~the preceding~~

section hereof shall be 85-2-2152 are assignable and may be sold or negotiated by the board of commissioners of ~~said the~~ irrigation district and the proceeds ~~thereof of the sale~~ delivered to and deposited with the county treasurer of ~~said the~~ county for proper credit to the respective funds of ~~said the~~ irrigation district. Upon the sale, negotiation, or transfer ~~thereof, as provided for above~~ of a certificate, the lien of ~~said the~~ irrigation district shall ~~vest~~ vests in the purchaser ~~thereof of the certificate~~ and is only divested by the payment to the purchaser or the county treasurer of ~~said the~~ county, for ~~his the~~ purchaser's use, of the sum for which ~~said the~~ certificate is issued and 1% additional for each month that ~~elapses~~ passes from the date of ~~such the~~ certificate until redeemed as hereinafter provided for in 85-7-2154."

Section 2801. Section 85-7-2166, MCA, is amended to read:

"85-7-2166. Liability of county treasurers. (1) The county treasurer to whom district funds or securities are entrusted ~~shall be~~ is liable on ~~his the~~ the treasurer's bond for the safekeeping of ~~said the~~ funds and securities. ~~Such The~~ funds ~~shall must~~ be properly divided into the respective funds for which district taxes or assessments were levied; ~~that is to say,~~ including a United States contract fund; bond principal and interest fund; sinking fund to redeem bonds; maintenance fund; construction fund; and general fund. The construction fund ~~shall must~~ be available for the payment of the purchase price of all works, water rights, or other property purchased by or for the district and all expenses incident ~~thereto~~ to those purchases, as well as for the payment of the cost of construction of works, including cost of engineering, superintendence, and other expenses incident ~~thereto~~ to construction. All warrants issued for preliminary and organization expenses and all administrative expenses ~~shall~~ must be paid from the general fund.

(2) The county treasurer is authorized to receive, in lieu of cash, matured bonds, ~~and/or~~ matured coupons, or interest coupons maturing within the year in payment of any tax or assessment levied for the payment of bonds or interest on bonds. The county treasurer at any time, upon the order of the board of commissioners of the district, shall turn over to ~~said the~~ board any bonds or securities held by ~~him the~~ the treasurer and required to be delivered to ~~said the~~ board in accordance with the provisions of this chapter. All bonds and interest coupons ~~so~~ received or otherwise paid and all bonds of the district upon the payment ~~thereof shall~~ must be immediately canceled and retained by the county treasurer as vouchers."

Section 2802. Section 85-8-111, MCA, is amended to read:

"85-8-111. Notice of hearing. (1) On ~~such the~~ the filing of a petition under 85-8-101 ~~being filed~~, the court or judge ~~thereof~~ shall make an order fixing a time and place of hearing ~~thereon~~ on the petition and ordering notice.

Thereupon, the ~~The~~ clerk of ~~said~~ court for the county in which the proceedings are instituted shall cause 20 days' notice of the filing of ~~such the~~ petition to be given:

(a) by posting notice ~~thereof~~ in at least five of the most public places in the proposed district in which ~~said the~~ work is to be done;

(b) by serving or causing to be served a copy of ~~such the~~ notice on each owner of land within ~~said the~~ proposed district residing in any county in which any lands in ~~said the~~ proposed district are situated, either personally or by leaving a copy ~~thereof~~ of the notice at ~~his the~~ owner's last usual place of ~~abode~~ residence with a person of suitable age and discretion, to whom its contents ~~shall~~ must be explained; and

(c) by publishing a copy ~~thereof~~ at least once a week for 3 successive weeks in some newspaper published in each county from which any part of the district is proposed to be taken. If there ~~be is~~ no newspaper in any ~~such~~ county, ~~such the~~ notice may be published in a newspaper published in an adjoining county.

(2) ~~Such The~~ notice ~~shall~~ must:

(a) state in what court ~~said the~~ petition is filed;

(b) state briefly the starting points, routes, and termini of ~~said~~ drains, ditches, and levees;

(c) give a general description of the proposed work;

(d) give the proposed boundaries of ~~said the~~ district (or a general description of all the lands in ~~said the~~ proposed district);

(e) give the name proposed for ~~said the~~ drainage district; and

(f) state the time and place fixed by the court when and where the petitioners will ~~ask~~ request a hearing on ~~said the~~ petition."

Section 2803. Section 85-8-115, MCA, is amended to read:

"85-8-115. Insufficient service. (1) If it ~~shall be is~~ found, before the hearing on a petition for the organization of a drainage district, that one or more owners of land in ~~said the proposed~~ district have not been ~~duly~~ served with notice of hearing on ~~said the~~ petition, the court or presiding judge ~~shall~~ does not ~~thereby~~ lose jurisdiction. The court or presiding judge in ~~such that~~ case shall adjourn the hearing, make an order directing the serving of ~~said the~~ notice upon ~~said the~~ landowner or landowners, and fix the time and manner of service of ~~such the~~ notice, which ~~notice shall~~ must notify ~~him the~~ landowner or landowners to appear at ~~said the~~ adjourned time and place and be heard on ~~said the~~ petition.

(2) ~~Said The~~ notice ~~shall~~ must be served personally or by leaving ~~the~~ notice at the last usual place of ~~abode~~ residence of ~~said the~~ unserved owners as provided in 85-8-111, not less than 8 days before ~~said the~~

adjourned hearing, or must be published, not less than 14 days before ~~said the~~ adjourned hearing, in some newspaper published in the county in which ~~said the~~ owners' lands lie or, if ~~no a~~ newspaper ~~be is not~~ published in ~~said that~~ county, then in some newspaper published in an adjoining county."

Section 2804. Section 85-8-119, MCA, is amended to read:

"85-8-119. Receiving affidavits on question of petition sufficiency. The affidavits of any 10 or more of the signers of the petition, stating that they have examined it the petition and are acquainted with the locality of the district and that the petition is signed by a sufficient number of owners of lands in the district to satisfy 85-8-101, may be taken by the court or judge as prima facie evidence of the facts ~~therein~~ stated in the petition. The affidavit of any petitioner or other landowner before the court or represented before the court asserting ~~his~~ the petitioner's or landowner's ownership of lands in the district, properly described, is sufficient evidence to the court of ~~such those~~ facts."

Section 2805. Section 85-8-121, MCA, is amended to read:

"85-8-121. Court determination. (1) If the court or presiding judge ~~thereof~~, after hearing any and all competent evidence that may be offered for and against the petition for the creation of the district, ~~shall find~~ finds that the ~~same~~ petition has not been signed as ~~herein~~ required in this part, the petition ~~shall~~ must be dismissed at the cost of the petitioners and judgment ~~shall~~ must be entered against ~~said the~~ petitioners for the amount of ~~said the~~ costs.

(2) If it ~~shall appear~~ appears that the petition has been ~~so~~ signed as required in this part, the court or judge shall so find and order any necessary amendments ~~thereto;~~ to the petition, shall divide the district into three divisions, as nearly equal in area as possible~~;~~, and shall appoint three suitable and competent persons as commissioners and fix their temporary bonds. ~~In making such appointments one~~ One commissioner ~~shall~~ must be appointed from each division, and each person ~~so~~ appointed ~~a commissioner~~ must be an actual landowner and resident of the county or counties in the division for which ~~he~~ the person is appointed ~~such commissioner~~. If the district is situated in two or more counties, not more than two of ~~said the~~ commissioners ~~shall~~ may reside in one of ~~said the~~ counties. Ownership of land within the district ~~shall~~ may not disqualify a person from acting as a commissioner."

Section 2806. Section 85-8-307, MCA, is amended to read:

"85-8-307. Vacancies. If a vacancy occurs ~~in~~ on the board of commissioners, the remaining members

of the board shall elect some qualified elector to fill ~~such the~~ vacancy, and the person ~~so~~ elected shall hold ~~such~~ holds office for the unexpired term and until ~~his a~~ successor is elected and qualified. The person ~~so~~ appointed must be appointed as a commissioner for the division in which ~~such the~~ vacancy exists. ~~In the event~~ If there is a vacancy or vacancies ~~in on~~ the board of commissioners by reason of no appointment being made, due to the failure of the remaining members of the board to act or on account of no election being held, ~~then, in that event,~~ the judge of the court having jurisdiction over ~~said the~~ drainage district shall, upon the receipt of a petition signed by 10% of the resident owners of land in ~~said the~~ district, appoint to ~~such the~~ vacancy or vacancies ~~such the~~ person ~~as that the~~ aforsaid petition may designate."

Section 2807. Section 85-8-308, MCA, is amended to read:

"85-8-308. Oath and bond of commissioners -- quorum. (1) Before entering upon their duties, ~~such~~ the commissioners shall:

(a) take and subscribe an oath to support The Constitution of the United States and The Constitution of the State of Montana, to faithfully and impartially discharge their duties as ~~such~~ commissioners, and to render a true account of their doings to the court by which they are appointed; whenever required by law or the order of the court; and

(b) execute a bond running to the clerk of ~~said~~ court and ~~his~~ the clerk's successors in office as obligees, to be filed with ~~said the~~ clerk for the benefit of the parties interested, in an amount to be fixed by the court or presiding judge and with sureties to be approved by the court or presiding judge, conditioned for the faithful discharge of their duties as ~~such~~ commissioners and the faithful accounting for and application of all ~~moneys~~ money that comes into their hands as ~~such~~ commissioners.

(2) A majority shall constitute a quorum, and a concurrence of a majority in any matter within their duties ~~shall be~~ is sufficient to its determination."

Section 2808. Section 85-8-312, MCA, is amended to read:

"85-8-312. Custody of funds. The county treasurer of the county ~~wherein~~ in which the court having jurisdiction of ~~such the~~ district is located ~~shall be~~ is the custodian of all funds belonging to the district, and ~~he~~ the treasurer shall pay out ~~such the~~ funds upon warrants drawn by the board of commissioners of ~~such the~~ district, except that the bonds of ~~said the~~ district and the interest coupons ~~thereon shall be~~ on the bonds are payable as they mature; on presentation to ~~such the~~ treasurer."

Section 2809. Section 85-8-314, MCA, is amended to read:

"85-8-314. Court control and compensation of commissioners. (1) The commissioners ~~shall~~ must receive for their services ~~such~~ compensation ~~as~~ that the court or presiding judge ~~thereof~~ may determine. They ~~shall~~ must also receive their actual reasonable expenses. They ~~shall~~ are at all times ~~be~~ under the control or direction of the court or presiding judge and shall obey ~~its~~ the court's or ~~his~~ judge's directions; and for failure to do so, they shall forfeit their compensation and be dealt with summarily as for contempt. Suit may also be brought upon their bonds, in the name of the clerk of the court, and the amount recovered ~~shall~~ must be applied to the construction of the work or to the party injured; as justice may require.

(2) The court may at any time require the commissioners to make a report on any matter or matters connected with their duties as commissioners and after ~~due~~ hearing may remove from office any or all of ~~said~~ the commissioners for neglect of duty, for malfeasance in office, or for other good cause. The court may at any time require the commissioners to give new bonds to the clerk of ~~the~~ court and may fix the amount ~~thereof~~ of the bonds. ~~Said~~ The bonds ~~shall~~ must be submitted to the court or the presiding judge ~~thereof~~ for approval."

Section 2810. Section 85-8-321, MCA, is amended to read:

"85-8-321. Organization, appointments, and preliminary report. (1) Within 10 days after ~~said~~ the commissioners ~~shall~~ be are appointed and qualified, they shall meet and organize by electing one ~~of their number~~ member as president and by electing a secretary, who may or may not be ~~one of their number~~ a member of the board.

(2) ~~They~~ The commissioners shall appoint one or more attorneys to assist in the establishment of the district; ~~advise~~ advise with its officers, agents, and employees; ~~and~~ and prepare reports and other necessary documents. The court shall allow ~~such~~ the attorney or attorneys just compensation to be taxed in the case.

(3) ~~They~~ The commissioners shall ~~also~~ appoint a competent civil and drainage engineer, who may be an individual, a partnership, or a corporation, who may employ assistants and make surveys; ~~and~~ and who, with the approval of the court, may employ a consulting engineer or secure expert advice. The expense of the engineer, ~~his~~ the engineer's assistants, and the consulting engineer ~~shall~~ must be taxed as expenses under the petition. ~~As soon thereafter as may be, they~~ The commissioners shall personally examine the lands in ~~said~~ the district and make a preliminary report to the court; ~~which report shall state~~ that states:

(a) whether ~~said~~ the proposed work is necessary or would be of utility use in carrying out the purposes of the petition;

(b) whether the proposed work would promote the public health;

(c) whether the proposed work would promote the public welfare;

(d) whether the total benefits from ~~said the~~ proposed work will exceed the cost ~~thereof of the work~~, together with the damages resulting ~~therefrom from the work~~, and in arriving at this, they shall include all benefits and all damages resulting ~~therefrom from the work~~ both within and ~~without said~~ outside of the district.

(4) ~~Said The~~ commissioners shall in ~~said the~~ report fix, as near as may be, and report to the court the boundaries of ~~said the~~ proposed drainage district. ~~Said The~~ boundaries ~~shall may~~ not be changed from those in the petition described so as to deprive the court of jurisdiction by reason of not having on the petition the required number of signers owning land within ~~said the~~ changed boundaries."

Section 2811. Section 85-8-345, MCA, is amended to read:

"85-8-345. Notice of hearing of report. (1) Upon the filing of ~~such the~~ report under 85-8-341, the court shall make an order fixing the time and place when and where all interested persons may appear and ~~remonstrat~~ protest against the confirmation ~~thereof of the petition~~. The clerk of ~~such~~ court shall ~~cause notice to be given~~ give notice to all interested parties ~~interested~~ by publication ~~thereof of the order~~ for at least 3 successive weeks before the date of ~~such the~~ hearing in at least one newspaper in each county ~~wherein in which~~ lands located in ~~such the~~ district are ~~situate; situated. which The~~ notice ~~shall must~~ contain a statement of the time and place of the hearing of ~~said the~~ report and a brief statement of the substance ~~thereof of the report~~.

(2) Upon a date not later than the date of the first publication of the notice referred to in ~~the last~~ subsection (1), the clerk of ~~such~~ court shall also cause to be mailed to each of the persons or corporations recommended by ~~said the~~ report to be assessed or whose lands are recommended by ~~said the~~ report to be included in ~~said the~~ district, at his ~~the person's~~ or its ~~corporation's last-known~~ last-known post-office address, a notice containing a brief description of the land or easement belonging to ~~such the~~ person or corporation benefited or damaged; the net damage awarded to ~~such the~~ tract, parcel, easement, or corporation; and the sum assessed against ~~such the~~ benefited parcel, tract, easement, or corporation."

Section 2812. Section 85-8-362, MCA, is amended to read:

"85-8-362. Interest of commissioners in contracts forbidden. The commissioners ~~shall may~~ not, during their term of office, be interested, directly or indirectly, in any contract for the construction of any drain, ditch, levee, or other work in ~~such the~~ drainage district; in the sale of materials ~~therefor; for the drainage district~~, or in the wages of or supplies for ~~men personnel~~ or teams employed on any ~~such~~ construction work in ~~said the~~ district."

Section 2813. Section 85-8-364, MCA, is amended to read:

"85-8-364. Payment or tender of damages. (1) The damages allowed to the owners of lands ~~shall~~ must be paid or tendered before the commissioners ~~shall be~~ are authorized to enter upon the lands (for damage to which the award is made) for the construction of any proposed drains, ditches, or levees ~~proposed thereon~~. If the owner is unknown, ~~or if there shall be~~ is a contest in regard to the ownership of the land, ~~or if the owner will not receive payment,~~ or if there exists a mortgage or other lien against the same land, ~~or if the commissioners cannot for any other reason pay him the owner,~~ they may deposit the ~~same~~ damages with the clerk of ~~the~~ court; for the benefit of the owner or parties interested, to be paid or distributed as the court shall direct; ~~and such payment shall have~~ The deposit has the same effect as the tender to and acceptance of the damages awarded by the ~~true~~ owner of the land.

(2) This section ~~shall does~~ not, however, prevent ~~said the~~ commissioners; or their agents, servants, and employees from going upon ~~said the~~ lands to do any and all work found necessary prior to making their assessment of benefits and award of damages and the trial on their report ~~thereof of the benefits and damages.~~"

Section 2814. Section 85-8-402, MCA, is amended to read:

"85-8-402. Hearing -- notice and service. Upon the filing of ~~such a~~ such a petition under 85-8-401, a judge of ~~said the~~ district court shall set the ~~same~~ petition for hearing and direct the clerk of ~~such~~ court to give notice ~~thereof of the hearing.~~ Such The notice ~~shall must~~ contain a concise statement of the proposed alteration ~~and/or~~ or addition and the estimated cost ~~thereof, of the alteration or addition.~~ which The notice must be served and published at least 20 days before the date fixed for ~~such the~~ hearing. Service of ~~such the~~ notice ~~shall must~~ be made by certified ~~or registered~~ mail, addressed to each landowner and corporation that may be liable for the payment of any portion of the cost of making ~~such the~~ alteration ~~and/or~~ or addition, at ~~his the~~ the landowner's or its corporation's post-office address, if the same can be ascertained by the exercise of due diligence. Such The notice ~~shall must~~ be published once a week for 20 days prior to ~~such the~~ date of the hearing in ~~some a~~ newspaper, to be designated in the order fixing the date for ~~such the~~ hearing, published in the county where ~~said the~~ court is held; ~~provided, however~~ However, ~~that~~ if all interested landowners and corporations are ~~so~~ served, ~~such the~~ notice need not be published."

Section 2815. Section 85-8-403, MCA, is amended to read:

"85-8-403. Court order -- dismissal of petition. (1) Any A ~~such~~ landowner or corporation may, at any time prior to 5 days before the date fixed for ~~such the~~ hearing under 85-8-402, file ~~his or its~~ objections to ~~such~~

~~the~~ petition. A copy of ~~such the~~ objections ~~shall~~ must be delivered to the attorney for ~~said the~~ commissioners, if they have an attorney of record, or to the ~~chairman~~ presiding officer of the board of commissioners of ~~said the~~ district, if there ~~be is~~ no ~~such~~ attorney of record, prior to filing the original ~~thereof~~ objections with the clerk of ~~said~~ court.

(2) If objections are made and filed by the owners of at least 75% in area of the lands in ~~said the~~ district, ~~said the~~ petition ~~shall~~ must be dismissed and ~~no~~ further proceedings ~~had thereon~~ may not be taken. If the owners of less than 75% in area of the lands in ~~said the~~ district object to ~~such the~~ petition, then, on the date fixed for ~~such~~ hearing or upon any day to which ~~such the~~ hearing may be adjourned, the court having jurisdiction will hear testimony in support of ~~said and in opposition to the~~ petition ~~and in opposition thereto~~.

(3) After ~~such the~~ hearing, the court shall determine whether the proposed alteration ~~and/or or~~ addition is necessary; and whether it will be beneficial to ~~said the~~ district and improve the drainage system ~~thereof of the~~ district; and shall either approve or deny ~~such the~~ petition or modify and change the proposed alteration ~~and/or or~~ addition. If the court ~~shall approve such~~ approves the petition or ~~modify~~ modifies and ~~change~~ changes the alteration ~~and/or or~~ addition proposed, the court shall by order direct ~~said the~~ commissioners to proceed with ~~said the~~ work with all convenient speed.

(4) ~~So~~ As far as possible, ~~such the~~ hearing ~~shall~~ must be conducted as other hearings and trials in the district courts of the state of Montana, and the laws of the state of Montana with reference to hearings and trials, ~~so~~ as far as applicable, ~~shall~~ govern in the conduct of ~~such the~~ hearings."

Section 2816. Section 85-8-404, MCA, is amended to read:

"85-8-404. Appeals and assessments. Any A party interested in ~~such the~~ hearing under 85-8-402; ~~deeming himself who is~~ aggrieved by the order of the court ~~thereon~~, may appeal from ~~such the~~ order to the supreme court of Montana within 30 days after the entry of ~~such the~~ order. If ~~no such an~~ appeal is not taken within the time limit, the order of the court made upon ~~such the~~ hearing ~~will be is~~ final and conclusive. If ~~any such~~ alterations ~~and/or or~~ additions are authorized by ~~such the~~ order, the ~~same shall~~ alterations or additions must be made by the commissioners of ~~said the~~ district and the cost ~~thereof~~ apportioned in accordance with the last assessment roll of ~~any such the~~ drain district or in accordance with the last assessments of ~~any such the~~ drainage district confirmed by the court."

Section 2817. Section 85-8-612, MCA, is amended to read:

"85-8-612. Lien of assessments -- payment of assessments against state lands. (1) From the time

of the entry of ~~said an~~ order under 85-8-611, assessments for construction of new work and additional assessments and interest ~~thereon shall be~~ on the assessments are a lien upon the lands assessed; until paid. Any An owner of land or any a corporation assessed for construction may, at any time within 30 days after the confirmation of ~~said the~~ report, pay into court the amount of the assessment against ~~his~~ the person's land or any tract ~~thereof of land~~ or against any the such corporation. ~~Said payment shall relieve said~~ Payment relieves the lands from the lien of ~~said the~~ assessment and ~~said the~~ corporation from all liability on ~~said the~~ assessment.

(2) Upon presentation to the state treasurer of an order of the district court having jurisdiction of the drainage district, properly certified, the department of administration shall draw a warrant on the treasury on the ~~common school~~ appropriate fund in favor of the commissioners of the drainage district for the total amount that may be assessed against any state lands included in the district, ~~the title to which is in the state of Montana~~. Upon payment of the warrant, the lands are relieved from the lien created for the costs of construction."

Section 2818. Section 85-9-103, MCA, is amended to read:

"85-9-103. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Applicant" means any a person residing within the boundaries of the proposed district and making a request for a study of the feasibility of forming a conservancy district.

(2) "Board of supervisors" means the board of supervisors of the soil and water conservation district in which the largest portion of the taxable valuation of real property of the proposed district is located.

(3) "Cost of works" means the cost of construction, acquisition, improvement, extension, and development of works, including financing charges, interest, and professional services.

(4) "Court" means the district court of the judicial district in which the largest portion of the taxable valuation of real property of the proposed district is located and within the county in which the largest portion of the taxable valuation of real property of the proposed district is located within the judicial district.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Directors" means the board of directors of a conservancy district.

(7) "District" means a conservancy district.

(8) "Elector" means a person qualified to vote under 85-9-421.

(9) "Notice" means publication at least once each week for 3 consecutive weeks in a newspaper published in each county or, if ~~no a~~ newspaper is not published in a county, in a newspaper of general circulation

in the county or counties in which a district is or will be located. The last published notice ~~shall~~ must appear not less than 5 days prior to any hearing or election held under this chapter.

(10) "Owners" ~~are~~ means the person or persons who appear as owners of record of the legal title to real property according to the county records, whether ~~such~~ the title is held beneficially or in a fiduciary capacity, except that a person holding a title for purposes of security is not an owner; ~~nor~~ and the owner for security may ~~he~~ not affect the previous title for purposes of this chapter.

(11) "Person" means a natural person, firm, partnership, cooperative, association, public or private corporation, including the state of Montana or the United States, foundation, state agency or institution, county, municipality, district or other political subdivision of the state, federal agency or bureau, or any other legal entity.

(12) "Taxable valuation" is the value as defined in 15-8-111 and does not mean assessed valuation.

(13) "Works" means all property, rights, easements, franchises, and other facilities, including but not limited to land, reservoirs, dams, canals, dikes, ditches, pumping units, mains, pipelines, waterworks systems, recreational facilities, facilities for fish and wildlife, and facilities to control and correct pollution."

Section 2819. Section 85-9-304, MCA, is amended to read:

"85-9-304. Appointment of receiver -- assessments. (1) If ~~no~~ a plan is not presented on or before the date set by the court, the court shall appoint a receiver to terminate the affairs of the district under the supervision of the court.

(2) Upon the appointment of ~~any~~ a receiver, all ~~the~~ authority of the directors ~~shall cease~~ ceases. However, until dissolution, the receiver ~~shall have~~ has authority to levy assessments for:

(a) the payment of obligations of the district; and

(b) the costs of termination.

(3) The directors or, if there is a receiver, ~~then~~ the receiver, with the approval of the court, shall make assessments each year in an amount large enough to retire the obligations of the district.

(4) If a receiver has been appointed, ~~he~~ the receiver shall direct, under court supervision, the disposition of all assessments collected."

Section 2820. Section 85-9-401, MCA, is amended to read:

"85-9-401. District directors -- appointment, term of office, vacancies, first meeting, and bond. If a district is organized, the court shall:

(1) establish by court order the number of persons who shall comprise the directors; and appoint persons

who are electors within the district to membership on the board of directors; and fix their compensation. The number ~~shall~~ may not be less than 3 or more than 11 persons. In fixing the number and making the appointments, the court shall consider the interests and purposes to be served by the district. Upon a verified petition filed by a majority of the directors and for good cause shown, the court may enlarge or reduce the membership of the directors but not to be less than 3 or ~~to exceed~~ more than 11.

(2) fix the terms of office so that approximately one-third of the directors first appointed ~~shall~~ serve for 1 year, approximately one-third ~~shall~~ serve 2 years, and the remainder ~~shall~~ serve 3 years. All succeeding terms ~~shall~~ must be 3 years. Unless excused for good cause, a director who misses three consecutive regular meetings has vacated ~~his~~ the position.

(3) fill all vacancies on the board by appointment or reappointment;

(4) specify a date for the first annual meeting of the directors;

(5) specify the amount and form of a corporate surety bond ~~which that~~ each member of the directors shall furnish at the expense of the district, conditioned upon ~~his~~ the faithful performance of ~~his~~ duties as a director."

Section 2821. Section 85-9-402, MCA, is amended to read:

"85-9-402. Officers and meetings. (1) The directors shall select from among themselves a ~~chairman~~ presiding officer, ~~vice-chairman~~ vice presiding officer, secretary, and other necessary officers. The directors shall adopt bylaws and rules for the conduct of meetings. All official acts of the directors ~~shall~~ must be entered in a book of minutes to be kept by the secretary.

(2) The directors shall establish times for regular meetings and may hold special meetings upon the call of the ~~chairman~~ presiding officer or any two members and, ~~(except in case of emergency)~~, upon at least 3 days' notice of the time, place, and purpose of the meeting."

Section 2822. Section 85-9-421, MCA, is amended to read:

"85-9-421. Persons entitled to vote. (1) Only persons who are taxpayers upon and owners of real property located within the district and whose names appear upon the last-completed assessment roll of some county within the district for state, county, and school district taxes are electors and ~~shall be~~ are entitled to vote in elections, provided that:

(a) an elector need not reside within the district in order to vote;

(b) ~~where~~ when a corporation owns taxable real property within the boundaries of the conservancy district, the authorized agent of ~~such~~ the corporation ~~shall be~~ is entitled to cast a vote on behalf of the corporation;

(c) ~~where~~ when land is under contract of sale to a purchaser and the contract is recorded, only the purchaser ~~shall have~~ has the right to vote;

(d) guardians, executors, administrators, and trustees of real property within the district ~~shall be~~ are entitled to cast the vote for the owner of the land.

(2) When voting, an agent of a corporation or of co-owners or a guardian, executor, administrator, trustee, or purchaser under contract of sale may be required to show ~~his~~ the person's authority by the judges of the election."

Section 2823. Section 85-9-502, MCA, is amended to read:

"85-9-502. Annexation of property. (1) To annex real property to the district, the procedure is ~~the following as follows:~~

~~(+)~~(a) The directors shall petition the court.

~~(2)~~(b) The petition ~~shall~~ must:

~~(a)~~(i) give a general description of the real property to be annexed sufficient to enable a person to determine if ~~his~~ the person's property is in the proposed annexation; and

~~(b)~~(ii) describe the benefits to accrue to the real property as a result of the annexation.

~~(3)~~(2) The court shall:

(a) give notice and hold a hearing on the petition; and

(b) upon good cause shown, order or deny the annexation."

Section 2824. Section 85-9-504, MCA, is amended to read:

"85-9-504. Procedure to exclude lands. Any territory included within ~~any~~ a district formed under the provisions of this chapter and not benefited in any manner by ~~such the~~ the district or its inclusion ~~therein in the district~~ may be excluded ~~therefrom~~ from the district. The procedure for exclusion consists of the following:

(1) A petition for exclusion ~~shall~~ must be initiated by either the directors or the owner or owners of the land sought to be excluded.

(2) The petition ~~shall~~ must:

(a) give a description of the territory sought to be excluded sufficient to enable a person to determine if ~~his~~ the person's property is in the proposed exclusion;

(b) ~~shall~~ set forth that ~~such the~~ the territory is not benefited in any manner by the district or its continued inclusion ~~therein in the district~~; and

(c) ~~shall~~ request that ~~such~~ the territory be excluded from the district.

(3) When owners of property initiate the petition for exclusion, the petition ~~shall~~ must be filed with the secretary of the district and ~~shall~~ must be accompanied by a deposit of \$100 to meet the costs incident to the process of exclusion. The unexpended balance of the deposit ~~shall~~ must be returned to the petitioner.

(4) Upon the filing of ~~such~~ the petition with the secretary of the district, the secretary shall ~~duty~~ call a meeting of the directors to consider the petition. The directors shall approve or disapprove of the merits of the petition. The secretary shall then file the petition, together with a copy of the action of the directors, with the court.

(5) The court shall give notice, hold a hearing, and issue an order either granting or denying the petition."

Section 2825. Section 85-9-628, MCA, is amended to read:

"85-9-628. Bond registration -- copy to county. (1) When duly executed, all bonds issued under this chapter ~~shall~~ must be registered by the county treasurer of the county in which the largest portion of the taxable valuation of real property of the district is located. ~~They shall~~ The bonds must be registered in a book provided for that purpose before being delivered to the purchaser.

(2) The registration ~~shall~~ must show:

- (a) the number and amount of each bond;
- (b) the date of issue and date redeemable;
- (c) the name of the purchaser;
- (d) the amount and due date of all payments required on the bonds.

(3) The directors shall provide the county treasurer with an unsigned and canceled printed copy of each issue of bonds of the district. The copy ~~shall~~ must be preserved in ~~his~~ the treasurer's office."

Section 2826. Section 85-20-104, MCA, is amended to read:

"85-20-104. Filing written statement with department. (1) ~~Any~~ A person claiming an appropriate right to the use of any water of any interstate tributary; ~~which right~~ that was acquired after January 1, 1950, shall, within 60 days after February 25, 1953, or before ~~he~~ the person diverts any water, file with the department at its office in Helena, Montana, a written statement containing the following information:

- (a) the name of the claimant and ~~his~~ the claimant's address;
- (b) the date of appropriation or the date when the water was first applied to a beneficial use;
- (c) the quantity of water claimed;
- (d) the name of the stream, river, or other source of water from which the diversion is made, if it has a

name, and if it does not, a description identifying the ~~same~~ stream, river, or source;

(e) the purpose for which the water is claimed and the place of intended use;

(f) the means of diversion;

(g) whether or not a weir or other device for measuring the water intended to be diverted has been installed in ~~his~~ the claimant's ditch or other means of diversion;

(h) if a notice of appropriation was filed with the county clerk and recorder, the name of the county where it was filed;

(i) whether the appropriation was made from an adjudicated or nonadjudicated stream, river, or other source of water.

(2) The written statement ~~shall~~ must be verified by the affidavit of the claimant or someone in ~~his~~ the claimant's behalf. The affidavit must state that the matters and facts contained in the written statement are true."

Section 2827. Section 85-20-105, MCA, is amended to read:

"85-20-105. Duty to install measuring devices. ~~Any~~ A person claiming an appropriative right to use any waters of any interstate tributary of the Yellowstone River, ~~which right that~~ was acquired subsequently to after January 1, 1950, shall, after February 25, 1953, and before ~~he~~ the person diverts any ~~such~~ water, install in ~~his~~ the person's ditch or other means of diversion a weir or other measuring device so that all of the water to be diverted by ~~him~~ the person can be accurately measured. The installation of a weir or other measuring device is subject to the approval of the department, and if in its judgment ~~such~~ the weir or other measuring device or the installation of the ~~same~~ weir or device is defective so that the water cannot be accurately measured, it may order the installation of an accurate measuring device. The claimant ~~shall~~ may not divert any water until ~~he~~ the claimant complies with ~~such~~ the order."

Section 2828. Section 85-20-106, MCA, is amended to read:

"85-20-106. Duty to measure water. Each claimant shall measure all the water being diverted by ~~him~~ the claimant, and keep accurate records ~~thereof~~ of the diversion on forms prescribed and furnished by the department, and, within 15 days after November 1 of each year, file the written records with the department at its office in Helena, Montana."

Section 2829. Section 87-1-204, MCA, is amended to read:

"87-1-204. Political activity of employees. While retaining the right to vote as ~~he may please~~ the

employee pleases and to express ~~his~~ opinions on all political questions, ~~no~~ an employee of the department may not use ~~his~~ the employee's official authority or influence for the purpose of interfering with an election or affecting the results ~~thereof~~ of an election or for the purpose of coercing or influencing the political actions of any person or body."

Section 2830. Section 87-1-205, MCA, is amended to read:

"87-1-205. Grievance procedure. An employee of the department; who is aggrieved by a serious matter of ~~his~~ employment based upon work conditions, supervision, or the result of an administrative action; and who has exhausted all administrative remedies within the department; is entitled to a hearing before the board of personnel appeals provided for in 2-15-1705 and subject to the provisions of 2-18-1011 through 2-18-1013. Any order of the board is binding upon the department."

Section 2831. Section 87-1-206, MCA, is amended to read:

"87-1-206. Bounty claims for wild animals. (1) The department ~~of fish, wildlife, and parks~~ shall pay bounty claims for wild animals ~~which~~ that have been filed with and approved by the board of livestock. The department shall pay out of the state fish and game funds, other than those funds derived from license fees paid by hunters and ~~fishermen~~ anglers, bounties on predatory wild animals as the bounty claims are presented, not exceeding \$7,500 ~~per~~ for each calendar year.

(2) The board of livestock shall, after approving the bounty claim, deliver the claim to the department ~~of fish, wildlife, and parks~~ for rejection or approval. If the claim or certificate is rejected, it ~~shall~~ must be returned by the department to the board of livestock. If approved, it ~~shall~~ must be delivered to the department of administration for allowance or disallowance. ~~Nothing in this~~ This section takes ~~does not take~~ from the department ~~of fish, wildlife, and parks~~ the exclusive power to administer the fish and game ~~moneys~~ money at its discretion.

(3) If the department of administration allows the claim, the department shall draw a warrant on the state fish and game money in the state special revenue fund for the amount approved in favor of the claimant; in the order in which the claim is approved."

Section 2832. Section 87-1-207, MCA, is amended to read:

"87-1-207. Establishment of checking stations. The department is authorized to establish checking stations ~~where~~ when ~~deemed~~ considered necessary to inspect licenses of hunters and ~~fishermen~~ anglers and to inspect any game animals, fish, or fur-bearing animals in the possession of hunters and ~~fishermen~~ anglers."

Section 2833. Section 87-1-208, MCA, is amended to read:

"87-1-208. Inspection at checking station. ~~Every~~ A person, upon the request of the director, ~~or his~~ the ~~director's~~ authorized representative, ~~or~~ of any game warden, shall produce for inspection any current fish and game license ~~which that~~ that has been issued to ~~such~~ the person and shall produce for inspection any game animals, birds, fish, or fur-bearing animals in ~~his~~ the person's possession. Hunters or ~~fishermen~~ anglers entering or leaving areas for which checking stations have been established ~~must~~ shall stop and report if a checking station is on the hunter's or ~~fishermen's~~ angler's route of travel to or from the hunting or fishing area. Failure to stop and report at a checking station when personnel are on duty ~~shall constitute~~ constitutes a misdemeanor."

Section 2834. Section 87-1-210, MCA, is amended to read:

"87-1-210. Research, training, and other projects. (1) The department may enter into cooperative agreements with educational institutions and state, federal, or other agencies to promote wildlife research and to train ~~men~~ personnel for wildlife management. It may enter into cooperative agreements with federal agencies, municipalities, corporations, organized groups of landowners, associations, and individuals for the development of game, bird, fish, or fur-bearing animal management and demonstration projects.

(2) It may establish and maintain an educational and biological program for the collection and diffusion of statistics and information germane to the purpose of this title."

Section 2835. Section 87-1-225, MCA, is amended to read:

"87-1-225. Regulation of wild animals damaging property -- public hunting requirements. (1) Subject to the provisions of subsection (2), a landowner is eligible for game damage assistance under subsection (3) if ~~he~~ the landowner:

- (a) allows public hunting during established hunting seasons; or
- (b) does not significantly reduce public hunting through imposed restrictions.

(2) The department may provide game damage assistance when public hunting on a landowner's property has been denied because of unique or special circumstances that have rendered public hunting inappropriate.

(3) Within 48 hours after receiving a request or complaint from any landholder or person in possession and having charge of any land in the state that wild animals of the state, protected by the fish and game laws and regulations, are doing damage to the property or crops ~~thereon~~ on the property, the department shall investigate and arrange to study the situation with respect to damage and depredation. The department may then decide to

open a special season on the game or, if the special season method ~~be~~ is not feasible, the department may destroy the animals causing the damage. The department may authorize and grant the holders of ~~said~~ the property permission to kill or destroy a specified number of the animals causing the damage. ~~No~~ A wild, ferocious animal damaging property or endangering life ~~shall be~~ is not covered by this section."

Section 2836. Section 87-1-302, MCA, is amended to read:

"87-1-302. Commission meetings. The members of the commission shall hold quarterly or other meetings for the transaction of business; at times and places it considers necessary and proper. The meetings ~~shall~~ must be called by the ~~chairman~~ presiding officer or by a majority of the commission and ~~shall~~ must be held at the time and place specified in the call for the meeting. A majority of the members of the commission ~~shall~~ constitute a quorum for the transaction of any business ~~which~~ that may come before it. The commission shall keep a record of all the business transacted by it. The ~~chairman~~ presiding officer and secretary shall sign all orders, minutes, or documents for the commission."

Section 2837. Section 87-1-402, MCA, is amended to read:

"87-1-402. Oath of director. Before entering upon ~~his~~ official duties, the director shall take and subscribe the constitutional oath of office and shall in addition ~~thereto~~ swear or affirm that ~~he holds no other~~ the director does not hold another position or office or any position under any political committee or party. ~~Such~~ The oath or affirmation ~~shall~~ must be filed in the office of the secretary of state."

Section 2838. Section 87-1-501, MCA, is amended to read:

"87-1-501. Selection and oath of wardens. (1) Wardens ~~shall~~ must be selected from applicants who have passed ~~such~~ an examination ~~as~~ that may be required according to the rules adopted and promulgated by the department. ~~No~~ A person ~~shall~~ may not be appointed as a warden until a certificate ~~shall~~ has been issued to ~~him~~ the person by the department to the effect that ~~he~~ the person has passed the required examination and is a fit and proper person to perform the duties of the office.

(2) Before entering upon their official duties, state fish and game wardens shall take and subscribe the constitutional oath of office and shall in addition ~~thereto~~ swear or affirm that they hold no other position or office or any position under any political committee or party. ~~Such~~ The oath or affirmation ~~shall~~ must be filed in the office of the secretary of state."

Section 2839. Section 87-1-511, MCA, is amended to read:

"87-1-511. Sale of confiscated birds and animals -- disposition of seized grizzly bears. (1) Except as provided in 87-1-226(1), all birds, animals, fish, heads, hides, teeth, or other parts of any animal other than grizzly bear seized by any officer or warden or otherwise acquired by a department employee in the scope of his employment may be sold, under the direction of the director or wardens, at a time, place, and manner so as to receive the highest price. The sale ~~shall~~ must be at public auction to the highest and best bidder. The director or ~~his~~ the wardens shall publish notice of the time and place of the sale, together with a description of the birds, fish, animals, or parts or portions of animals to be sold, in a newspaper of general circulation published in the county where the sale is to be held. The notice ~~shall~~ must be published at least once, and the sale ~~shall~~ may not be less than 5 or more than 30 days after the last publication. If the property seized is perishable, it may be sold by those officers without publishing notice of the sale. The property may be sold upon that public notice and under those terms and conditions ~~which~~ that in the discretion of the officers seem conducive to securing full value.

(2) All grizzly bears or heads, hides, teeth, claws, or other parts of grizzly bears seized by any officer or warden may be donated to museums, educational institutions, government agencies, or persons conducting scientific studies, as approved by the commission. If approved under federal law, parts may be sold at public auction if, after approval by the commission, a reasonable attempt has been made to dispose of the parts."

Section 2840. Section 87-1-701, MCA, is amended to read:

"87-1-701. Assent to Dingell-Johnson bill. ~~The congress of the United States having passed an act which was approved on August 9, 1950, and which is known as Public Law 681, 81st congress, chapter 658, 2nd session, wherein it is, among other things, provided that "no money apportioned under this act to any state, except as hereinafter provided, shall be expended therein until its legislature, or other state agency authorized by the state constitution to make laws governing the conservation of fish, shall have assented to the provisions of this act and shall have passed laws for the conservation of fish, which shall include prohibition against the diversion of license fees paid by fishermen for any other purpose than the administration of said fish, wildlife, and parks department, except that, until the final adjournment of the first regular session of the legislature held after passage of this act, the assent of the governor of the state shall be sufficient", and since the moneys referred to in the act of congress are collected in part from the fishermen of this state and will not be returned to the state of Montana except the state of Montana does assent to this act; now, therefore, the~~ The state of Montana does assent ~~assents~~ to the provisions of ~~said act of congress~~ Public Law 681, 81st congress, chapter 658, 2nd session, which is commonly known as the Dingell-Johnson bill, but ~~such~~ the assent is with the express reservations

enumerated in 87-1-701 through 87-1-703. The state of Montana does not, by the passage of 87-1-701 through 87-1-703 or by the consent ~~herein~~ given in this section, surrender to the congress of the United States or any department of the government of the United States any of those rights ~~which that~~ are retained by the people of the state of Montana or the state of Montana and ~~which that~~ are guaranteed to them by the 9th and 10th amendments to the constitution of the United States, ~~nor shall~~ and 87-1-701 through 87-1-703 may not in any manner or at all be construed or held to be the state of Montana's consent to amending the constitution of the United States in any manner or at all relative to its rights. The title to all lands acquired under the provisions of 87-1-701 through 87-1-703 for fish restoration and management projects and projects constructed ~~thereon shall be on those lands are~~ and remain in the state"

Section 2841. Section 87-1-704, MCA, is amended to read:

"87-1-704. Federal fish-hatching operations. The government of the United States, the United States commissioner of fisheries, and ~~its the government's or his duty commissioner's~~ authorized ~~agent or agents~~ may conduct fish-hatching and all operations connected ~~therewith~~ (with fish-hatching in any manner and at any time that may be considered necessary and proper by them), ~~at any United States fish cultural station that may be established by the United States government in the state of Montana.~~"

Section 2842. Section 87-2-112, MCA, is amended to read:

"87-2-112. Forfeiture of license or permit for littering. Any A holder of a Montana resident or nonresident fishing or hunting license or camping permit convicted of littering campgrounds, public or private lands, streams, or lakes while hunting, fishing, or camping shall forfeit ~~his~~ the license and privilege to hunt, fish, camp, or trap within Montana for a period of 1 year from the date of conviction."

Section 2843. Section 87-2-203, MCA, is amended to read:

"87-2-203. Unlawful sales of licenses. It ~~shall be~~ is unlawful for ~~any a~~ license agent to sell any hunting, fishing, or trapping license to ~~any a~~ person who does not present ~~his~~ the person's wildlife conservation license at the time of application for ~~such~~ the licenses."

Section 2844. Section 87-2-204, MCA, is amended to read:

"87-2-204. Disposition of wildlife conservation license fees. The fees from the wildlife conservation license ~~shall~~ must be delivered to the state treasurer and deposited by ~~him~~ the treasurer in the state special

revenue fund to the credit of the department in accordance with the provisions of 87-1-601."

Section 2845. Section 87-2-602, MCA, is amended to read:

"87-2-602. Class C-1--landowner's trapping license. Except as otherwise provided in this chapter, any individual who owns land in this state or any tenant or member of the immediate family of ~~said the~~ owner or tenant, upon making application to the department and payment of the fee of \$1, may receive a Class C-1 license ~~which shall entitle~~ that entitles the holder ~~thereof~~ to trap any fur-bearing animal and to hunt bobcat, wolverine, and lynx on land owned or leased by ~~him the individual~~ or ~~his the individual's~~ immediate family at ~~such~~ times and in ~~such a~~ manner ~~as may be~~ that is lawful ~~so to do~~ under the laws of the state and the regulations of the department and at ~~such~~ places ~~as~~ that may be designated in ~~said the~~ license."

Section 2846. Section 87-2-604, MCA, is amended to read:

"87-2-604. Permission of landowner required. Every A holder of a Class C-2 trapper's license shall obtain written permission from the landowner, the lessee, or ~~his~~ the landowner's or lessee's agent before trapping or snaring predatory animals or nongame wildlife on private property."

Section 2847. Section 87-2-1002, MCA, is amended to read:

"87-2-1002. Regulation of devices and equipment used under reciprocal privilege. The department may by regulation authorize the use of fishing devices and equipment by properly licensed ~~fishermen~~ anglers of both states under the provisions of 87-2-1001, unless otherwise prohibited by Montana law, in waters forming the subject of ~~such~~ the agreements."

Section 2848. Section 87-3-123, MCA, is amended to read:

"87-3-123. Use of silencers or mufflers on firearms forbidden. ~~No~~ A person may not take into a field or forest or have in ~~his~~ the person's possession while out hunting any device or mechanism devised to silence, muffle, or minimize the report of any firearms, whether ~~such~~ the device or mechanism ~~be~~ is operated from or attached to any firearm."

Section 2849. Section 87-3-206, MCA, is amended to read:

"87-3-206. Unlawful to use explosives or poisons in taking fish. (1) If ~~any~~ a person or persons ~~shall~~ use any carbide, lime, giant powder, dynamite, or other explosive compounds or any corrosive or narcotic poison

or other deleterious substance or have any of the ~~same~~ enumerated items in ~~his~~ the person's possession within 100 feet of any stream where fish are found for the purpose of catching, stunning, or killing fish, ~~he shall be deemed~~ the person is considered guilty of a misdemeanor and upon conviction ~~thereof~~ shall be punished as provided by law.

(2) The provisions of this section ~~shall do~~ not apply to anyone ~~duly~~ authorized by the department to conduct lake or stream surveys or to control undesirable or overpopulated species of fish."

Section 2850. Section 87-3-221, MCA, is amended to read:

"87-3-221. Importation of salmonid fish or eggs unlawful -- exception -- certification -- permit. (1)

It is unlawful to bring live or dead salmonid fish or eggs into the state of Montana for any purpose unless the importations are shipped direct from the source to destination and a written certification that the source is free of all fish pathogens specified by the department as posing a threat to existing fisheries accompanies the shipment. Certification must be made by a fish pathologist approved by the director. Certification of the source may be by inspection conducted annually or at ~~such~~ other times ~~as~~ that the director may order.

(2) In addition to the certification required in subsection (1), all importations of live salmonid fish or eggs must be accompanied by a permit issued by the department. The department shall issue an import permit upon application to the department showing that the proposed importations do not present ~~no~~ a substantial threat to the health of state fisheries. The department may condition the permit as necessary to protect fisheries from the introduction and spread of pathogens. Import permits apply to all importations from specified and certified species and sources by a permittee until January 31 of the year succeeding the year of issuance, when the permit expires. However, a separate permit is required for importations by a permittee for species or from sources unspecified in ~~his~~ the permittee's other permit or permits. It is unlawful to import live salmonid fish or eggs into Montana without first obtaining the permit required by this subsection or to violate any conditions of the permit."

Section 2851. Section 87-3-405, MCA, is amended to read:

"87-3-405. Failure to tag turkey. It is unlawful for ~~any~~ a person who kills, captures, or possesses ~~any~~ a wild turkey by authority of any turkey tag or permit to fail or neglect to attach ~~his~~ the tag to the turkey or fail to validate ~~his~~ the tag by filling out or punch marking the tag as required and to fail to keep the tag attached while the ~~same~~ turkey is possessed by ~~him~~ the person."

Section 2852. Section 87-3-506, MCA, is amended to read:

"87-3-506. Wasting of fur-bearing animals. (1) A person who fails to pick up traps or snares at the end of the trapping season or attends ~~his~~ the traps or snares so that fur-bearing animals are wasted is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

(2) The department of ~~fish, wildlife, and parks~~ shall enforce the provisions of this section.

(3) Federal, state, and county predator control programs are exempt from this section."

Section 2853. Section 87-3-507, MCA, is amended to read:

"87-3-507. Unlawful to disturb traps or trapped animals belonging to another -- exception. (1) ~~No~~ A person may not destroy, disturb, or remove any trap or snare belonging to another person or remove wildlife from a trap or snare belonging to another person without permission of the owner of the trap or snare, except that from March 1 to October 1 of each year a person may remove any snare from land owned or leased by ~~him~~ the person if ~~such the~~ snare would endanger livestock.

(2) This section does not apply to a law enforcement officer acting within the scope of ~~his~~ duty."

Section 2854. Section 87-4-301, MCA, is amended to read:

"87-4-301. Fur dealers defined. (1) ~~Any~~ A person or persons, firm, company, or corporation engaging in, carrying on, or conducting wholly or in part the business of buying or selling, trading, or dealing within the state of Montana in the skins or pelts of any animal or animals designated by the laws of Montana as fur-bearing or predatory animals ~~shall be deemed~~ is considered a fur dealer within the meaning of this part.

(2) If ~~such the~~ fur dealer resides in or if ~~his or its~~ the fur dealer's principal place of business is within the state of Montana, ~~he or it shall be deemed~~ the fur dealer is considered a resident fur dealer. All other fur dealers ~~shall be deemed~~ are considered nonresident fur dealers."

Section 2855. Section 87-4-303, MCA, is amended to read:

"87-4-303. Persons required to have fur dealer's license. A fur dealer shall, before buying, selling, or in any manner dealing in the skins or pelts of any fur-bearing or predatory animal within this state, secure a fur dealer's license from the director. ~~No~~ A license is not required for a hunter or trapper selling skins or pelts ~~which he~~ that the hunter or trapper has lawfully taken or for a person who is not a fur dealer who purchases skins or pelts exclusively for ~~his~~ the person's own use and not for sale."

Section 2856. Section 87-4-602, MCA, is amended to read:

"87-4-602. Seining licenses. The director shall keep a record of all licenses issued ~~by him~~ for the use of a net for the taking of fish, showing the name of the applicant, the date of ~~issue~~ issuance, the waters that the netting is to be used in, and the date of revocation if the license is revoked. The director shall pay all fees received for those licenses into the state treasury to the credit of the fish and game ~~moneys~~ account in the state special revenue fund. A license may not be issued to a person whose license has been revoked for cause."

Section 2857. Section 87-4-702, MCA, is amended to read:

"87-4-702. Possession of game by merchants, hotelkeepers, or restaurant keepers. (1) Except as provided in subsection (2), it is lawful for any merchant, hotelkeeper, or restaurant keeper to have in ~~his~~ the person's possession, offer for sale, or sell game birds and game; ~~provided if~~ provided if the game or game birds are not killed in Montana.

(2) ~~No~~ A merchant, hotelkeeper, or restaurant keeper may not offer for sale or sell any grizzly bear or any head, hide, teeth, claws, or other part of a grizzly bear."

Section 2858. Section 87-4-703, MCA, is amended to read:

"87-4-703. Evidence of lawful possession of game. Each merchant, hotelkeeper, or restaurant keeper; ~~having in his possession~~ who possesses and ~~offering offers~~ offers for sale any game or game birds; shall produce upon demand, for the inspection of any game warden, deputy game warden, or sheriff, the receipt or record and shipping and transportation receipts required in 87-4-704 to be kept by ~~him~~ the person. A failure or refusal to produce the ~~same~~ receipts upon demand, coupled with the possession and offering for sale of game or game birds, is prima facie evidence of the violation of this part."

Section 2859. Section 87-4-704, MCA, is amended to read:

"87-4-704. Record to be kept. It ~~shall be~~ is the duty of ~~every~~ a person ~~having~~ who has in ~~his~~ the person's possession and ~~offering offers~~ offers for sale any game or game birds to keep a record showing the amount and kind of game and game birds received by ~~him~~ the person, together with shipping and transportation receipts showing the true time and place of shipment of ~~said~~ the game and game birds and the name of the person shipping ~~same~~; the game and game birds. ~~provided, however~~ However, that any merchant in Montana selling game or game birds to any ~~hotel or~~ hotelkeeper, restaurant keeper, or other person shall, in addition to the record and receipts ~~heretofore~~ required to be kept by ~~him~~ the merchant, keep a record of the date of sale, the kind and amount of game or game birds, and the name of the purchaser, ~~and provided, further, that in~~ In the case of hotel

~~and hotelkeepers,~~ restaurant keepers, or other persons buying game or game birds from a merchant within the state of Montana, a receipt from the ~~said~~ the merchant showing the date, and the kind and amount ~~and kind~~ of game or game birds purchased ~~shall be~~ is sufficient evidence of compliance with the provisions of this part by ~~such the hotel or hotelkeeper,~~ restaurant keeper, or other person."

Section 2860. Section 87-4-705, MCA, is amended to read:

"87-4-705. Noncompliance with law. It is unlawful for ~~any~~ a person to have in ~~his~~ the person's possession and offer for sale or sell any game or game birds without having complied with the provisions of 87-4-704 relating to the keeping of a record and shipping and transportation receipts."

Section 2861. Section 87-4-903, MCA, is amended to read:

"87-4-903. Game bird farm license required. Except as provided in 87-4-902, ~~no~~ a person may not own, control, or propagate game birds unless ~~he~~ the person holds a current game bird farm license from the department."

Section 2862. Section 87-4-904, MCA, is amended to read:

"87-4-904. Application for game bird farm license -- limitation on issuance. (1) A person desiring to obtain a game bird farm license shall make a written application to the department. The application must specify:

- (a) the name of the applicant;
- (b) ~~his~~ the applicant's address;
- (c) the species of game bird and any plans to propagate them;
- (d) the legal description of the lands to be included;
- (e) the type of fence or enclosure that the applicant contemplates erecting;
- (f) the source of game birds; and
- (g) for a nonresident owner, the name and address of a local resident agent.

(2) (a) A game bird farm license ~~shall~~ may be issued only to a responsible applicant who owns or leases the premises on which the operations are to be conducted and who has properly fenced or otherwise enclosed the place where ~~such the~~ the game bird farm is to be located.

(b) ~~Any~~ A game bird farm owned by a nonresident must have a resident agent who is responsible for the daily operation of the farm and who is authorized by the nonresident owner to receive service of process.

(3) Within 30 days of receiving the application, the department shall notify the applicant of its decision to approve or deny the application. If the required fencing or enclosure has not been completed, the department shall approve the application subject to the fencing or enclosure being completed. If the application is denied, the department shall specify the reasons for denial."

Section 2863. Section 87-4-915, MCA, is amended to read:

"87-4-915. Field trials -- permits. (1) As used in this section, "field trial" means an examination to determine the ability of dogs to point, flush, or retrieve game birds.

(2) ~~No~~ A person may not conduct a field trial unless ~~he~~ the person has ~~received~~ a permit under this section. Applicants for a permit to conduct a field trial ~~must make application~~ shall apply to the director upon a form furnished by the department for that purpose. The application must be signed and sworn to by the applicant, stating the applicant's name and address, the name and address of any national affiliate, the place for the field trial clearly defined, the date or dates of the proposed field trial, whether live birds are to be used, and any other information required by the director to determine the advisability of granting permission for the proposed field trial. The application must state that if a permit is granted, the applicant will carefully flush all wild game birds from fields used for the field trial each day before the field trial begins and will not permit dogs to run free in fields that have not been carefully flushed. The application must be presented to the director not less than 20 days prior to the date proposed for the field trial.

(3) The director may refuse any application that ~~he~~ the director determines is not in the best interests of the protection, preservation, propagation, and conservation of game birds in this state. Any denial by the director of ~~such an~~ application must state the reasons ~~therefor~~ for denial and must be mailed to the applicant within 10 days of receipt of the application.

(4) ~~No~~ An applicant receiving a permit to conduct a field trial may not violate or authorize violation of any of the terms of the permit.

(5) All live game birds used in a field trial must be tagged before being planted or released and may be planted or released only in the presence of a representative of the department. If an untagged bird is shot during any field trial, the person to whom the permit was issued ~~must~~ shall immediately replace it with a live bird.

(6) (a) Dogs may be trained in open fields at any time without permission of the director only if:

(i) ~~no~~ live game birds are not killed or captured during training; and

(ii) the training is more than 1 mile from any bird nesting or management area or game preserve.

(b) A person may train dogs with a method that will kill birds acquired from a game bird farm only after

receiving a written permit from the department and only in compliance with the terms of the permit."

Section 2864. Section 87-4-1002, MCA, is amended to read:

"87-4-1002. Fur farm license required -- applicability. (1) Except as provided in subsection (2), ~~no~~ a person may not own, control, or propagate furbearers unless ~~he~~ the person holds a current fur farm license from the department.

(2) This part does not apply to the ownership, control, or propagation of furbearers if the ownership, control, or propagation is not for the sale or conveyance of furbearers or parts ~~thereof~~ of furbearers."

Section 2865. Section 87-4-1003, MCA, is amended to read:

"87-4-1003. Application for license. (1) ~~Any~~ A person desiring to obtain a fur farm license shall make a written application to the department. The application must specify:

- (a) the name of the applicant;
- (b) ~~his~~ the applicant's address;
- (c) the species of furbearers and any plan to propagate them;
- (d) the legal description of the lands to be included;
- (e) the type of fence that the applicant contemplates erecting;
- (f) the source of furbearers.

(2) (a) A fur farm license ~~shall~~ may be issued only to a responsible applicant who owns or leases the premises on which the operations are to be conducted and who has properly fenced the place where ~~such~~ the fur farm is to be located.

(b) Any fur farm owned by a nonresident must have a resident agent who is responsible for the daily operation of the fur farm and who is authorized by the nonresident owner to receive service of process.

(3) Within 30 days of receiving the application, the department shall notify the applicant of its decision to approve or deny the application. If required fencing has not been completed, the department shall approve the application subject to the fencing being completed. If the application is denied, the department shall specify the reasons for denial."

Section 2866. Section 87-5-108, MCA, is amended to read:

"87-5-108. Establishment of programs. (1) The director shall establish ~~such~~ programs, including acquisition of land or aquatic habitat, ~~as~~ that are ~~deemed~~ considered necessary for management of nongame

and endangered wildlife. The department shall establish ~~such policies as that~~ that are necessary to carry out the purpose of ~~this section and 87-5-109~~ and this section.

(2) In carrying out programs authorized by this section, the department may enter into agreements with federal agencies, political subdivisions of the state, or with private persons for administration and management of any area established under ~~this section and 87-5-109~~ and this section or ~~utilized~~ used for management of nongame or endangered wildlife.

(3) The governor shall review other programs administered by ~~him~~ the governor and, to the extent practicable, ~~utilize such~~ use those programs in furtherance of the purposes of ~~this section and 87-5-109~~ and this section. The governor shall also encourage other state and federal agencies to ~~utilize~~ use their authorities in furtherance of the purposes of ~~this section and 87-5-109~~ and this section."

Section 2867. Section 90-2-1111, MCA, is amended to read:

"90-2-1111. State and local grants. (1) ~~Any~~ A department, agency, board, commission, or other division of state government or any city, county, or other political subdivision or tribal government within the state may apply, in accordance with the procedures established by the department, for a grant from the natural resources projects state special revenue account established in 15-38-302 for a project that is consistent with the policy and purpose of the reclamation and development grants program.

(2) The department shall evaluate applications under the eligibility criteria provided in 90-2-1112 and the evaluation criteria provided in 90-2-1113.

(3) The department shall solicit and consider in its evaluation of applications the views of interested persons and public agencies.

(4) Based on its evaluation of eligible applications, the department shall recommend to the governor projects to receive grants from the natural resources projects state special revenue account established in 15-38-302.

(5) The governor shall submit all proposals, with ~~his~~ the governor's recommended priorities, to the legislature by the first day of any regular legislative session. The legislature may approve by appropriation or other appropriate means grants for those projects it finds consistent with the policies and purposes of the reclamation and development grants program. The department shall administer and oversee the grants to approved projects and monitor the projects."

Section 2868. Section 90-4-305, MCA, is amended to read:

"90-4-305. Information obtainable by governor. (1) The governor may obtain information on a regular basis from energy resource producers, suppliers, public agencies, and consumers and from political subdivisions in this state that is necessary for the governor to determine the need for energy supply alert and emergency declarations. The information may include but is not limited to:

- (a) sales volumes by customer classifications other than for petroleum products;
- (b) forecasts of energy resource requirements for the particular type of energy involved for a period not to exceed 2 years; and
- (c) inventory of energy resources and reserves available for use in meeting a shortage in a particular energy source.

(2) In order to help anticipate and mitigate the effects of shortages of petroleum products, the governor may monitor the supply of and demand for these products by obtaining the following monthly reports submitted no later than 20 days after the last day of the month, on forms prescribed by the governor, from the following persons:

- (a) Each refiner shall submit Montana refinery processing data by fuel type in custody₁ including:
 - (i) inventory stocks at the beginning and end of the month;
 - (ii) receipts during the month;
 - (iii) inputs during the month;
 - (iv) production during the month;
 - (v) shipments, losses, and refinery fuel use during the month.
- (b) Each prime petroleum supplier shall submit:
 - (i) 3-month projections of his the supplier's Montana supply and stock of petroleum products that the supplier anticipates supplying to Montana customers; and
 - (ii) the actual volume of petroleum products delivered in the state the previous month.
- (c) Each petroleum pipeline company shall submit reports by fuel type of Montana pipeline terminal delivery, throughput, and export.
- (d) Each bulk pipeline terminal operator shall submit end-of-month reports of inventory stock levels of finished petroleum products in custody in Montana by type of product and storage location.
- (e) Each prime petroleum supplier shall submit quarterly reports of monthly marketing sales in Montana₁ by standard point locator index; or other method prescribed by the governor, and fuel type of petroleum products designated by the governor.

(3) In obtaining information under subsections (1) and (2) during a state of energy emergency, the

governor may:

(a) subpoena witnesses, material, and relevant books, papers, accounts, records, and memoranda;

(b) administer oaths; and

(c) cause the depositions of persons residing within or ~~without~~ outside of Montana to be taken in the manner prescribed for depositions in civil actions in district courts; to obtain information relevant to energy resources that are the subject of the proclaimed emergency or associated disaster.

(4) In obtaining information under this section, the governor shall:

(a) avoid eliciting information already furnished by a person or political subdivision in this state to a federal, state, or local regulatory authority that is available for the governor's study; and

(b) cause reporting procedures, including forms, to conform to existing requirements of federal, state, and local regulatory authorities.

(5) Except as provided in subsection (2), this part does not require the disclosure by a distributor of confidential information, trade secrets, or other facts of a proprietary nature.

(6) (a) The information required under subsection (2) is subject to the following restrictions:

(i) Except in accordance with a proper judicial order, a public officer or employee charged by the governor with the custody of this information may not divulge or make known in any manner any information that is specific to a particular distributor.

(ii) The public officers and employees charged by the governor with the custody of the information provided for in subsection (2) may not be required to produce any of it or evidence of anything contained in it on behalf of any party to any action or proceeding under this part; except when the information concerned is directly involved in the action or proceeding, in which case only that information directly pertinent to the action or proceeding may be admitted.

(b) This section does not preclude access to the information by the legislative auditor in carrying out the functions under Title 5, chapter 13."

Section 2869. Section 90-4-309, MCA, is amended to read:

"90-4-309. Energy supply alert. (1) The governor may, upon finding that an energy alert condition exists, declare ~~the same an energy alert~~ an energy alert for a period of not longer than 90 days, setting forth the reasons ~~therefor~~ for the alert. ~~Such~~ The declaration may be renewed for 90-day periods ~~thereafter~~ thereafter upon a finding that the energy alert condition will continue for ~~such~~ the further period.

(2) Whenever the governor has declared an energy supply alert, ~~he~~ the governor may by executive order

direct actions:

- (a) reducing energy resource usage by state agencies and political subdivisions;
- (b) promoting conservation, prevention of waste, and salvage of energy resources and the materials, services, and facilities derived ~~therefrom~~ from energy resources or dependent ~~thereon~~ on energy resources; by state agencies and political subdivisions."

Section 2870. Section 90-4-314, MCA, is amended to read:

"90-4-314. Orders to distributors. The governor may order any distributor to take ~~such~~ action on ~~his~~ the governor's behalf as may be required to implement orders issued pursuant to 90-4-310, and ~~no~~ a distributor or person is not liable for actions taken in accordance with ~~such an~~ an order."

Section 2871. Section 90-4-317, MCA, is amended to read:

"90-4-317. Disaster and emergency laws supplemented. The powers vested in the governor under this part are in addition to and not in lieu of emergency powers vested in ~~him~~ the governor under Title 10, chapter 3, or any other law of Montana."

Section 2872. Section 90-5-202, MCA, is amended to read:

"90-5-202. Board member appointed by governor -- compensation. The governor shall appoint the board member. ~~He~~ The member shall report directly to the governor. The member, with the approval of the governor, may designate an alternate to represent the state when ~~he~~ the member is unable to do so. The member or ~~his~~ the alternate may not receive ~~no~~ compensation in addition to salary for ~~his~~ services as a member of the board but ~~shall~~ must be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, ~~as amended~~, incurred in the performance of ~~his~~ duties."

Section 2873. Section 90-6-120, MCA, is amended to read:

"90-6-120. Maintenance of capital reserve account. (1) In order to ~~assure~~ ensure the maintenance of the capital reserve account, the ~~chairman~~ presiding officer of the board shall on or before September 1 in the year preceding the convening of the legislature deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the minimum capital reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the capital reserve account to the sum of minimum capital reserve requirements. All sums appropriated by the legislature ~~shall~~ must

be deposited in the capital reserve account.

(2) All amounts appropriated to the board by the legislature under this section constitute advances to the board and, subject to the rights of the holders of any bonds or notes of the board, ~~shall~~ must be repaid to the state's general fund, without interest from available operating revenues of the board in excess of amounts required for the payment of bonds, notes, or other obligations of the board, for maintenance of the capital reserve account, and for operating expenses."

Section 2874. Section 90-6-204, MCA, is amended to read:

"90-6-204. Chairman Presiding officer, meetings, compensation, and facilities. (1) The board shall elect a ~~chairman~~ presiding officer from among its members.

(2) The board shall meet quarterly and may meet at other times as called by the ~~chairman~~ presiding officer or a majority of the members.

(3) Members are entitled to compensation as provided for in 2-15-124(7).

(4) The department of commerce ~~will~~ shall provide suitable office facilities and the necessary staff for the coal board."

Section 2875. Section 90-6-303, MCA, is amended to read:

"90-6-303. Chairman Presiding officer -- meetings -- facilities -- funding. (1) The board shall elect a ~~chairman~~ presiding officer from among its members.

(2) The board shall meet as necessary or as called by the ~~chairman~~ presiding officer or a majority of the members.

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

(4) The administrative and operating expenses of the board ~~shall~~ must be paid from revenue deposited to the credit of the hard-rock mining impact trust account from the license tax on metal mines imposed under Title 15, chapter 37."

Section 2876. Section 90-7-319, MCA, is amended to read:

"90-7-319. Maintenance of capital reserve account. (1) In order to ~~assure~~ ensure the maintenance of the capital reserve account, the ~~chairman~~ presiding officer of the authority shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any,

required to restore the capital reserve account to the sum of minimum capital reserve requirements. The governor shall include in the executive budget submitted to the legislature the sum required to restore the capital reserve account to the minimum capital reserve requirements. All funds appropriated by the legislature for maintenance of the capital reserve account must be deposited in the account; as required in 90-7-317.

(2) All amounts appropriated to the authority under this section constitute advances to the authority and, subject to the rights of the holders of bonds or notes of the authority, must be repaid to the state general fund, without interest from available operating revenue of the authority in excess of amounts required for the payment of bonds, notes, or other obligations of the authority, for maintenance of the capital reserve account, and for operating expenses."

- END -

