

1 HOUSE BILL NO. 533

2 INTRODUCED BY J. KARJALA

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE MARRIAGE OF PERSONS UNDER 18 YEARS
5 OF AGE; AMENDING SECTIONS 1-1-215, 1-5-615, 15-61-102, 19-6-101, 19-9-104, 19-13-104, 19-17-102,
6 19-19-503, 20-5-501, 27-1-718, 39-71-116, 40-1-104, 40-1-202, 40-1-203, 40-1-401, 40-1-402, 40-5-201,
7 40-5-278, 40-5-701, 40-6-221, 40-6-234, 40-6-501, 41-1-401, 41-1-402, 41-1-404, 41-1-405, 41-1-406, 41-3-102,
8 41-5-103, 41-5-1402, 50-20-503, 70-1-404, 72-5-103, 72-5-104, 72-5-211, 72-5-222, 72-5-231, 72-5-233,
9 72-5-427, AND 87-2-102, MCA; REPEALING SECTIONS 40-1-213 AND 40-2-315, MCA; AND PROVIDING AN
10 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

- 13
14 **Section 1.** Section 1-1-215, MCA, is amended to read:
- 15 **"1-1-215. Residence -- rules for determining.** Every person has, in law, a residence. In determining
16 the place of residence, the following rules are to be observed:
- 17 (1) It is the place where a person remains when not called elsewhere for labor or other special or
18 temporary purpose and to which the person returns in seasons of repose.
- 19 (2) There may be only one residence. If a person claims a residence within Montana for any purpose,
20 then that location is the person's residence for all purposes unless there is a specific statutory exception.
- 21 (3) A residence cannot be lost until another is gained.
- 22 (4) The residence of ~~an unmarried~~ a minor is:
- 23 (a) the residence of the minor's parents;
- 24 (b) if one of the parents is deceased or the parents do not share the same residence, the residence of
25 the parent having legal custody;
- 26 (c) if neither parent has legal custody, the residence of the legal guardian or custodian appointed by a
27 court of competent jurisdiction; or
- 28 (d) if the conditions in 20-5-502 are met, the residence of the caretaker relative.
- 29 (5) In the case of a controversy, the district court has jurisdiction over which residence is the residence
30 of ~~an unmarried~~ a minor.

1 (6) Except as provided in Title 20, chapter 5, part 5, and this section, the residence of ~~an unmarried a~~
 2 minor who has a parent living cannot be changed by either the minor's own act or an act of the minor's guardian.

3 (7) The residence can be changed only by the union of act and intent."
 4

5 **Section 2.** Section 1-5-615, MCA, is amended to read:

6 **"1-5-615. Notification regarding performance of notarial act on electronic record -- selection of**
 7 **technology.** (1) (a) A notary public may select one or more tamper-evident technologies to perform notarial acts
 8 with respect to electronic records.

9 (b) A person may not require a notary public to perform a notarial act with respect to an electronic record
 10 with a technology that the notary public has not selected.

11 (2) Before a notary public performs the notary public's initial notarial act with respect to an electronic
 12 record, a notary public shall:

13 (a) notify the secretary of state that the notary public will be performing notarial acts with respect to
 14 electronic records; and

15 (b) identify the technology the notary public intends to use. If the secretary of state has established by
 16 rule the standards for the technology used by the notary public, the technology must comply with the standards.
 17 If the technology complies with the standards, the secretary of state shall approve the use of the technology.

18 (3) A notary public in this state may perform acknowledgments or verifications on oath or affirmation by
 19 means of a real-time, two-way audio-video communication, according to the rules and standards established by
 20 the secretary of state, if:

21 (a) the signer is personally known to the notary or identified by a credible witness and, except for a
 22 transaction described in subsection (3)(b)(iv), is a legal resident of this state; and

23 (b) the transaction:

24 (i) involves real property located in this state;

25 (ii) involves personal property titled in this state;

26 (iii) is under the jurisdiction of any court in this state; or

27 (iv) is pursuant to a proxy marriage under ~~40-1-213~~ or 40-1-301."
 28

29 **Section 3.** Section 15-61-102, MCA, is amended to read:

30 **"15-61-102. Definitions.** As used in this chapter, unless it clearly appears otherwise, the following

1 definitions apply:

2 (1) "Account administrator" means:

3 (a) a state or federally chartered bank, savings and loan association, credit union, or trust company;

4 (b) a health care insurer as defined in 33-22-125;

5 (c) a certified public accountant licensed to practice in this state pursuant to Title 37, chapter 50;

6 (d) an employer if the employer has a self-insured health plan under ERISA;

7 (e) the account holder or an employee for whose benefit the account in question is established;

8 (f) a broker, insurance producer, or investment adviser regulated by the commissioner of insurance;

9 (g) an attorney licensed to practice law in this state;

10 (h) a person who is an enrolled agent allowed to practice before the United States internal revenue
11 service.

12 (2) "Account holder" means an individual who is a resident of this state and who establishes a medical
13 care savings account or for whose benefit the account is established.

14 (3) "Consumer price index" means the consumer price index, United States city average, for all items,
15 for all urban consumers, as published by the bureau of labor statistics of the United States department of labor.

16 (4) "Dependent" means the spouse of the employee or account holder or a child of the employee or
17 account holder if the child is:

18 (a) under 23 years of age and enrolled as a full-time student at an accredited college or university or is
19 under 19 years of age;

20 (b) legally entitled to the provision of proper or necessary subsistence, education, medical care, or other
21 care necessary for the health, guidance, or well-being of the child and is not otherwise emancipated,
22 self-supporting, married if 18 years of age or older, or a member of the armed forces of the United States; or

23 (c) mentally or physically incapacitated to the extent that the child is not self-sufficient.

24 (5) "Eligible medical expense" means:

25 (a) an expense paid by the employee or account holder for medical care defined by 26 U.S.C. 213(d);

26 (b) an expense for long-term care, including long-term care insurance or a long-term care annuity; and

27 (c) a family leave expense.

28 (6) "Employee" means an employed individual for whose benefit or for the benefit of whose dependents
29 a medical care savings account is established. The term includes a self-employed individual.

30 (7) "ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.

1 (8) "Family leave expense" means:

2 (a) an expense, calculated monthly, approximating wages lost while caring for an immediate family
3 member for the purposes allowed under the Family and Medical Leave Act of 1993, 29 U.S.C. 2601, et seq., and
4 29 CFR, part 825. A family leave expense is calculated by multiplying the hourly wage that the caregiver would
5 have been paid by the number of hours that would typically be spent working but were instead spent caring for
6 an immediate family member. The hourly wage for a person paid a salary is the gross annual wage divided by
7 2,087.

8 (b) a premium paid for family leave insurance.

9 (9) "Immediate family member" means a parent, spouse, or child.

10 (10) "Medical care savings account" or "account" means an account established with an account
11 administrator in this state pursuant to 15-61-201."

12

13 **Section 4.** Section 19-6-101, MCA, is amended to read:

14 **"19-6-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this
15 chapter:

16 (1) (a) "Compensation" means remuneration paid from funds controlled by an employer in payment for
17 the member's services or for time during which the member is excused from work because the member has taken
18 compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by
19 state or federal law are made.

20 (b) Compensation does not include:

21 (i) maintenance, allowances, and expenses; or

22 (ii) bonuses provided after July 1, 2013, that are one-time, temporary payments in addition to and not
23 considered part of base pay.

24 (2) "Dependent child" means ~~an unmarried~~ a child of a deceased retired member, who is:

25 (a) under 18 years of age; or

26 (b) unmarried, under 24 years of age, and attending an accredited postsecondary educational institution
27 as a full-time student in anticipation of receiving a certificate or degree.

28 (3) (a) "Highest average compensation" means a member's highest average monthly compensation
29 during any 36 consecutive months of membership service or, in the event a member has not served at least 36
30 months, the total compensation earned divided by the number of months of service.

1 (b) Lump-sum payments for compensatory leave, sick leave, and annual leave paid to the member upon
2 termination of employment may be used in the calculation of a retirement benefit only to the extent that they are
3 used to replace, on a month-for-month basis, the normal compensation for a month or months included in the
4 calculation of the highest average compensation. A lump-sum payment may not be added to a single month's
5 compensation.

6 (c) Excess earnings limits must be applied to the calculation of the highest average compensation
7 pursuant to 19-2-1005(2).

8 (4) "Surviving spouse" means the spouse married to a retired member at the time of the retired member's
9 death.

10 (5) "Survivor" means a surviving spouse or dependent child of a member."
11

12 **Section 5.** Section 19-9-104, MCA, is amended to read:

13 **"19-9-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this
14 chapter:

15 (1) (a) "Compensation" means the remuneration paid from funds controlled by an employer in payment
16 for the member's services before any pretax deductions allowed by state or federal law are made.

17 (b) Compensation does not include:

18 (i) overtime, holiday payments, shift differential payments, compensatory time payments, and payments
19 in lieu of sick leave and annual leave;

20 (ii) maintenance, allowances, and expenses; or

21 (iii) bonuses provided after July 1, 2013, that are one-time, temporary payments in addition to and not
22 considered part of base pay.

23 (2) "Dependent child" means a child of a deceased member:

24 (a) who is ~~unmarried and~~ under 18 years of age; or

25 (b) who is unmarried, under 24 years of age, and attending an accredited postsecondary educational
26 institution as a full-time student in anticipation of receiving a certificate or degree.

27 (3) "Employer" means any city that participated in a prior plan or that elects to join this retirement system
28 under 19-9-207.

29 (4) (a) "Final average compensation" means the monthly compensation of a member averaged over the
30 last 36 months of the member's service or, in the event a member has not served at least 36 months, the total

1 compensation earned divided by the number of months of service.

2 (b) Excess earnings limits must be applied to the calculation of the final average compensation pursuant
3 to 19-2-1005(2).

4 (5) "Minimum retirement date" means the first day of the month coinciding with or, if none coincides, the
5 date on which a member both becomes age 50 and completes 5 years of membership service.

6 (6) Any reference to "municipality", "city", or "town" includes those jurisdictions that, prior to the effective
7 date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban
8 law enforcement services, or the entire county included in the county-municipal consolidation.

9 (7) "Police officer" means an appointed, lawfully trained, appropriately salaried, and regularly acting
10 officer with the requisite professional certification and licensing.

11 (8) "Prior plan" means the local police reserve or pension trust fund of a city that elects to join the
12 retirement system under 19-9-207.

13 (9) "Retirement date" means the date on which the first payment of the retirement, disability, or
14 survivorship benefits of a member or a survivor is payable.

15 (10) "Surviving spouse" means the spouse married to a member at the time of the member's death.

16 (11) "Survivor" means a surviving spouse or dependent child of the member."
17

18 **Section 6.** Section 19-13-104, MCA, is amended to read:

19 **"19-13-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this
20 chapter:

21 (1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a
22 county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban
23 firefighting services, or the entire county included in the county-municipal consolidation.

24 (2) "Compensation" means:

25 (a) for a full-paid firefighter, the remuneration paid from funds controlled by an employer in payment for
26 the member's services before any pretax deductions allowed by state and federal law are made;

27 (b) for a part-paid firefighter employed by a city of the second class:

28 (i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments,
29 compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly
30 confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

1 (ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding
2 overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of
3 sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the
4 second class.

5 (c) Compensation for full-paid and part-paid firefighters does not include:

6 (i) overtime, holiday payments, shift differential payments, compensatory time payments, and payments
7 in lieu of sick leave;

8 (ii) maintenance, allowances, and expenses; or

9 (iii) bonuses provided after July 1, 2013, that are one-time, temporary payments in addition to and not
10 considered part of base pay.

11 (3) "Dependent child" means a child of a deceased member who is:

12 (a) ~~unmarried~~ and under 18 years of age; or

13 (b) unmarried, under 24 years of age, and attending an accredited postsecondary educational institution
14 as a full-time student in anticipation of receiving a certificate or degree.

15 (4) "Employer" means:

16 (a) any city that is of the first or second class or that elects to join this retirement system under
17 19-13-211;

18 (b) a city or a rural fire district referred to in 19-13-210(3);

19 (c) with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department
20 of military affairs established in 2-15-1201; and

21 (d) any other statutorily allowed entity that elects to join this retirement system pursuant to 19-13-210.

22 (5) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

23 (6) "Full-paid firefighter" means a person appointed pursuant to 7-33-4106 by an employer as a firefighter
24 meeting the standards provided in 7-33-4107.

25 (7) (a) "Highest average compensation" means the monthly compensation of a member averaged over
26 the highest consecutive 36 months of the member's active service or, in the event a member has not served at
27 least 36 consecutive months, the total compensation earned divided by the number of months of service.

28 (b) Lump-sum payments for annual leave paid to the member upon termination of employment may be
29 used to replace, on a month-for-month basis, the regular compensation for a month or months included in the
30 calculation of highest average compensation.

1 (c) Excess earnings limits must be applied to the calculation of the highest average compensation
2 pursuant to 19-2-1005(2).

3 (8) "Minimum retirement date" means the first day of the month coinciding with or immediately following,
4 if none coincides, the date on which a member both reaches 50 years of age or older and completes 5 or more
5 years of membership service.

6 (9) "Newly confirmed firefighter" means a new member of a fire department appointed pursuant to
7 7-33-4106 and meeting the standards of 7-33-4107.

8 (10) "Part-paid firefighter" means a person other than a full-paid firefighter employed by a second-class
9 city who receives compensation in excess of \$300 in a fiscal year for service as a firefighter and who is appointed
10 by an employer as a firefighter under the standards provided in 7-33-4106 and 7-33-4107.

11 (11) "Prior plan" means the fire department relief association plan of a city that elects to join the
12 retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second
13 class.

14 (12) "Retirement date" means the date on which the first payment of benefits is payable.

15 (13) "Retirement system" means the firefighters' unified retirement system provided for in this chapter.

16 (14) "Surviving spouse" means the spouse married to a member at the time of the member's death."
17

18 **Section 7.** Section 19-17-102, MCA, is amended to read:

19 **"19-17-102. Definitions.** Unless the context requires otherwise, the following definitions apply in this
20 chapter:

21 (1) "Active member" means a volunteer firefighter credited with service under this chapter as provided
22 in 19-17-108 during the most recently reportable fiscal year.

23 (2) "Allowance" means a total monetary and gift amount that is available to a volunteer firefighter from
24 a fire company pursuant to 19-17-110.

25 (3) "Benefit" means the pension, disability, or survivorship benefit provided under this chapter.

26 (4) "Board" means the public employees' retirement board provided for in 2-15-1009.

27 (5) "Claim" means a request from a member, surviving spouse, or dependent child for payment of
28 medical or funeral expenses.

29 (6) "Compensation" means remuneration for services rendered as a firefighter from the fire company
30 requesting credit for that firefighter.

1 (7) "Dependent child" means a child ~~who is unmarried~~, who is under 18 years of age, and who is the child
2 of a deceased member.

3 (8) "Designated official" means a representative of a fire company appointed by the fire chief to perform
4 specified actions and includes but is not limited to a fire company supervisor, a fire company secretary, and a fire
5 company presiding officer as described in 7-33-2312.

6 (9) "Disability" or "permanent total disability" means a duty-related injury resulting in permanent total
7 disability as defined in 39-71-116.

8 (10) "Fire company" means an organization of volunteer firefighters created under the authority of a
9 governing board or commission to serve an unincorporated area, town, or village.

10 (11) "Fiscal year" means the 12-month period that begins on July 1 and ends on June 30 of the following
11 year.

12 (12) "Inactive member" means a member not credited with service under this chapter as provided in
13 19-17-108 during the most recently reportable fiscal year.

14 (13) "Member" means a volunteer firefighter who has service credited under this chapter.

15 (14) "Pension benefit" means a full or partial payment for service earned as a volunteer firefighter and
16 does not include payment for disability.

17 (15) "Pension trust fund" means the volunteer firefighters' pension trust fund established to pay claims
18 and benefits under this chapter.

19 (16) "Reimbursed" means the return by a fire company of an equivalent amount of money expended by
20 a member for the benefit of the fire company.

21 (17) "Retiree" or "retired member" means a member who is receiving full or partial pension benefits or
22 disability benefits from the pension trust fund.

23 (18) "Supplemental insurance" means insurance that is carried by a fire company for the purposes of
24 providing disability or death benefits. Supplemental insurance does not include any insurance required by law,
25 such as workers' compensation insurance.

26 (19) "Surviving spouse" means the spouse married to a member when the member dies.

27 (20) "Survivorship benefit" means the monthly benefit paid to the surviving spouse or dependent child
28 of a deceased member.

29 (21) "Training" means instruction pertaining to firefighting that is supervised by the chief or a designated
30 official.

1 (22) "Volunteer firefighter" means a person who is a member of an eligible fire company and is not
2 compensated for services as a firefighter."

3

4 **Section 8.** Section 19-19-503, MCA, is amended to read:

5 **"19-19-503. Death benefits.** (1) Upon the death of a police officer on the active list or retired list of a
6 city, the officer's surviving spouse, if there is one, must, as long as the spouse remains the surviving spouse, be
7 paid from the city's police retirement fund a sum equal to one-half the base salary, excluding overtime and
8 payments in lieu of sick leave and annual leave, that the officer was receiving as an active officer computed on
9 the highest salary received in any 1 month during the last year of active service.

10 (2) If the officer leaves one or more dependent minor children, upon the officer's death if there is no
11 surviving spouse or upon the death or remarriage of the surviving spouse, the surviving dependent minor children,
12 collectively if there is more than one, must receive the same monthly payments as a surviving spouse would
13 receive, until they reach 18 years of age ~~or are married~~. The payments must be made to their duly appointed,
14 qualified, and acting guardian for their use. If there is more than one child, upon each child reaching 18 years of
15 age ~~or marrying~~, the pro rata payments to that child must cease and must be made to the remaining children until
16 all the children have ~~either~~ reached 18 years of age ~~or are married~~."

17

18 **Section 9.** Section 20-5-501, MCA, is amended to read:

19 **"20-5-501. Purpose -- legislative intent -- parental rights -- definitions.** (1) The legislature recognizes
20 that the rights of parents to the custody and control of a child are based upon liberties secured by the United
21 States and Montana constitutions and that a parent's rights to that custody and control of a child are therefore
22 normally supreme to the interests of other persons. The legislature also recognizes a growing phenomenon in
23 which absent or otherwise unavailable parents have temporarily surrendered the custody and care of their
24 children to a grandparent or other relative for lengthy periods of time. Regardless of the purpose of the absence,
25 a child willfully surrendered to a relative for an extended time period still has the same needs as a child in the care
26 of its parents. In this situation, a caretaker relative assumes responsibilities for the child but has no legal right of
27 control over the child, a situation that interferes in the caretaker relative's ability to perform routine functions of
28 child rearing, including tending to the educational and educationally related medical needs of the child. It is
29 therefore the purpose of the legislature in these instances to protect the rights of a child granted by Article II,
30 section 15, of the Montana constitution by granting a caretaker relative limited authority for a child left in the

1 relative's care.

2 (2) It is the intent of the legislature that a caretaker relative given the responsibility of caring for a child
3 with little or no warning and without any other provision having been made for the child's care, such as the
4 appointment of a guardian or the provision of a power of attorney, be granted authority to enroll the child in
5 school, discuss with the school district the child's educational progress, and consent to an educational service
6 and to medical care for the child related to an educational service without superseding any parental rights
7 regarding the child.

8 (3) This part is not intended to affect the rights and responsibilities of a parent, legal guardian, or other
9 custodian regarding the child, does not grant legal custody of the child to the caretaker relative, and does not
10 grant authority to the caretaker relative to consent to the ~~marriage~~ or adoption of the child or to receive notice of
11 a medical procedure, including abortion, not consented to by the relative, if notice is required by law, for the child
12 except as expressly provided in this section.

13 (4) For the purposes of this part, the following definitions apply:

14 (a) "Caretaker relative" or "relative" means an individual related by blood, marriage, or adoption by
15 another individual to the child whose care is undertaken by the relative, but who is not a parent, foster parent,
16 stepparent, or legal guardian of the child.

17 (b) "Caretaker relative educational authorization affidavit" or "affidavit" means an affidavit completed in
18 compliance with 20-5-503.

19 (c) "Health care provider" means a person who provides medical care.

20 (d) "Medical care" means care by a health care provider, for which parental consent is normally required,
21 for the prevention, diagnosis, or treatment of a mental, physical, or dental injury or disease.

22 (e) "Parent" means a biological parent, adoptive parent, or other legal guardian of the child whose
23 parental rights have not been terminated."
24

25 **Section 10.** Section 27-1-718, MCA, is amended to read:

26 **"27-1-718. Civil penalty for shoplifting.** (1) An adult or emancipated minor who takes possession of
27 any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment
28 without the consent of the owner or seller and with the intention of converting the goods to the taker's own use
29 without having paid the purchase price of the goods is liable to the owner or seller for a penalty, whether or not
30 the goods have been returned undamaged, in the amount of the greater of \$100 or the retail value of the goods,

1 not to exceed \$1,000. This amount is in addition to actual damages.

2 (2) When an unemancipated minor takes possession of any goods, wares, or merchandise displayed
3 or offered for sale by any store or other mercantile establishment without the consent of the owner or seller and
4 with the intention of converting the goods to the minor's own use without having paid the purchase price of the
5 goods, the minor's parent or legal guardian having custody of the minor is liable to the owner or seller for a
6 penalty, whether or not the goods have been returned undamaged, equal to the greater of \$100 or the retail value
7 of the goods, not to exceed \$1,000. For the purposes of this subsection (2), liability may not be imposed upon
8 any governmental or private agency that has been assigned responsibility for the minor child pursuant to court
9 order or action of the department of corrections or the department of public health and human services.

10 (3) Judgments and claims arising under this section may be assigned.

11 (4) A conviction for violation of 45-6-301 is not a condition precedent to maintenance of a civil action
12 under this section.

13 (5) For purposes of this section, the term "emancipated minor" means a person under 18 years of age
14 who is self-supporting from personal earnings ~~or is married~~. A person who received more than 25% of the cost
15 of support from any person other than an agency of the government may not be considered an emancipated
16 minor."

17

18 **Section 11.** Section 39-71-116, MCA, is amended to read:

19 **"39-71-116. Definitions.** Unless the context otherwise requires, in this chapter, the following definitions
20 apply:

21 (1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker
22 reaches maximum healing are less than the actual wages the worker received at the time of the injury.

23 (2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act
24 necessary to:

25 (a) investigation, review, and settlement of claims;

26 (b) payment of benefits;

27 (c) setting of reserves;

28 (d) furnishing of services and facilities; and

29 (e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

30 (3) "Aid or sustenance" means a public or private subsidy made to provide a means of support,

1 maintenance, or subsistence for the recipient.

2 (4) "Beneficiary" means:

3 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

4 (b) ~~an unmarried~~ a child under 18 years of age;

5 (c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is
6 enrolled in an accredited apprenticeship program;

7 (d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the
8 decedent for support at the time of injury;

9 (e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time
10 of the injury if a beneficiary, as defined in subsections (4)(a) through (4)(d), does not exist; and

11 (f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent
12 for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in
13 subsections (4)(a) through (4)(e), does not exist.

14 (5) "Business partner" means the community, governmental entity, or business organization that provides
15 the premises for work-based learning activities for students.

16 (6) "Casual employment" means employment not in the usual course of the trade, business, profession,
17 or occupation of the employer.

18 (7) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the
19 injury.

20 (8) (a) "Claims examiner" means an individual who, as a paid employee of the department, of a plan No.
21 1, 2, or 3 insurer, or of an administrator licensed under Title 33, chapter 17, examines claims under chapter 71
22 to:

23 (i) determine liability;

24 (ii) apply the requirements of this title;

25 (iii) settle workers' compensation or occupational disease claims; or

26 (iv) determine survivor benefits.

27 (b) The term does not include an adjuster as defined in 33-17-102.

28 (9) (a) "Construction industry" means the major group of general contractors and operative builders,
29 heavy construction (other than building construction) contractors, and special trade contractors listed in major
30 group 23 in the North American Industry Classification System Manual.

1 (b) The term does not include office workers, design professionals, salespersons, estimators, or any
2 other related employment that is not directly involved on a regular basis in the provision of physical labor at a
3 construction or renovation site.

4 (10) "Days" means calendar days, unless otherwise specified.

5 (11) "Department" means the department of labor and industry.

6 (12) "Direct result" means that a diagnosed condition was caused or aggravated by an injury or
7 occupational disease.

8 (13) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

9 (14) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws
10 of this state to provide health care in the ordinary course of business or practice of a profession.

11 (15) (a) "Household or domestic employment" means employment of persons other than members of the
12 household for the purpose of tending to the aid and comfort of the employer or members of the employer's family,
13 including but not limited to housecleaning and yard work.

14 (b) The term does not include employment beyond the scope of normal household or domestic duties,
15 such as home health care or domiciliary care.

16 (16) (a) "Indemnity benefits" means any payment made directly to the worker or the worker's
17 beneficiaries, other than a medical benefit. The term includes payments made pursuant to a reservation of rights.

18 (b) The term does not include stay-at-work/return-to-work assistance, auxiliary benefits, or expense
19 reimbursements for items such as meals, travel, or lodging.

20 (17) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting
21 business under compensation plan No. 2, or the state fund under compensation plan No. 3.

22 (18) "Invalid" means one who is physically or mentally incapacitated.

23 (19) "Limited liability company" has the meaning provided in 35-8-102.

24 (20) "Maintenance care" means treatment designed to provide the optimum state of health while
25 minimizing recurrence of the clinical status.

26 (21) "Medical stability", "maximum medical improvement", "maximum healing", or "maximum medical
27 healing" means a point in the healing process when further material functional improvement would not be
28 reasonably expected from primary medical services.

29 (22) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle
30 strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

1 (23) (a) "Occupational disease" means harm, damage, or death arising out of or contracted in the course
2 and scope of employment caused by events occurring on more than a single day or work shift.

3 (b) The term does not include a physical or mental condition arising from emotional or mental stress or
4 from a nonphysical stimulus or activity.

5 (24) "Order" means any decision, rule, direction, requirement, or standard of the department or any other
6 determination arrived at by the department.

7 (25) "Palliative care" means treatment designed to reduce or ease symptoms without curing the
8 underlying cause of the symptoms.

9 (26) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual
10 payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any
11 length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an
12 estimate may be made by the department for any employer starting in business if average payrolls are not
13 available. This estimate must be adjusted by additional payment by the employer or refund by the department,
14 as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by
15 calculating all wages, as defined in 39-71-123, that are paid by an employer.

16 (27) "Permanent partial disability" means a physical condition in which a worker, after reaching maximum
17 medical healing:

18 (a) has a permanent impairment, as determined by the sixth edition of the American medical
19 association's Guides to the Evaluation of Permanent Impairment, that is established by objective medical findings
20 for the ratable condition. The ratable condition must be a direct result of the compensable injury or occupational
21 disease and may not be based exclusively on complaints of pain.

22 (b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability
23 to work; and

24 (c) has an actual wage loss as a result of the injury.

25 (28) "Permanent total disability" means a physical condition resulting from injury as defined in this
26 chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable
27 prospect of physically performing regular employment. Lack of immediate job openings is not a factor to be
28 considered in determining if a worker is permanently totally disabled.

29 (29) "Primary medical services" means treatment prescribed by the treating physician, for conditions
30 resulting from the injury or occupational disease, necessary for achieving medical stability.

1 (30) "Public corporation" means the state or a county, municipal corporation, school district, city, city
2 under a commission form of government or special charter, town, or village.

3 (31) "Reasonably safe place to work" means that the place of employment has been made as free from
4 danger to the life or safety of the employee as the nature of the employment will reasonably permit.

5 (32) "Reasonably safe tools or appliances" are tools and appliances that are adapted to and that are
6 reasonably safe for use for the particular purpose for which they are furnished.

7 (33) "Regular employment" means work on a recurring basis performed for remuneration in a trade,
8 business, profession, or other occupation in this state.

9 (34) (a) "Secondary medical services" means those medical services or appliances that are considered
10 not medically necessary for medical stability. The services and appliances include but are not limited to spas or
11 hot tubs, work hardening, physical restoration programs and other restoration programs designed to address
12 disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation
13 facilities.

14 (b) (i) As used in this subsection (34), "disability" means a condition in which a worker's ability to engage
15 in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions
16 may be combined with factors, such as the worker's age, education, work history, and other factors that affect
17 the worker's ability to engage in gainful employment.

18 (ii) Disability does not mean a purely medical condition.

19 (35) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a
20 business enterprise.

21 (36) "State's average weekly wage" means the mean weekly earnings of all employees under covered
22 employment, as defined and established annually by the department before July 1 and rounded to the nearest
23 whole dollar number.

24 (37) "Temporary partial disability" means a physical condition resulting from an injury, as defined in
25 39-71-119, in which a worker, prior to maximum healing:

26 (a) is temporarily unable to return to the position held at the time of injury because of a medically
27 determined physical restriction;

28 (b) returns to work in a modified or alternative employment; and

29 (c) suffers a partial wage loss.

30 (38) "Temporary service contractor" means a person, firm, association, partnership, limited liability

1 company, or corporation conducting business that hires its own employees and assigns them to clients to fill a
2 work assignment with a finite ending date to support or supplement the client's workforce in situations resulting
3 from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

4 (39) "Temporary total disability" means a physical condition resulting from an injury, as defined in this
5 chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

6 (40) "Temporary worker" means a worker whose services are furnished to another on a part-time or
7 temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in
8 situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and
9 projects.

10 (41) "Treating physician" means the person who, subject to the requirements of 39-71-1101, is primarily
11 responsible for delivery and coordination of the worker's medical services for the treatment of a worker's
12 compensable injury or occupational disease and is:

13 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges
14 to practice in one or more hospitals, if any, in the area where the physician is located;

15 (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

16 (c) a physician assistant licensed by the state of Montana under Title 37, chapter 20, if there is not a
17 treating physician, as provided for in subsection (41)(a), in the area where the physician assistant is located;

18 (d) an osteopath licensed by the state of Montana under Title 37, chapter 3;

19 (e) a dentist licensed by the state of Montana under Title 37, chapter 4;

20 (f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in
21 subsections (41)(a) through (41)(e) who is licensed or certified in another state; or

22 (g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8.

23 (42) "Work-based learning activities" means job training and work experience conducted on the premises
24 of a business partner as a component of school-based learning activities authorized by an elementary, secondary,
25 or postsecondary educational institution.

26 (43) "Year", unless otherwise specified, means calendar year."
27

28 **Section 12.** Section 40-1-104, MCA, is amended to read:

29 **"40-1-104. Application.** (1) All marriages contracted within this state prior to January 1, 1976, or outside
30 the state, that were valid at the time of the contract or subsequently validated by the laws of the place in which

1 they were contracted or by the domicile of the parties are valid in this state.

2 (2) A marriage entered into outside this state by a person under 18 years of age that is valid under the
 3 laws of the place in which the marriage was contracted is not recognized as valid in this state until the person
 4 turns 18 years of age."

5

6 **Section 13.** Section 40-1-202, MCA, is amended to read:

7 **"40-1-202. License issuance.** Except as provided in 40-1-301, when a marriage application has been
 8 completed and signed by both parties to a prospective marriage and at least one party has appeared before the
 9 clerk of the district court and paid the marriage license fee of \$53, the clerk of the district court shall issue a
 10 license to marry and a marriage certificate form upon being furnished:

11 (1) satisfactory proof that each party to the marriage will have attained 18 years of age at the time the
 12 marriage license is effective ~~or will have attained 16 years of age and has obtained judicial approval as provided~~
 13 ~~in 40-1-213;~~

14 (2) satisfactory proof that the marriage is not prohibited; and

15 (3) a certificate of the results of any medical examination required by the laws of this state or a waiver
 16 of the medical certificate requirement as provided in 40-1-203."

17

18 **Section 14.** Section 40-1-203, MCA, is amended to read:

19 **"40-1-203. Proof of age and medical certificate -- waiver of medical certificate requirement.** (1)
 20 Before a person authorized by law to issue marriage licenses may issue a marriage license, each applicant for
 21 a license shall provide a birth certificate or other satisfactory evidence of age ~~and, if the applicant is a minor, the~~
 22 ~~approval required by 40-1-213.~~ Each female applicant, unless exempted on medical grounds by rule of the
 23 department of public health and human services or as provided in subsection (2), shall file with the license issuer
 24 a medical certificate from a physician who is licensed to practice medicine and surgery in any state or United
 25 States territory or from any other person authorized by rule of the department to issue a medical certificate. The
 26 certificate must state that the applicant has been given a blood test for rubella immunity, that the report of the test
 27 results has been shown to the applicant tested, and that the other party to the proposed marriage contract has
 28 examined the report.

29 (2) In lieu of a medical certificate, applicants for a marriage license may file an informed consent form
 30 acknowledging receipt and understanding of written rubella immunity information and declining rubella immunity

1 testing. Filing of an informed consent form will effect a waiver of the requirement for a blood test for rubella
 2 immunity. Informed consent must be recorded on a form provided by the department and must be signed by both
 3 applicants. The informed consent form must include:

- 4 (a) the reasons for undergoing a blood test for rubella immunity;
- 5 (b) the information that the results would provide about the woman's rubella antibody status;
- 6 (c) the risks associated with remaining uninformed of the rubella antibody status, including the potential
 7 risks posed to a fetus, particularly in the first trimester of pregnancy; and
- 8 (d) contact information indicating where applicants may obtain additional information regarding rubella
 9 and rubella immunity testing.

10 (3) A person who by law is able to obtain a marriage license in this state is also able to give consent to
 11 any examinations, tests, or waivers required or allowed by this section. In submitting the blood specimen to the
 12 laboratory, the physician or other person authorized to issue a medical certificate shall designate that it is a
 13 premarital test."

14

15 **Section 15.** Section 40-1-401, MCA, is amended to read:

16 **"40-1-401. Prohibited marriages -- contracts.** (1) The following marriages are prohibited:

- 17 (a) a marriage entered into prior to the dissolution of an earlier marriage of one of the parties;
- 18 (b) a marriage between an ancestor and a descendant or between a brother and a sister, whether the
 19 relationship is by the half or the whole blood, or between first cousins;
- 20 (c) a marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship
 21 is by the half or the whole blood;
- 22 (d) a marriage between persons of the same sex; and
- 23 (e) a marriage entered into by a person under 18 years of age.

24 (2) Parties to a marriage prohibited under this section who cohabit after removal of the impediment are
 25 lawfully married as of the date of the removal of the impediment.

26 (3) Children born of a prohibited marriage are legitimate.

27 (4) A contractual relationship entered into for the purpose of achieving a civil relationship that is
 28 prohibited under subsection (1) is void as against public policy."

29

30 **Section 16.** Section 40-1-402, MCA, is amended to read:

1 **"40-1-402. Declaration of invalidity.** (1) The district court shall enter its decree declaring the invalidity
2 of a marriage entered into under the following circumstances:

3 (a) a party lacked capacity to consent to the marriage at the time that the marriage was entered into,
4 either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other
5 incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud involving
6 the essentials of marriage;

7 (b) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at the time
8 that the marriage was entered into, the other party did not know of the incapacity; or

9 ~~(c) a party was under 16 years of age or was 16 or 17 years of age and did not have the consent of the~~
10 ~~party's parents or guardian or judicial approval; or~~

11 ~~(d)(c)~~ the marriage is prohibited.

12 (2) A declaration of invalidity under subsections (1)(a) ~~through (1)(c)~~ and (1)(b) may be sought by any
13 of the following persons and must be commenced within the times specified, but a declaration of invalidity may
14 not be sought after the death of either party to the marriage:

15 (a) for lack of capacity to consent because of mental incapacity or infirmity, no later than 1 year after the
16 petitioner obtained knowledge of the described condition;

17 (b) for lack of capacity to consent because of the influence of alcohol, drugs, or other incapacitating
18 substances, no later than 1 year after the petitioner obtained knowledge of the described condition;

19 (c) for lack of capacity to consent because of force, duress, or fraud, no later than 2 years after the
20 petitioner obtained knowledge of the described condition;

21 (d) for the reason set forth in subsection (1)(b), by either party, no later than 4 years after the petitioner
22 obtained knowledge of the described condition;

23 ~~——(e) for the reason set forth in subsection (1)(c), by the underaged party or the party's parent or guardian,~~
24 ~~before the time that the underaged party reaches the age at which the party could have married without satisfying~~
25 ~~the omitted requirement.~~

26 (3) A declaration of invalidity for the reason set forth in subsection ~~(1)(d)~~ (1)(c) may be sought by either
27 party, the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at any time
28 before the death of one of the parties.

29 (4) Children born of a marriage declared invalid are legitimate.

30 (5) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a

1 retroactive decree on third parties, that the interests of justice would be served by making the decree not
2 retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of chapter 4 relating
3 to property rights of the spouses, maintenance, support, and parenting of children on dissolution of marriage are
4 applicable to nonretroactive decrees of invalidity.

5 (6) The clerk of the court shall give notice of the entry of a decree declaring the invalidity of a marriage:

6 (a) if the marriage is registered in this state, to the clerk of the district court of the county where the
7 marriage is registered, who shall enter the fact of invalidity in the book in which the marriage license and
8 certificate are recorded; or

9 (b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with
10 the request that the official enter the fact of invalidity in the appropriate record."

11

12 **Section 17.** Section 40-5-201, MCA, is amended to read:

13 **"40-5-201. Definitions.** As used in this part, the following definitions apply:

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

17 (2) (a) "Child" means:

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

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

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

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

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

25 (B) a public assistance payment has been made;

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

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

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

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

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

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

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

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

11 (8) "Obligee" means:

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

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

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

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

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

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

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

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

1 (b) a support order for spousal maintenance of the custodial parent; or
2 (c) fines, fees, penalties, interest, and other funds and costs that the department is authorized under this
3 chapter to collect by the use of any procedure available for the payment, enforcement, and collection of child
4 support or spousal maintenance or support.

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

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

10 (b) is issued by:

11 (i) a district court of this state;

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

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

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

16 (c) when the context requires, includes:

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

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

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

24

25 **Section 18.** Section 40-5-278, MCA, is amended to read:

26 **"40-5-278. Limited review of support order.** A party may apply for a limited review to address a
27 specific change that occurred after a support order was entered, that is not caused by an increase or decrease
28 in a party's annual net income, and that may have other effects on the existing support order. It is presumed that
29 all other facts relative to the existing support order, including income and deductions from income, remain
30 unchanged. Information gathered is limited to that which is necessary to verify the change, the value of the

1 change, and the expected duration of the change. The department's recommendation must be limited to whether
 2 the value of the change should be added to or subtracted from the amount of the existing support order. If a more
 3 detailed modification is required in a case presented for limited review, the case becomes subject to the
 4 requirements of 40-5-277. The circumstances in which a limited review process is available are confined to cases
 5 in which:

6 (1) there is a change in parenting time or residence of a child and a modified support order has not been
 7 entered as a result of the change;

8 (2) a child's need for day-care services has increased or decreased and the increase or decrease is
 9 expected to continue for at least 18 months;

10 (3) a child has developed special needs that did not exist when the existing support order was issued
 11 and the needs are expected to continue for at least 18 months or a special need considered in the support order
 12 no longer exists;

13 (4) the cost of health insurance coverage for a child provided by a parent has increased or decreased
 14 by 25% of the support order and the increase or decrease is expected to continue for at least 18 months;

15 (5) there has been the birth of another child to the parties and the child's needs are to be added to the
 16 existing support order; or

17 (6) a child has reached the age of majority, become emancipated, ~~married~~, entered military service, or
 18 died."

19

20 **Section 19.** Section 40-5-701, MCA, is amended to read:

21 **"40-5-701. Definitions.** As used in this part, the following definitions apply:

22 (1) (a) "Child" means:

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

25 (ii) a person under 19 years of age who is still in high school;

26 (iii) a person who is mentally or physically incapacitated when the incapacity began prior to that person
 27 reaching 18 years of age; and

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

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

30 (B) a public assistance payment has been made;

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

2 (D) the department has received a referral for IV-D services under the provisions of the Uniform
3 Interstate Family Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform
4 Reciprocal Enforcement of Support Act, or Title IV-D of the Social Security Act.

5 (b) The term may not be construed to limit the ability of the department to enforce a support order
6 according to its terms when the order provides for support extending beyond the time the child reaches 18 years
7 of age.

8 (2) "Conservation activity" means an activity for which a wildlife conservation license is issued by the
9 department of fish, wildlife, and parks pursuant to 87-2-201.

10 (3) "Delinquency" means a support debt or support obligation due under a support order in an amount
11 greater than or equal to 6 months' support payments as of the date of service of a notice of intent to suspend a
12 license.

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

14 (5) "License" means a license, certificate, registration, permit, or any other authorization issued by an
15 agency of the state of Montana granting a person a right or privilege to engage in a business, occupation,
16 profession, conservation activity, or any other privilege that is subject to suspension, revocation, forfeiture,
17 termination, or a declaration of ineligibility to purchase by the licensing authority prior to its date of expiration.

18 (6) "Licensing authority" means any department, division, board, agency, or instrumentality of this state
19 that issues a license.

20 (7) "Obligee" means:

21 (a) a person to whom a support debt or support obligation is owed; or

22 (b) a public agency of this or another state or an Indian tribe that has the right to receive current or
23 accrued support payments or that is providing support enforcement services under this chapter.

24 (8) "Obligor" means a person who owes a duty of support or who is subject to a subpoena or warrant
25 in a paternity or child support proceeding.

26 (9) "Order suspending a license" means an order issued by a support enforcement entity to suspend a
27 license. The order must contain the name of the obligor, the type of license, and, if known, the social security
28 number of the obligor.

29 (10) "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that
30 provides sufficient security to ensure compliance with a support order and that incorporates voluntary or

1 involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a support
2 debt and, if applicable, current and future support.

3 (11) "Subpoena" means a writ or order issued by a court or the department in a proceeding or as part
4 of an investigation related to the paternity or support of a child that commands a person to appear at a particular
5 place and time to testify or produce documents or things under the person's control.

6 (12) "Support debt" or "support obligation" means the amount created by the failure to provide or pay:

7 (a) support to a child under the laws of this or any other state or under a support order;

8 (b) court-ordered spousal maintenance or other court-ordered support for the child's custodial parent;

9 (c) fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is
10 authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and
11 collection of child support or spousal maintenance or support; or

12 (d) contributions ordered pursuant to 41-5-1525.

13 (13) "Support enforcement entity" means:

14 (a) in IV-D cases, the department; or

15 (b) in all other cases, the district court that entered the support order or a district court in which the
16 support order is registered.

17 (14) (a) "Support order" means an order that provides a determinable amount for temporary or final
18 periodic payment of a support debt or support obligation and that may include payment of a determinable or
19 indeterminable amount for insurance covering the child issued by:

20 (i) a district court of this state;

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

22 (iii) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or

23 (iv) an administrative agency of another state or an Indian tribe with a hearing function and process
24 similar to those of the department.

25 (b) If an action for child support is commenced under this part and the context so requires, support order
26 also includes:

27 (i) judgments and orders providing periodic payments for the maintenance or support of the child's
28 custodial parent; and

29 (ii) amounts for the recovery of fines, fees, penalties, interest, and other funds and costs that the support
30 enforcement entity is authorized to collect by the use of any procedure available to the entity for the payment,

1 enforcement, and collection of child support or spousal maintenance or support.

2 (15) "Suspension" includes the withdrawal, withholding, revocation, forfeiture, or nonissuance of a license
3 and license privileges.

4 (16) "Warrant" means a bench warrant, a warrant to appear, an order to show cause, or any other order
5 issued by a court relating to the appearance of a party in a paternity or child support proceeding.

6 (17) "IV-D case" means a case in which the department is providing support enforcement services as
7 a result of:

8 (a) an assignment of support rights under 53-2-613;

9 (b) a payment of public assistance;

10 (c) an application for support enforcement services under 40-5-203; or

11 (d) a referral for services from an agency of another state or an Indian tribe under the provisions of the
12 Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act,
13 the Uniform Interstate Family Support Act, or Title IV-D of the Social Security Act."
14

15 **Section 20.** Section 40-6-221, MCA, is amended to read:

16 **"40-6-221. Parenting, services, and earnings of child.** The father and mother of an ~~unmarried~~ a minor
17 child are equally entitled to the parenting, services, and earnings of the child. If either parent is dead or unable
18 or refuses to exercise parenting or has abandoned the family, the other parent is entitled to the parenting,
19 services, and earnings of the child, unless care of the child is determined otherwise pursuant to 40-4-221."
20

21 **Section 21.** Section 40-6-234, MCA, is amended to read:

22 **"40-6-234. When parental authority ceases.** The authority of the parent ceases:

23 (1) upon the appointment, by a court, of a guardian of the person of a child; or

24 ~~(2) upon the marriage of a child; or~~

25 ~~(3)(2) upon its attaining when a child attains majority."~~

26

27 **Section 22.** Section 40-6-501, MCA, is amended to read:

28 **"40-6-501. Purpose -- legislative intent -- parental rights -- definitions.** (1) The legislature recognizes
29 that the rights of parents to the custody and control of a child are based upon liberties secured by the United
30 States and Montana constitutions and that a parent's rights to that custody and control of a child are therefore

1 normally supreme to the interests of other persons. The legislature also recognizes a growing phenomenon in
2 which absent or otherwise unavailable parents have temporarily surrendered the custody and care of their
3 children to a grandparent or other relative for lengthy periods of time. Regardless of the purpose of the absence,
4 a child willfully surrendered to a relative for an extended time period still has the same needs as a child in the care
5 of its parents. In this situation, a caretaker relative assumes responsibilities for the child but has no legal right of
6 control over the child, a situation that interferes in the caretaker relative's ability to perform routine functions of
7 child rearing, including tending to the medical needs of the child. It is therefore the purpose of the legislature in
8 these instances to protect the rights of a child granted by Article II, section 15, of the Montana constitution by
9 granting a caretaker relative limited authority for a child left in the relative's care.

10 (2) It is the intent of the legislature that a caretaker relative given the responsibility of caring for a child
11 with little or no warning and without any other provision having been made for the child's care, such as the
12 appointment of a guardian or the provision of a power of attorney, be granted authority to consent to medical care
13 for the child without superseding any parental rights regarding the child.

14 (3) Section 40-6-502 and this section are not intended to affect the rights and responsibilities of a parent,
15 legal guardian, or other custodian regarding the child, do not grant legal custody of the child to the caretaker
16 relative, and do not grant authority to the caretaker relative to consent to the ~~marriage~~ or adoption of the child or
17 to receive notice of a medical procedure, including abortion, not consented to by the relative, if notice is required
18 by law, for the child except as expressly provided in this section.

19 (4) For the purposes of 40-6-502 and this section, the following definitions apply:

20 (a) "Caretaker relative" or "relative" means an individual related by blood, marriage, or adoption by
21 another individual to the child whose care is undertaken by the relative, but who is not a parent, foster parent,
22 stepparent, or legal guardian of the child.

23 (b) "Caretaker relative medical authorization affidavit" or "affidavit" means an affidavit completed in
24 compliance with 40-6-502.

25 (c) "Health care provider" means a person who provides medical care.

26 (d) "Medical care" means care by a health care provider, for which parental consent is normally required,
27 for the prevention, diagnosis, or treatment of a mental, physical, or dental injury or disease.

28 (e) "Parent" means a biological or adoptive parent or other legal guardian of a child."
29

30 **Section 23.** Section 41-1-401, MCA, is amended to read:

1 **"41-1-401. Definitions.** As used in this part, the following definitions apply:

2 (1) "Emancipated minor" means an individual under 18 years of age who:

3 ~~(a) is or has been married;~~

4 ~~(b)~~(a) is separated from the individual's parent, parents, or legal guardian and is self-supporting; or

5 ~~(c)~~(b) has been granted the right to consent to medical treatment pursuant to an order of limited
6 emancipation granted by a court pursuant to 41-3-438.

7 (2) "Health care facility" has the meaning provided in 50-5-101.

8 (3) "Health professional" includes only those persons licensed in Montana as physicians, psychiatrists,
9 psychologists, advanced practice registered nurses, dentists, physician assistants, professional counselors, or
10 social workers."

11

12 **Section 24.** Section 41-1-402, MCA, is amended to read:

13 **"41-1-402. Validity of consent of minor for health services.** (1) This part does not limit the right of
14 an emancipated minor to consent to the provision of health services or to control access to protected health care
15 information under applicable law.

16 (2) The consent to the provision of health services and to control access to protected health care
17 information by a health care facility or to the performance of health services by a health professional may be given
18 by a minor who professes or is found to meet any of the following descriptions:

19 ~~(a) a minor who professes to be or to have been married or to have had a child or graduated from high~~
20 school;

21 (b) a minor who professes to be or is found to be separated from the minor's parent, parents, or legal
22 guardian for whatever reason and is providing self-support by whatever means;

23 (c) a minor who professes or is found to be pregnant or afflicted with any reportable communicable
24 disease, including a sexually transmitted disease, or drug and substance abuse, including alcohol. This
25 self-consent applies only to the prevention, diagnosis, and treatment of those conditions specified in this
26 subsection. The self-consent in the case of pregnancy, a sexually transmitted disease, or drug and substance
27 abuse also obliges the health professional, if the health professional accepts the responsibility for treatment, to
28 counsel the minor or to refer the minor to another health professional for counseling.

29 (d) a minor who needs emergency care, including transfusions, without which the minor's health will be
30 jeopardized. If emergency care is rendered, the parent, parents, or legal guardian must be informed as soon as

1 practical except under the circumstances mentioned in this subsection (2).

2 (3) A minor who has had a child may give effective consent to health service for the child.

3 ~~(4) A minor may give consent for health care for the minor's spouse if the spouse is unable to give~~
4 ~~consent by reason of physical or mental incapacity."~~

5

6 **Section 25.** Section 41-1-404, MCA, is amended to read:

7 **"41-1-404. Financial responsibility of minor.** Consent of the minor shall not be subject to later
8 disaffirmance or revocation because of minority. The ~~spouse~~, parent, parents, or legal guardian of a consenting
9 minor shall not be liable for payment for such service unless the ~~spouse~~, parent, parents, or legal guardian have
10 expressly agreed to pay for such care. Minors so consenting for such health services shall thereby assume
11 financial responsibility for the cost of said services, except those who are proven unable to pay and who receive
12 the services in public institutions. If the minor is covered by health insurance, payment may be applied for
13 services rendered."

14

15 **Section 26.** Section 41-1-405, MCA, is amended to read:

16 **"41-1-405. Emergencies and special situations.** (1) A health professional may render or attempt to
17 render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation,
18 to any injured person or any person regardless of age who is in need of immediate health care when, in good
19 faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical
20 or mental damage.

21 (2) A health professional may render nonemergency services to minors for conditions that will endanger
22 the health or life of the minor if services would be delayed by obtaining consent from ~~spouse~~, a parent, parents,
23 or legal guardian.

24 (3) Consent may not be required of a minor who does not possess the mental capacity or who has a
25 physical disability that renders the minor incapable of giving consent and who has no known relatives or legal
26 guardians, if a physician determines that the health service should be given.

27 (4) Self-consent of minors does not apply to sterilization or abortion, except as provided in Title 50,
28 chapter 20, part 5."

29

30 **Section 27.** Section 41-1-406, MCA, is amended to read:

1 **"41-1-406. Psychiatric or psychological counseling under urgent circumstances.** When executed
 2 by a minor, the consent to the providing of psychiatric or psychological counseling by a physician or psychologist
 3 licensed to practice in this state, under circumstances when the need for the counseling is urgent in the opinion
 4 of the physician or psychologist involved because of danger to the life, safety, or property of a minor or of another
 5 person or persons and the consent of the ~~spouse~~, parent, custodian, or guardian of the minor cannot be obtained
 6 within a reasonable time to offset the danger to life or safety, is as valid and binding as if the minor had achieved
 7 majority. The minor has the same legal capacity to act and the same legal obligations with regard to the giving
 8 of consent as a person of full legal age and capacity, and the consent is not subject to disaffirmance by reason
 9 of minority. The consent of another person, including but not limited to a ~~spouse~~, parent, custodian, or guardian,
 10 is not necessary in order to authorize the psychiatric or psychological counseling of the minor. However, a parent
 11 may not be obligated for the cost of the counseling without the parent's consent."
 12

13 **Section 28.** Section 41-3-102, MCA, is amended to read:

14 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

15 (1) (a) "Abandon", "abandoned", and "abandonment" mean:

16 (i) leaving a child under circumstances that make reasonable the belief that the parent does not intend
 17 to resume care of the child in the future;

18 (ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting
 19 to the child and the person having physical custody of the child a firm intention to resume physical custody or to
 20 make permanent legal arrangements for the care of the child;

21 (iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts
 22 to identify and locate the parent have failed; or

23 (iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30
 24 days old to an emergency services provider, as defined in 40-6-402.

25 (b) The terms do not include the voluntary surrender of a child to the department solely because of
 26 parental inability to access publicly funded services.

27 (2) "A person responsible for a child's welfare" means:

28 (a) the child's parent, guardian, or foster parent or an adult who resides in the same home in which the
 29 child resides;

30 (b) a person providing care in a day-care facility;

1 (c) an employee of a public or private residential institution, facility, home, or agency; or

2 (d) any other person responsible for the child's welfare in a residential setting.

3 (3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or
4 neglect.

5 (4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized
6 by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding
7 of medically indicated treatment or medically indicated psychological care permitted or authorized under state
8 law.

9 (b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole
10 reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care for
11 a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to
12 ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the
13 child.

14 (5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of
15 the child and any other factor considered by the court to be relevant to the child.

16 (6) "Child" or "youth" means any person under 18 years of age.

17 (7) (a) "Child abuse or neglect" means:

18 (i) actual physical or psychological harm to a child;

19 (ii) substantial risk of physical or psychological harm to a child; or

20 (iii) abandonment.

21 (b) (i) The term includes:

22 (A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm
23 to a child by the acts or omissions of a person responsible for the child's welfare; or

24 (B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the
25 criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful
26 clandestine laboratory, as prohibited by 45-9-132.

27 (ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances
28 described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

29 (c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, this term
30 has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

1 (d) The term does not include self-defense, defense of others, or action taken to prevent the child from
2 self-harm that does not constitute physical or psychological harm to a child.

3 (8) "Concurrent planning" means to work toward reunification of the child with the family while at the
4 same time developing and implementing an alternative permanent plan.

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

6 (10) "Family group decisionmaking meeting" means a meeting that involves family members in either
7 developing treatment plans or making placement decisions, or both.

8 (11) "Indian child" means ~~any unmarried~~ a person who is under 18 years of age and who is either:

9 (a) a member of an Indian tribe; or

10 (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

11 (12) "Indian child's tribe" means:

12 (a) the Indian tribe in which an Indian child is a member or eligible for membership; or

13 (b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian
14 tribe, the Indian tribe with which the Indian child has the more significant contacts.

15 (13) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal
16 law or custom or under state law or to whom temporary physical care, custody, and control have been transferred
17 by the child's parent.

18 (14) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians
19 recognized by:

20 (a) the state of Montana; or

21 (b) the United States secretary of the interior as being eligible for the services provided to Indians or
22 because of the group's status as Indians, including any Alaskan native village as defined in federal law.

23 (15) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-1-503
24 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who
25 is 18 years of age or older.

26 (16) "Parent" means a biological or adoptive parent or stepparent.

27 (17) "Parent-child legal relationship" means the legal relationship that exists between a child and the
28 child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been
29 terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

30 (18) "Permanent placement" means reunification of the child with the child's parent, adoption, placement

1 with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living
2 arrangement until the child reaches 18 years of age.

3 (19) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting
4 in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone
5 fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or
6 death.

7 (20) "Physical neglect" means either failure to provide basic necessities, including but not limited to
8 appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to
9 weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the
10 child to be exposed to an unreasonable physical or psychological risk to the child.

11 (21) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or
12 other person responsible for the child's welfare:

13 (i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse
14 or neglect;

15 (ii) commits or allows sexual abuse or exploitation of the child;

16 (iii) induces or attempts to induce a child to give untrue testimony that the child or another child was
17 abused or neglected by a parent or other person responsible for the child's welfare;

18 (iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or
19 fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered
20 financial or other reasonable means to do so;

21 (v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by
22 failing to intervene or eliminate the risk; or

23 (vi) abandons the child.

24 (b) The term does not include a youth not receiving supervision solely because of parental inability to
25 control the youth's behavior.

26 (22) (a) "Protective services" means services provided by the department:

27 (i) to enable a child alleged to have been abused or neglected to remain safely in the home;

28 (ii) to enable a child alleged to have been abused or neglected who has been removed from the home
29 to safely return to the home; or

30 (iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and

1 the best interests of the child prevent reunification with parents or a return to the home.

2 (b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective
3 services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and
4 6 of this chapter.

5 (23) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are
6 injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of
7 acts of violence against another person residing in the child's home.

8 (b) The term may not be construed to hold a victim responsible for failing to prevent the crime against
9 the victim.

10 (24) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to the
11 federal Indian Child Welfare Act means:

12 (a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in
13 tribal customs as they pertain to family organization and child-rearing practices;

14 (b) a lay expert witness who has substantial experience in the delivery of child and family services to
15 Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the
16 Indian child's tribe; or

17 (c) a professional person who has substantial education and experience in providing services to children
18 and families and who possesses significant knowledge of and experience with Indian culture, family structure,
19 and child-rearing practices in general.

20 (25) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that
21 child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the
22 person.

23 (26) "Residential setting" means an out-of-home placement where the child typically resides for longer
24 than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

25 (27) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
26 indecent exposure, sexual abuse, ritual abuse of a minor, or incest, as described in Title 45, chapter 5.

27 (b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while
28 attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for
29 the child's welfare.

30 (28) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution

1 offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of
2 children as described in 45-5-625.

3 (29) (a) "Social worker" means an employee of the department who, before the employee's field
4 assignment, has been educated or trained in a program of social work or a related field that includes cognitive
5 and family systems treatment or who has equivalent verified experience or verified training in the investigation
6 of child abuse, neglect, and endangerment.

7 (b) This definition does not apply to any provision of this code that is not in this chapter.

8 (30) "Treatment plan" means a written agreement between the department and the parent or guardian
9 or a court order that includes action that must be taken to resolve the condition or conduct of the parent or
10 guardian that resulted in the need for protective services for the child. The treatment plan may involve court
11 services, the department, and other parties, if necessary, for protective services.

12 (31) "Unfounded" means that after an investigation, the investigating person has determined that the
13 reported abuse, neglect, or exploitation has not occurred.

14 (32) "Unsubstantiated" means that after an investigation, the investigator was unable to determine by a
15 preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.

16 (33) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's
17 life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that,
18 in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in
19 ameliorating or correcting the conditions.

20 (b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration,
21 or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

22 (i) the infant is chronically and irreversibly comatose;

23 (ii) the provision of treatment would:

24 (A) merely prolong dying;

25 (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

26 (C) otherwise be futile in terms of the survival of the infant; or

27 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the
28 treatment itself under the circumstances would be inhumane. For purposes of this subsection (33), "infant" means
29 an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since
30 birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year

1 of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches
2 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect
3 of children 1 year of age or older.

4 (34) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing,
5 to be or to have been abused, neglected, or abandoned."
6

7 **Section 29.** Section 41-5-103, MCA, is amended to read:

8 **"41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires otherwise,
9 the following definitions apply:

10 (1) "Adult" means an individual who is 18 years of age or older.

11 (2) "Agency" means any entity of state or local government authorized by law to be responsible for the
12 care or rehabilitation of youth.

13 (3) "Assessment officer" means a person who is authorized by the court to provide initial intake and
14 evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

15 (4) "Commit" means to transfer legal custody of a youth to the department or to the youth court.

16 (5) "Correctional facility" means a public or private, physically secure residential facility under contract
17 with the department and operated solely for the purpose of housing adjudicated delinquent youth.

18 (6) "Cost containment pool" means an account from which funds are allocated by the office of court
19 administrator under 41-5-132 to a judicial district that exceeds its annual allocation for juvenile out-of-home
20 placements, programs, and services or to the department for costs incurred under 41-5-1504.

21 (7) "Cost containment review panel" means the panel established in 41-5-131.

22 (8) "Court", when used without further qualification, means the youth court of the district court.

23 (9) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to
24 41-5-206.

25 (10)(a) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth
26 has been given.

27 (b) The term does not include a person who has only physical custody.

28 (11) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana
29 Youth Court Act as a youth:

30 (a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

1 (b) who has been placed on probation as a delinquent youth and who has violated any condition of
2 probation.

3 (12) "Department" means the department of corrections provided for in 2-15-2301.

4 (13) (a) "Department records" means information or data, either in written or electronic form, maintained
5 by the department pertaining to youth who are committed under 41-5-1513(1)(b) or who are under parole
6 supervision.

7 (b) Department records do not include information provided by the department to the department of
8 public health and human services' management information system or information maintained by the youth court
9 through the office of court administrator.

10 (14) "Detention" means the holding or temporary placement of a youth in the youth's home under home
11 arrest or in a facility other than the youth's own home for:

12 (a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into
13 custody and before final disposition of the youth's case;

14 (b) contempt of court or violation of a valid court order; or

15 (c) violation of a youth parole agreement.

16 (15) "Detention facility" means a physically restricting facility designed to prevent a youth from departing
17 at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

18 (16) "Emergency placement" means placement of a youth in a youth care facility for less than 45 days
19 to protect the youth when there is no alternative placement available.

20 (17) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a
21 youth ordinarily lives.

22 (18) "Final disposition" means the implementation of a court order for the disposition or placement of a
23 youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

24 (19) (a) "Formal youth court records" means information or data, either in written or electronic form, on
25 file with the clerk of district court pertaining to a youth under the jurisdiction of the youth court and includes
26 petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, and predispositional studies.

27 (b) The term does not include information provided by the youth court to the department of public health
28 and human services' management information system.

29 (20) "Foster home" means a private residence licensed by the department of public health and human
30 services for placement of a youth.

1 (21) "Guardian" means an adult:

2 (a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the
3 youth; and

4 (b) whose status is created and defined by law.

5 (22) "Habitual truancy" means recorded unexcused absences of 9 or more days or 54 or more parts of
6 a day, whichever is less, in 1 school year.

7 (23) (a) "Holdover" means a room, office, building, or other place approved by the board of crime control
8 for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed
9 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention
10 or shelter care facility.

11 (b) The term does not include a jail.

12 (24) (a) "Informal youth court records" means information or data, either in written or electronic form,
13 maintained by youth court probation offices pertaining to a youth under the jurisdiction of the youth court and
14 includes reports of preliminary inquiries, youth assessment materials, medical records, school records, and
15 supervision records of probationers.

16 (b) The term does not include information provided by the youth court to the department of public health
17 and human services' management information system.

18 (25) (a) "Jail" means a facility used for the confinement of adults accused or convicted of criminal
19 offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after
20 arrest.

21 (b) The term does not include a colocated juvenile detention facility that complies with 28 CFR, part 31.

22 (26) "Judge", when used without further qualification, means the judge of the youth court.

23 (27) "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles
24 in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

25 (28) "Law enforcement records" means information or data, either in written or electronic form, maintained
26 by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

27 (29) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that
28 gives a person the right and duty to:

29 (i) have physical custody of the youth;

30 (ii) determine with whom the youth shall live and for what period;

- 1 (iii) protect, train, and discipline the youth; and
- 2 (iv) provide the youth with food, shelter, education, and ordinary medical care.
- 3 (b) An individual granted legal custody of a youth shall personally exercise the individual's rights and
- 4 duties as guardian unless otherwise authorized by the court entering the order.
- 5 (30) "Necessary parties" includes the youth and the youth's parents, guardian, or custodian, ~~or spouse~~.
- 6 (31) (a) "Out-of-home placement" means placement of a youth in a program, facility, or home, other than
- 7 a custodial parent's home, for purposes other than preadjudicatory detention.
- 8 (b) The term does not include shelter care or emergency placement of less than 45 days.
- 9 (32) (a) "Parent" means the natural or adoptive parent.
- 10 (b) The term does not include:
- 11 (i) a person whose parental rights have been judicially terminated; or
- 12 (ii) the putative father of an illegitimate youth unless the putative father's paternity is established by an
- 13 adjudication or by other clear and convincing proof.
- 14 (33) "Probable cause hearing" means the hearing provided for in 41-5-332.
- 15 (34) "Regional detention facility" means a youth detention facility established and maintained by two or
- 16 more counties, as authorized in 41-5-1804.
- 17 (35) "Restitution" means payments in cash to the victim or with services to the victim or the general
- 18 community when these payments are made pursuant to a consent adjustment, consent decree, or other youth
- 19 court order.
- 20 (36) "Running away from home" means that a youth has been reported to have run away from home
- 21 without the consent of a parent or guardian or a custodian having legal custody of the youth.
- 22 (37) "Secure detention facility" means a public or private facility that:
- 23 (a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses
- 24 or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and
- 25 (b) is designed to physically restrict the movements and activities of youth or other individuals held in
- 26 lawful custody of the facility.
- 27 (38) "Serious juvenile offender" means a youth who has committed an offense that would be considered
- 28 a felony offense if committed by an adult and that is an offense against a person, an offense against property,
- 29 or an offense involving dangerous drugs.
- 30 (39) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

1 (40) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the
2 facilities enumerated in 41-5-347.

3 (41) "Short-term detention center" means a detention facility licensed by the department for the temporary
4 placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending
5 a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment
6 center, or shelter care facility.

7 (42) "State youth correctional facility" means the Pine Hills youth correctional facility in Miles City or the
8 Riverside youth correctional facility in Boulder.

9 (43) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing
10 food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from
11 or are without the care and supervision of their parents or guardians.

12 (44) "Victim" means:

13 (a) a person who suffers property, physical, or emotional injury as a result of an offense committed by
14 a youth that would be a criminal offense if committed by an adult;

15 (b) an adult relative of the victim, as defined in subsection (44)(a), if the victim is a minor; and

16 (c) an adult relative of a homicide victim.

17 (45) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

18 (46) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1203.

19 (47) "Youth assessment center" means a staff-secured location that is licensed by the department of
20 public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and
21 comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the
22 youth's behavior.

23 (48) "Youth care facility" has the meaning provided in 52-2-602.

24 (49) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which
25 a youth is alleged to be a delinquent youth or a youth in need of intervention and includes the youth court judge,
26 juvenile probation officers, and assessment officers.

27 (50) "Youth detention facility" means a secure detention facility licensed by the department for the
28 temporary substitute care of youth that is:

29 (a) (i) operated, administered, and staffed separately and independently of a jail; or

30 (ii) a colocated secure detention facility that complies with 28 CFR, part 31; and

1 (b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction
2 for contempt of court, violation of a parole agreement, or violation of a valid court order.

3 (51) "Youth in need of intervention" means a youth who is adjudicated as a youth and who:

4 (a) commits an offense prohibited by law that if committed by an adult would not constitute a criminal
5 offense, including but not limited to a youth who:

6 (i) violates any Montana municipal or state law regarding alcoholic beverages; or

7 (ii) continues to exhibit behavior, including running away from home or habitual truancy, beyond the
8 control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's
9 parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or
10 control the youth's behavior; or

11 (b) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion,
12 chooses to regard as a youth in need of intervention."

13

14 **Section 30.** Section 41-5-1402, MCA, is amended to read:

15 **"41-5-1402. Petition -- form and content.** (1) A petition initiating proceedings under this chapter must
16 be signed by the county attorney, must be entitled "In the Matter of...., a youth", and must set forth with specificity:

17 (a) the facts necessary to invoke the jurisdiction of the court, together with a statement alleging the youth
18 to be a delinquent youth or a youth in need of intervention;

19 (b) the charge of an offense, that must:

20 (i) state the name of the offense;

21 (ii) cite in customary form the statute, rule, or other provisions of law that the youth is alleged to have
22 violated;

23 (iii) state the facts constituting the offense in ordinary and concise language and in a manner that enables
24 a person of common understanding to know what is intended; and

25 (iv) state the time and place of the offense as definitely as possible;

26 (c) the name, birth date, and residence address of the youth;

27 (d) the names and residence addresses of the parents; or guardian; ~~or spouse~~ of the youth and, if the
28 parents; or guardian; ~~or spouse~~ do not reside or cannot be found within the state or if there is none, the adult
29 relative residing nearest to the court;

30 (e) whether the youth is in detention, a youth assessment center, or shelter care and, if so, the place of

1 detention, assessment, or shelter care and the time that the youth was detained or sheltered;

2 (f) if any of the matters required to be set forth by this section are not known, a statement of those
3 matters and the fact that they are not known; and

4 (g) a list of witnesses to be used in proving the commission of the offense or offenses charged in the
5 petition, together with their residence addresses. The names and addresses of any witnesses discovered after
6 the filing of the petition must be furnished to the youth upon request.

7 (2) When a county attorney files a delinquency petition alleging that a youth committed an offense that
8 would be a felony if committed by an adult and that is transferable under 41-5-206 or in which a youth 12 years
9 of age or older allegedly used a firearm, the county attorney shall indicate in the petition whether the county
10 attorney designates the proceeding an extended jurisdiction juvenile prosecution. When the county attorney files
11 a delinquency petition alleging that a youth committed any other offense that would be a felony if committed by
12 an adult, the county attorney may request that the court designate the proceeding an extended jurisdiction
13 juvenile prosecution."

14

15 **Section 31.** Section 50-20-503, MCA, is amended to read:

16 **"50-20-503. Definitions.** As used in this part, unless the context requires otherwise, the following
17 definitions apply:

18 (1) "Coerce" means to restrain or dominate the choice of a minor by force, threat of force, or deprivation
19 of food and shelter.

20 (2) "Consent" means a notarized written statement obtained on a form and executed in the manner
21 prescribed by 50-20-505 that is signed by a parent or legal guardian of a minor and that declares that the minor
22 intends to seek an abortion and that the parent or legal guardian of the minor consents to the abortion.

23 (3) "Emancipated minor" means a person under 18 years of age who ~~is or has been married or who~~ has
24 been granted an order of limited emancipation by a court as provided in 41-1-503.

25 (4) "Medical emergency" means a condition that, on the basis of the good faith clinical judgment of a
26 physician or physician assistant, so complicates the medical condition of a pregnant woman as to necessitate
27 the immediate abortion of the woman's pregnancy to avert the woman's death or a condition for which a delay
28 in treatment will create serious risk of substantial and irreversible impairment of a major bodily function.

29 (5) "Minor" means a pregnant female under 18 years of age who is not an emancipated minor.

30 (6) "Physical abuse" means any physical injury intentionally inflicted by a parent or legal guardian on a

1 minor.

2 (7) "Physician" means a person licensed to practice medicine under Title 37, chapter 3.

3 (8) "Physician assistant" means a person licensed pursuant to Title 37, chapter 20, who provides medical
4 services under the supervision of a physician.

5 (9) "Sexual abuse" has the meaning provided in 41-3-102."
6

7 **Section 32.** Section 70-1-404, MCA, is amended to read:

8 **"70-1-404. Conditions restraining marriage void.** Conditions imposing restraints upon marriage;
9 ~~except upon the marriage of a minor,~~ are void, but this does not affect limitations where the intent was not to
10 forbid marriage but only to give the use until marriage."
11

12 **Section 33.** Section 72-5-103, MCA, is amended to read:

13 **"72-5-103. Delegation of powers by parent or guardian.** (1) A parent or a guardian of a minor or
14 incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not
15 exceeding 6 months, any powers regarding care, custody, or property of the minor child or ward, except the
16 power to consent to ~~marriage~~ or adoption of a minor ward.

17 (2) The 6-month limitation provided in subsection (1) does not apply to:

18 (a) a member of the Montana national guard who serves for more than 180 continuous days on duty
19 pursuant to Title 10 or Title 32 of the United States Code or on state military duty as defined in 10-1-1003;

20 (b) a member of the active duty military forces of the United States; or

21 (c) a member of the federal reserves who serves for more than 180 continuous days on duty pursuant
22 to Title 10 of the United States Code.

23 (3) As used in this section, "federal reserves" means the United States air force reserve, army reserve,
24 navy reserve, marine corps reserve, or coast guard reserve."
25

26 **Section 34.** Section 72-5-104, MCA, is amended to read:

27 **"72-5-104. Informal discharge of duty to pay or deliver property to minor.** (1) A person under a duty
28 to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding \$5,000
29 a year, by paying or delivering the money or property to:

30 (a) the minor, if the minor has attained 18 years of age ~~or is married~~;

- 1 (b) any person having the care and custody of the minor with whom the minor resides;
 2 (c) a guardian of the minor; or
 3 (d) a financial institution incident to a deposit in a federally insured savings account in the sole name of
 4 the minor and giving notice of the deposit to the minor.

5 (2) This section does not apply if the person making payment or delivery has actual knowledge that a
 6 conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are
 7 pending.

8 (3) The persons, other than the minor or any financial institution under subsection (1)(d), receiving
 9 money or property for a minor are obligated to apply the money to the support and education of the minor but may
 10 not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services
 11 necessary for the minor's support. Any excess sums must be preserved for future support of the minor, and any
 12 balance not so used and any property received for the minor must be turned over to the minor when the minor
 13 attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for
 14 the proper application of the money or property."
 15

16 **Section 35.** Section 72-5-211, MCA, is amended to read:

17 **"72-5-211. Testamentary appointment of guardian of minor -- when effective -- priorities -- notice**
 18 **of appointment.** (1) The parent of a minor may appoint by will a guardian of ~~an unmarried~~ a minor. Subject to
 19 the right of the minor under 72-5-213, a testamentary appointment becomes effective upon filing the guardian's
 20 acceptance in the court in which the will is probated if before acceptance both parents are dead or the surviving
 21 parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later
 22 has priority.

23 (2) Upon acceptance of an appointment, written notice of acceptance must be given by the guardian to
 24 the minor and to the person having the minor's care or to the minor's nearest adult relations."
 25

26 **Section 36.** Section 72-5-222, MCA, is amended to read:

27 **"72-5-222. Court appointment of guardian of minor -- when allowed -- priority of testamentary**
 28 **appointment.** (1) The court may appoint a guardian for ~~an unmarried~~ a minor if all parental rights of custody have
 29 been terminated or if parental rights have been suspended or limited by circumstances or prior court order.

30 (2) A guardian appointed by will as provided in 72-5-211 and 72-5-212 whose appointment has not been

1 prevented or nullified under 72-5-213 has priority over any guardian who may be appointed by the court, but the
2 court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the
3 testamentary appointment within 30 days after notice of the guardianship proceeding."

4

5 **Section 37.** Section 72-5-231, MCA, is amended to read:

6 **"72-5-231. Powers and duties of guardian of minor.** Unless otherwise limited by the court, a guardian
7 of a minor has the powers and responsibilities of a parent who has not been deprived of custody of the parent's
8 minor and unemancipated child, except that a guardian is not legally obligated to provide from the guardian's own
9 funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In
10 particular and without qualifying the foregoing, a guardian has the following powers and duties:

11 (1) The guardian shall take reasonable care of the ward's personal effects and commence protective
12 proceedings if necessary to protect other property of the ward.

13 (2) The guardian may receive money payable for the support of the ward to the ward's parent, guardian,
14 or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust,
15 conservatorship, or custodianship. The guardian also may receive money or property of the ward paid or
16 delivered by virtue of 72-5-104. Any sums received must be applied to the ward's current needs for support, care,
17 and education. The guardian shall exercise due care to conserve any excess for the ward's future needs unless
18 a conservator has been appointed for the estate of the ward, in which case the excess must be paid at least
19 annually to the conservator. Sums received by the guardian may not be used for compensation for the guardian's
20 services except as approved by an order of the court or as determined by a duly appointed conservator other than
21 the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support
22 the ward or to pay sums for the welfare of the ward.

23 (3) The guardian is empowered to facilitate the ward's education, social, or other activities and to
24 authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this
25 consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been
26 illegal for a parent to have consented. A guardian may consent to the ~~marriage~~ or adoption of the ward.

27 (4) A guardian shall report the condition of the ward and of the ward's estate that has been subject to
28 the guardian's possession or control, as ordered by the court on petition of any person interested in the minor's
29 welfare or as required by court rule.

30 (5) Upon the death of a guardian's ward, the guardian, upon an order of the court and if there is no

1 personal representative authorized to do so, may make necessary arrangements for the removal, transportation,
 2 and final disposition, including burial, entombment, or cremation, of the ward's physical remains and for the
 3 receipt and disposition of the ward's clothing, furniture, and other personal effects that may be in the possession
 4 of the person in charge of the ward's care, comfort, and maintenance at the time of the ward's death."
 5

6 **Section 38.** Section 72-5-233, MCA, is amended to read:

7 **"72-5-233. Termination of appointment -- how effected -- certain liabilities and obligations not**
 8 **affected.** (1) A guardian's authority and responsibility terminates upon the death, resignation, or removal of the
 9 guardian or upon the minor's death, except as provided in subsection (2), adoption, ~~marriage~~, or attainment of
 10 majority, but termination does not affect a guardian's liability for prior acts or a guardian's obligation to account
 11 for funds and assets of the guardian's ward. Resignation of a guardian does not terminate the guardianship until
 12 it has been approved by the court. A testamentary appointment under an informally probated will terminates if
 13 the will is later denied probate in a formal proceeding.

14 (2) The guardian's authority and responsibility for a minor who dies while the minor is a ward of the
 15 guardian terminates when the guardian has completed arrangements for the final disposition of the ward's
 16 physical remains and personal effects as provided in 72-5-231(5)."
 17

18 **Section 39.** Section 72-5-427, MCA, is amended to read:

19 **"72-5-427. Powers of conservator in administration.** (1) A conservator has all of the powers conferred
 20 in this section and any additional powers conferred by law on trustees in this state. In addition, a conservator of
 21 the estate of ~~an unmarried~~ a minor under 18 years of age, as to whom no one has parental rights, has the duties
 22 and powers of a guardian of a minor described in 72-5-231 until the minor attains 18 years of age ~~or marries~~, but
 23 the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by Title
 24 72, chapter 5, part 2.

25 (2) A conservator has power, without court authorization or confirmation, to invest and reinvest funds
 26 of the estate as would a trustee.

27 (3) A conservator, acting reasonably in efforts to accomplish the purpose for which the conservator was
 28 appointed, may act without court authorization or confirmation to:

29 (a) collect, hold, and retain assets of the estate, including land in another state, until in the conservator's
 30 judgment disposition of the assets should be made, and the assets may be retained even though they include

- 1 an asset in which the conservator is personally interested;
- 2 (b) receive additions to the estate;
- 3 (c) continue or participate in the operation of any business or other enterprise;
- 4 (d) acquire an undivided interest in an estate asset in which the conservator in any fiduciary capacity
- 5 holds an undivided interest;
- 6 (e) invest and reinvest estate assets in accordance with subsection (2);
- 7 (f) deposit estate funds in a bank, including a bank operated by the conservator;
- 8 (g) acquire or dispose of an estate asset, including land in another state, for cash or on credit at public
- 9 or private sale and manage, develop, improve, exchange, partition, change the character of, or abandon an estate
- 10 asset;
- 11 (h) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any
- 12 improvements, raze existing or erect new party walls or buildings;
- 13 (i) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust
- 14 boundaries, adjust differences in valuation on exchange or partition by giving or receiving considerations, and
- 15 dedicate easements to public use without consideration;
- 16 (j) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew,
- 17 for a term within or extending beyond the term of the conservatorship;
- 18 (k) enter into a lease or arrangement for exploration and removal of minerals or other natural resources
- 19 or enter into a pooling or unitization agreement;
- 20 (l) grant an option involving disposition of an estate asset or take an option for the acquisition of any
- 21 asset;
- 22 (m) vote a security in person or by general or limited proxy;
- 23 (n) pay calls, assessments, and any other sums chargeable or accruing against or on account of
- 24 securities;
- 25 (o) sell or exercise stock subscription or conversion rights or consent, directly or through a committee
- 26 or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other
- 27 business enterprise;
- 28 (p) hold a security in the name of a nominee or in other form without disclosure of the conservatorship
- 29 so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in
- 30 connection with the stock so held;

1 (q) insure the assets of the estate against damage or loss and the conservator against liability with
2 respect to third persons;

3 (r) borrow money to be repaid from estate assets or otherwise or advance money for the protection of
4 the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the
5 estate or because of the holding or ownership of any estate assets, and the conservator has a lien on the estate
6 as against the protected person for advances made;

7 (s) pay or contest any claim or settle a claim by or against the estate or the protected person by
8 compromise, arbitration, or otherwise and release, in whole or in part, any claim belonging to the estate to the
9 extent that the claim is uncollectible;

10 (t) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the
11 collection, care, administration, and protection of the estate;

12 (u) allocate items of income or expense to either estate income or principal, as provided by law, including
13 creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion in mineral or
14 timber properties;

15 (v) pay any sum distributable to a protected person or a dependent of the person who is a minor or
16 incompetent, without liability to the conservator, by paying the sum to the distributee or by paying the sum for the
17 use of the distributee either to the person's guardian or, if none, to a relative or other person with custody of the
18 person;

19 (w) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are
20 associated with the conservator, to advise or assist the conservator in the performance of administrative duties,
21 act upon their recommendation without independent investigation, and instead of acting personally, employ one
22 or more agents to perform any act of administration, whether or not discretionary;

23 (x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate
24 assets and of the conservator in the performance of the conservator's duties; and

25 (y) execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested
26 in the conservator."

27

28 **Section 40.** Section 87-2-102, MCA, is amended to read:

29 **"87-2-102. Resident defined.** In determining whether a person is a resident for the purpose of issuing
30 resident hunting, fishing, and trapping licenses, the following provisions apply:

1 (1) (a) A member of the regular armed forces of the United States, a member's spouse or dependent,
2 as defined in 15-30-2115, who resides in the member's household, or a member of the armed forces of a foreign
3 government attached to the regular armed forces of the United States is considered a resident for the purposes
4 of this chapter if:

5 (i) the member was a resident of Montana under the provisions of subsection (4) and continues to meet
6 the residency criteria of subsections (4)(b) through (4)(e); or

7 (ii) the member is currently stationed in and assigned to active duty in Montana, has resided in Montana
8 for at least 30 days, and presents official assignment orders and proof of completion of a hunter safety course
9 approved by the department, as provided in 87-2-105, or a certificate verifying the successful completion of a
10 hunter safety course in any state or province. The 30-day residence requirement is waived in time of war.
11 Reassignment to another state, United States territory, or country terminates Montana residency for purposes
12 of this section, except that a reassigned member continues to qualify as a resident if the member's spouse and
13 dependents continue to physically reside in Montana and the member continues to meet the residency criteria
14 of subsections (4)(b) through (4)(e). The designation of Montana by a member of the regular armed forces as a
15 "home of record" or "home of residence" in that member's armed forces records does not determine the member's
16 residency for purposes of this section.

17 (b) A member of the regular armed forces of the United States who is otherwise considered a Montana
18 resident pursuant to subsection (1)(a)(i) does not forfeit that status as a resident because the member, by virtue
19 of that membership, also possesses, has applied for, or has received resident hunting, fishing, or trapping
20 privileges in another state or country.

21 (2) A person who has physically resided in Montana as the person's principal or primary home or place
22 of abode for 180 consecutive days and who meets the criteria of subsection (4) immediately before making
23 application for any license is eligible to receive resident hunting, fishing, and trapping licenses. As used in this
24 section, a vacant lot or a premises used solely for business purposes is not considered a principal or primary
25 home or place of abode.

26 (3) A person who obtains residency under subsection (2) may continue to be a resident for purposes of
27 this section by physically residing in Montana as the person's principal or primary home or place of abode for not
28 less than 120 days a year and by meeting the criteria of subsection (4) prior to making application for any resident
29 hunting, fishing, or trapping license.

30 (4) In addition to the requirements of subsection (2) or (3), a person shall meet the following criteria to

1 be considered a resident for purposes of this section:

2 (a) the person's principal or primary home or place of abode is in Montana;

3 (b) the person files Montana state income tax returns as a resident if required to file;

4 (c) the person licenses and titles in Montana as required by law any vehicles that the person owns and
5 operates in Montana;

6 (d) except as provided in subsection (1)(b), the person does not possess or apply for any resident
7 hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or
8 trapping privileges in another state or country; and

9 (e) if the person registers to vote, the person registers only in Montana.

10 (5) A student who is enrolled full-time in a postsecondary educational institution out of state and who
11 would qualify for Montana resident tuition or who otherwise meets the residence requirements of subsection (2)
12 or (3) is considered a resident for purposes of this section.

13 (6) An enrollee of a job corps camp located within the state of Montana is, after a period of 30 days within
14 Montana, considered a resident for the purpose of making application for a fishing license as long as the person
15 remains an enrollee in a Montana camp.

16 (7) A person who does not reside in Montana but who meets all of the following requirements is a
17 resident for purposes of obtaining hunting and fishing licenses:

18 (a) The person's principal employment is within this state and the income from this employment is the
19 principal source of the applicant's family income.

20 (b) The person is required to pay and has paid Montana income tax in a timely manner and proper
21 amount.

22 (c) The person has been employed within this state on a full-time basis for at least 12 consecutive
23 months immediately preceding each application.

24 (d) The person's state of residency has laws substantially similar to this subsection (7).

25 (8) ~~An unmarried~~ A minor is considered a resident for the purposes of this section if the minor's parents,
26 legal guardian, or parent with joint custody, sole custody, or visitation rights is a resident for purposes of this
27 section. The minor is considered a resident for purposes of this section regardless of whether the minor resides
28 primarily in the state or otherwise qualifies as a resident. The resident parent or guardian of the minor may be
29 required to show proof of the parental, guardianship, or custodial relationship to the minor.

30 (9) A person is not considered a resident for the purposes of this section if the person:

1 (a) claims residence in any other state or country for any purpose; or

2 (b) is an absentee property owner paying property tax on property in Montana.

3 (10) A license agent is not considered a representative of the state for the purpose of determining a
4 license applicant's residence status."

5

6 **NEW SECTION. Section 41. Repealer.** The following sections of the Montana Code Annotated are
7 repealed:

8 40-1-213. Judicial approval.

9 40-2-315. Marriage settlement by minors.

10

11 **NEW SECTION. Section 42. Saving clause.** [This act] does not affect rights and duties that mature,
12 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

13

14 **NEW SECTION. Section 43. Effective date.** [This act] is effective on passage and approval.

15

16 **NEW SECTION. Section 44. Applicability.** [This act] applies to marriages entered into on or after [the
17 effective date of this act].

18

- END -