

## 1 HOUSE BILL NO. 537

2 INTRODUCED BY B. MERCER

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING VENUE LAWS; ELIMINATING CHOICE  
5 OF VENUE IN THE FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY, IN CERTAIN  
6 INSTANCES; ESTABLISHING VENUE FOR CERTAIN OUT-OF-STATE LITIGANTS IN THE FIRST JUDICIAL  
7 DISTRICT COURT, LEWIS AND CLARK COUNTY; AND AMENDING SECTIONS 13-37-113, 15-1-108, 16-4-  
8 411, 19-2-401, 19-20-201, 22-3-429, 25-2-126, 30-14-111, 30-14-1413, 31-1-726, 32-1-912, 32-5-402, 33-1-  
9 804, 37-1-332, 37-7-1513, 50-5-112, 50-5-113, 50-6-504, 50-30-102, 53-9-131, 61-4-107, 61-8-812, 61-8-815,  
10 75-1-108, 75-2-401, 75-2-413, 75-2-514, 75-5-611, 75-5-631, 75-6-114, 75-10-228, 75-10-417, 75-10-424, 75-  
11 10-542, 75-10-711, 75-10-715, 75-10-1223, 75-11-223, 75-11-516, 75-11-518, 75-11-525, 76-4-109, 77-2-107,  
12 82-4-142, 82-4-254, 82-4-354, 82-4-361, 82-4-427, 82-4-441, 82-15-120, 85-2-431, AND 85-6-109, MCA."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15  
16 **Section 1.** Section 13-37-113, MCA, is amended to read:

17 **"13-37-113. Hiring of attorneys -- prosecutions.** The commissioner may hire or retain attorneys  
18 who are properly licensed to practice before the supreme court of the state of Montana to prosecute violations  
19 of chapter 35 of this title or this chapter. Any attorney retained or hired shall exercise the powers of a special  
20 attorney general, and the attorney may prosecute, subject to the control and supervision of the commissioner  
21 and the provisions of 13-35-240, 13-37-124, and 13-37-125, any criminal or civil action arising out of a violation  
22 of any provision of chapter 35 of this title or this chapter. All prosecutions must be brought in the state district  
23 court for the county in which a violation has occurred ~~or in the district court for Lewis and Clark County.~~ The  
24 authority to prosecute as prescribed by this section includes the authority to:

25 (1) institute proceedings for the arrest of persons charged with or reasonably suspected of criminal  
26 violations of chapter 35 of this title or this chapter;

27 (2) attend and give advice to a grand jury when cases involving criminal violations of chapter 35 of  
28 this title or this chapter are presented;

- 1           (3) draw and file indictments, informations, and criminal complaints;
- 2           (4) prosecute all actions for the recovery of debts, fines, penalties, or forfeitures accruing to the state
- 3 or county from persons convicted of violating chapter 35 of this title or this chapter; and
- 4           (5) do any other act necessary to successfully prosecute a violation of any provision of chapter 35 of
- 5 this title or this chapter."

6

7           **Section 2.** Section 15-1-108, MCA, is amended to read:

8           **"15-1-108. Prohibition on sales -- restrictions on certain disclosures and uses.** (1) (a) Subject to

9 subsection (1)(b), a tax return preparer may not sell, receive any consideration for, or otherwise disclose tax

10 return information for the benefit of the tax return preparer or of any persons controlling, controlled by, or under

11 common control of the tax return preparer.

12           (b) The provisions of this section do not prevent the bona fide sale of a tax return preparation,

13 accounting, or law practice in the ordinary course of business.

14           (2) A tax return preparer may not disclose return information to a tax return preparer located outside

15 of the state unless:

16           (a) (i) the taxpayer has requested the disclosure; or

17           (ii) disclosure is required in connection with an internal audit;

18           (b) the tax return preparer located outside of the state agrees:

19           (i) not to sell or receive any consideration for the tax return information; and

20           (ii) not to otherwise disclose the tax return information for its benefit or for the benefit of any person

21 controlling, controlled by, or under common control with it; and

22           (c) the local tax return preparer indemnifies the taxpayer for the damages provided for in subsection

23 (3)(d) for any sale or disclosure by the tax return preparer located outside the state in violation of subsection

24 (2)(b).

25           (3) (a) A person whose tax return information is or will be used or disclosed in violation of subsection

26 (1) or (2) may bring an action to enjoin the violation and for the recovery of damages.

27           (b) An action under this section may be brought in Montana district court in the county where the

28 plaintiff resides or maintains its principal place of business ~~or in the Montana first judicial district.~~

1 (c) If the court finds that the defendant is violating or has violated any of the provisions of subsection  
2 (1) or (2), the court shall enjoin the defendant. It is not necessary to allege or prove actual damages to the  
3 plaintiff.

4 (d) In addition to injunctive relief, the plaintiff is entitled to recover from the defendant in an amount  
5 that is the greater of three times the amount of actual damages sustained by the plaintiff or up to \$10,000.

6 (e) In any action brought under this section, the court may award the prevailing party reasonable  
7 attorney fees incurred in prosecuting or defending the action. A person who brings an action on the person's  
8 own behalf without an attorney may receive equivalent fees at the judge's discretion.

9 (4) A tax return preparer may disclose or use return information:

10 (a) for quality or peer reviews;

11 (b) when authorized to do so by Montana law;

12 (c) when required to do so by federal or state law; or

13 (d) pursuant to a court subpoena or administrative summons.

14 (5) As used in this section, the following definitions apply:

15 (a) (i) "Return information" includes a taxpayer's identity, the nature, source, or amount of the  
16 taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax  
17 liability, tax withheld, deficiencies, overassessments, or tax payments, or any other data received by, recorded  
18 by, prepared by, furnished to, or collected by the department with respect to a return or with respect to the  
19 determination of the existence or possible existence of liability or the amount of a liability of any person under  
20 this title for any tax, penalty, interest, fine, forfeiture, or other imposition or any offense.

21 (ii) The term does not include data in a form that cannot be associated with or otherwise identify,  
22 directly or indirectly, a particular taxpayer.

23 (b) "Tax return preparer" means:

24 (i) any person who:

25 (A) is engaged in the business of preparing tax returns;

26 (B) is engaged in the business of providing services in connection with the preparation of tax returns;

27 (C) prepares or assists in preparing or presents to the public that the person prepares or assists in  
28 preparing a tax return for compensation;

- 1 (D) develops software used to prepare or file tax returns; or  
 2 (E) is an electronic return originator; and  
 3 (ii) an individual who, as a part of that individual's duties or employment with a person described in  
 4 subsection (5)(b)(i), performs services relating to:  
 5 (A) the preparation or filing of or the provision of services in connection with the preparation or filing of  
 6 a tax return; or  
 7 (B) the development of software used to prepare or file tax returns."

8

9 **Section 3.** Section 16-4-411, MCA, is amended to read:

10 **"16-4-411. Appeals concerning alcoholic beverages laws.** (1) Any interested party shall have the  
 11 right to appeal any decision of the department of revenue concerning the issuance, transfer, suspension, or  
 12 revocation of alcoholic beverages licenses to the district court in the county in which the issuance, transfer,  
 13 suspension, or revocation occurred ~~or, at the appellant's option, in the district court of the first judicial district.~~

14 (2) The appeal must be in conformity with the provisions of Title 2, chapter 4, part 7."  
 15

15

16 **Section 4.** Section 19-2-401, MCA, is amended to read:

17 **"19-2-401. Location of board -- jurisdiction and venue for judicial review -- quorum -- officers  
 18 and employees.** (1) The board shall maintain its office in the city of Helena. Jurisdiction and venue for judicial  
 19 review of final administrative decisions of the board are in the judicial district in which the appealing party  
 20 resides or, if the person resides outside the state, the first judicial district, Lewis and Clark County,~~unless~~  
 21 ~~otherwise stipulated by the parties.~~

22 (2) A quorum of the board is four members.

23 (3) The board shall elect one of its members presiding officer. The board may appoint a committee of  
 24 one or more of its members to perform routine acts, such as retirement of members and fixing of retirement  
 25 benefits, approval of death claims, and correction of records necessary in the administration of the systems in  
 26 accordance with the provisions of chapters 2, 3, 5 through 9, 13, 17, and 50 of this title and in accordance with  
 27 the rules of the board. The attorney general is the legal counsel for the board."  
 28

28

1           **Section 5.** Section 19-20-201, MCA, is amended to read:

2           **"19-20-201. Administration by retirement board -- jurisdiction and venue for judicial review. (1)**

3           The retirement board shall administer and operate the retirement system within the limitations prescribed by  
4           this chapter, and it is the duty of the retirement board to:

5           (a) establish rules necessary for the proper administration and operation of the retirement system;

6           (b) approve or disapprove all expenditures necessary for the proper operation of the retirement  
7           system;

8           (c) keep a record of all its proceedings, which must be open to public inspection;

9           (d) submit a report to the office of budget and program planning detailing the fiscal transactions for  
10          the 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and  
11          securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of  
12          the retirement system;

13          (e) keep in convenient form the data that is necessary for actuarial valuation of the various funds of  
14          the retirement system and for checking the experience of the retirement system;

15          (f) prepare an annual valuation of the assets and liabilities of the retirement system that includes an  
16          analysis of how market performance is affecting the actuarial funding of the retirement system;

17          (g) require the board's actuary to conduct and report on a periodic actuarial investigation into the  
18          actuarial experience of the retirement system;

19          (h) prescribe a form for membership application that will provide adequate and necessary information  
20          for the proper operation of the retirement system;

21          (i) annually determine the rate of regular interest as prescribed in 19-20-501;

22          (j) establish and maintain the funds of the retirement system in accordance with the provisions of part  
23          6 of this chapter; and

24          (k) perform other duties and functions as are required to properly administer and operate the  
25          retirement system.

26          (2) In discharging its duties, the board, or an authorized representative of the board, may conduct  
27          hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue  
28          subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence,

1 memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104.

2 (3) The board may send retirement-related material to employers and the campuses of the Montana  
3 university system for delivery to employees. To facilitate distribution, employers and those campuses shall each  
4 provide the board with a point of contact who is responsible for distribution of the material provided by the  
5 board.

6 (4) The board shall make available to the state administration and veterans' affairs interim committee  
7 and to the legislature pursuant to 5-11-210 copies of the annual actuarial valuation and reports required  
8 pursuant to subsections (1)(d), (1)(f), and (1)(g).

9 (5) Jurisdiction and venue for judicial review of the board's final administrative decisions is the judicial  
10 district in which the appealing party resides or, if the person resides outside the state, the first judicial district,  
11 Lewis and Clark County, unless otherwise stipulated by the parties."

12

13 **Section 6.** Section 22-3-429, MCA, is amended to read:

14 **"22-3-429. Requests for consultation -- public notice -- appeal of findings.** (1) A federal or state  
15 entity that acts upon a proposed federal or state action or an application for a federal, state, or local permit,  
16 license, lease, or funding may request the views of the historic preservation officer concerning:

17 (a) the recommended eligibility for a register listing of any heritage property or paleontological  
18 remains;

19 (b) the effects of a proposed action, activity, or undertaking on heritage property or remains that are  
20 found to be eligible for register listing; and

21 (c) the appropriateness of a proposed plan for the avoidance or mitigation of effects.

22 (2) A request for comment pursuant to 16 U.S.C. 470f may be made simultaneously with a request  
23 pursuant to subsection (1). The historic preservation officer shall respond in writing to a request within 30  
24 calendar days of receiving the request and shall address each property in the request and each topic of the  
25 request. In the event that an agency requests simultaneous consultation for two or more criteria under this  
26 section, the agency and historic preservation officer may extend the 30-day review period by mutual  
27 agreement. If the historic preservation officer fails to comment within that time, that failure is construed as  
28 concurrence with the agency's recommendation. In the event of failure to comment on a specific undertaking,

1 the historic preservation officer may not change a finding for a heritage property at a later date.

2 (3) If the proposed finding is that a heritage property or paleontological remains are involved and that  
3 a proposed activity will have an adverse impact on the property or remains, the proposed finding must address  
4 all properties or remains involved and describe the characteristics that illustrate the qualities that make the  
5 property or remains eligible for inclusion in the register. If the proposed finding includes a conclusion that a  
6 property or remains may be eligible but additional information or study is needed to reach an eligibility finding,  
7 the finding must specify the type and amount of information required in accordance with standards and  
8 guidelines as provided in 22-3-428.

9 (4) At the time that the state or federal agency requests the views of the historic preservation officer  
10 as provided in subsection (1), the agency shall provide notice to the applicant, affected property owners, and  
11 other interested persons of the request for consultation and shall identify locations where the submitted  
12 materials may be reviewed.

13 (5) The applicant and any affected property owners have 20 days in which to appeal the historic  
14 preservation officer's finding to the director. The appeal notice must include a written statement of reasons for  
15 the appeal and any additional supporting information.

16 (6) The director of the historical society shall issue a final finding within 30 days of the expiration of  
17 the 20-day appeal period provided for under subsection (5). The issuance of this finding does not limit the rights  
18 of any applicant or affected property owner to challenge a finding under an existing federal law, regulation, or  
19 regulatory or administrative process.

20 (7) If the applicant or an affected property owner is not satisfied with the finding of the director of the  
21 historical society concerning the eligibility of the property or remains for listing in the register or a finding of  
22 adverse effect to the property, the entity or property owner may appeal the finding to the district court in ~~either~~  
23 ~~Lewis and Clark County~~ or a county in which affected property is located. Appeal may be taken by filing a  
24 petition with the district court citing the decision by the director of the historical society and the evidence upon  
25 which the director relied. On appeal, the district court may consider any documents supporting or not supporting  
26 the finding, the written comments received by the director of the historical society, and any additional evidence  
27 that may be submitted to the court. The district court may substitute its judgment for the judgment of the director  
28 of the historical society as to the weight of the evidence.

1 (8) A state agency may not require a historical or archaeological survey as a condition of applying for  
 2 or receiving a state or local permit, license, lease, or funding for a project to reconstruct or maintain an irrigation  
 3 ditch or appurtenant structures or equipment when the ditch or appurtenant structures or equipment are in use  
 4 or have been in use within the past 10 years, if the reconstruction or maintenance will occur within the existing  
 5 ditch easement and if the project is not on land owned by the state."  
 6

7 **Section 7.** Section 25-2-126, MCA, is amended to read:

8 **"25-2-126. Against state and political subdivisions.** (1) ~~The~~Except as provided in subsection (2),  
 9 the proper place of trial for an action against the state is in the county in which the claim arose or in Lewis and  
 10 Clark County. In an action against the state brought by a resident of the state, the county of the plaintiff's  
 11 residence is also a proper place of trial.

12 (2) For an action that challenges the issuance, approval, renewal, or denial of a permit, license,  
 13 authorization, or certificate by a state agency, the action must be brought in the county in which the permitted,  
 14 licensed, authorized, or certificated activity would occur. If an activity would occur in more than one county, any  
 15 county in which the activity would occur is a proper place for an action.

16 ~~(2)~~(3) The proper place of trial for an action against a political subdivision is in the county in which the  
 17 claim arose or in any county where the political subdivision is located."  
 18

19 **Section 8.** Section 30-14-111, MCA, is amended to read:

20 **"30-14-111. Department to restrain unlawful acts.** (1) Whenever the department has reason to  
 21 believe that a person is using, has used, or is about to knowingly use any method, act, or practice declared by  
 22 30-14-103 to be unlawful and that proceeding would be in the public interest, the department may bring an  
 23 action in the name of the state against the person to restrain by temporary or permanent injunction or  
 24 temporary restraining order the use of the unlawful method, act, or practice upon giving appropriate notice to  
 25 that person.

26 (2) The notice must state generally the relief sought and be served in accordance with 30-14-115 at  
 27 least 20 days before the hearing of the action in which the relief sought is a temporary or permanent injunction.  
 28 The notice for a temporary restraining order is governed by 27-19-315.



1 (3) An action under this section may be brought in the district court in the county in which a person  
 2 resides or has the person's principal place of business or in the district court of Lewis and Clark County if the  
 3 person is not a resident of this state or does not maintain a place of business in this state.

4 (4) A district court is authorized to issue temporary or permanent injunctions or temporary restraining  
 5 orders to restrain and prevent violations of this part, and an injunction must be issued without bond."  
 6

7 **Section 9.** Section 30-14-1413, MCA, is amended to read:

8 **"30-14-1413. Civil remedies -- venue -- burden of proof.** (1) The sale of any goods or services by  
 9 an unregistered seller or telemarketer that is required to register is void. A person obtaining a judgment for  
 10 damages, attorney fees, or costs against a seller or telemarketer pursuant to this section has the right to be  
 11 reimbursed for those damages, attorney fees, or costs from any bond or security posted by the seller or  
 12 telemarketer pursuant to the provisions of 30-14-1404.

13 (2) A person that suffers a loss or harm as a result of an unfair and deceptive act or practice or a  
 14 prohibited act or practice is entitled to recover actual damages or \$500, whichever is greater, attorney fees,  
 15 court costs, and any other remedies provided by law.

16 (3) In addition to the remedies provided in subsection (2), a person that suffers harm as a result of an  
 17 abusive act or practice is entitled to receive injunctive or declaratory relief.

18 (4) (a) The department or a county attorney, on behalf of state residents who have suffered a loss or  
 19 harm as a result of a violation of this part, may seek any remedy provided by Title 30, chapter 14, part 1.

20 (b) The proper place for trial for an action based on a claim of a violation of this part is the district  
 21 court of ~~Lewis and Clark County~~ or in the county in which the alleged violation occurred.

22 (5) In a civil proceeding alleging a violation of this part, the burden of proving an exemption under 30-  
 23 14-1405 or an exception to a definition contained in 30-14-1403 is on the person claiming the exemption or  
 24 exception."  
 25

26 **Section 10.** Section 31-1-726, MCA, is amended to read:

27 **"31-1-726. Investigations by department -- subpoenas -- oaths -- examination of witnesses and**  
 28 **evidence.** (1) The department may investigate any matter, upon complaint or otherwise, if it appears that a

1 person has engaged in or offered to engage in any act or practice that is in violation of any provision of this part  
2 or any rule adopted or order issued by the department pursuant to this part.

3 (2) The department may issue subpoenas to compel the attendance of witnesses and the production  
4 of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction,  
5 control, or supervision pertaining to this part. The department may administer oaths and affirmations to a  
6 person whose testimony is required.

7 (3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by  
8 the subpoena, a judge of the district court ~~of Lewis and Clark County or in~~ the county in which the licensed  
9 premises ~~are located~~ or the person's principal place of business is located or where the person resides may,  
10 upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear  
11 before the department to give testimony and produce evidence as may be required. The clerk of court shall  
12 then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to  
13 appear at the time and place designated in the subpoena.

14 (4) If a person served with a subpoena refuses to obey the subpoena or to give testimony or produce  
15 evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3,  
16 chapter 1, part 5.

17 (5) Failure to comply with a court-ordered subpoena is punishable pursuant to 45-7-309."  
18

19 **Section 11.** Section 32-1-912, MCA, is amended to read:

20 **"32-1-912. Enforcement of notices or orders.** The director may apply to the district court of the  
21 county in which the home office of the institution is located or to the district court for Lewis and Clark County if  
22 the institution does not have a home office in this state for the enforcement of any effective and outstanding  
23 notice or order issued under this part. The court has jurisdiction to require compliance therewith."  
24

25 **Section 12.** Section 32-5-402, MCA, is amended to read:

26 **"32-5-402. Investigations by department -- subpoenas -- oaths -- examination of witnesses and**  
27 **evidence.** (1) The department may at any time investigate any transaction with borrowers and may examine  
28 the books, accounts, and records to discover violations of this chapter by:

1 (a) a licensee; or

2 (b) a person who the department has reason to believe is violating or is about to violate this chapter.

3 (2) The department or the department's authorized representatives must be given free access to the  
4 offices and places of business and files of all licensees. The department may investigate any matter, upon  
5 complaint or otherwise, if it appears that a person has engaged in or offered to engage in any act or practice  
6 that is in violation of any provision of this chapter or any rule adopted or order issued by the department  
7 pursuant to this chapter.

8 (3) The department may issue subpoenas to compel the attendance of witnesses and the production  
9 of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction,  
10 control, or supervision pertaining to this chapter. The department may administer oaths and affirmations to a  
11 person whose testimony is required.

12 (4) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by  
13 the subpoena, a judge of the district court of ~~Lewis and Clark County~~ or in the county in which the licensed  
14 premises are located or in the district court of Lewis and Clark County if no licensed premises are maintained in  
15 the state may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the  
16 witness to appear before the department to give testimony and produce evidence as may be required. The clerk  
17 of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it  
18 is directed to appear at the time and place designated in the subpoena.

19 (5) If a person served with a subpoena refuses to obey the subpoena or to give testimony or produce  
20 evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3,  
21 chapter 1, part 5.

22 (6) Failure to comply with the requirements of a court-ordered subpoena is punishable pursuant to 45-  
23 7-309."

24

25 **Section 13.** Section 33-1-804, MCA, is amended to read:

26 **"33-1-804. Civil penalty -- civil action for collection of penalty.** (1) A health carrier or a managed  
27 care organization violating 33-1-802 or 33-1-803 is subject to a civil penalty, as provided in 33-1-317, for each  
28 violation. Each day of violation constitutes a separate violation for the purposes of this section.

1           (2) In addition to other enforcement methods provided by law, the commissioner may bring a civil  
2 action ~~in the district court of the first judicial district~~ in the district court in the county in which the violation  
3 occurred to collect the civil penalty provided for in subsection (1) from a person violating a provision of this part.  
4 If the violation occurred in more than one county, any county in which the violation occurred is a proper venue  
5 for a civil action. An amount collected by the commissioner pursuant to this section must be deposited in the  
6 general fund."

7

8           **Section 14.** Section 37-1-332, MCA, is amended to read:

9           **"37-1-332. Administrative proceedings to stop unlicensed practice -- board of realty regulation**  
10 **-- state electrical board -- board of plumbers.** (1) For purposes of this section, the term "board" means the  
11 board of realty regulation provided for in 2-15-1757, the state electrical board provided for in 2-15-1764, or the  
12 board of plumbers provided for in 2-15-1765.

13           (2) (a) After investigation under 37-1-317, the board may establish a screening panel to determine if  
14 there is reasonable cause to believe a person has engaged in or is engaging in any act or practice constituting  
15 unlicensed practice of a profession or occupation.

16           (b) If reasonable cause is found under subsection (2)(a), the board may initiate a contested case  
17 proceeding against the person pursuant to the Montana Administrative Procedure Act in Title 2, chapter 4, part  
18 6.

19           (3) Following a contested case proceeding, the board may apply any of the following sanctions to a  
20 person found to have engaged in the unlicensed practice of a profession or occupation:

21           (a) impose a civil penalty not to exceed \$1,500 for each violation and not to exceed a total of \$5,000  
22 for all related violations; and

23           (b) require the person to pay up to \$5,000 for the costs of the administrative proceedings, including  
24 but not limited to costs allowable under Title 25, chapter 10, but excluding the costs of investigation and the  
25 board's attorney fees.

26           (4) Judicial review of any contested case under this section must be filed ~~with the first judicial district~~  
27 ~~or~~ in the district where the violation occurred, pursuant to the Montana Administrative Procedure Act in Title 2,  
28 chapter 4, part 7.

1 (5) The remedies provided by this section are in addition to all other remedies or actions that may be  
2 taken, including those authorized by 37-1-317. The remedies provided by this section may not be applied either  
3 to licensees or to employees of licensees."  
4

5 **Section 15.** Section 37-7-1513, MCA, is amended to read:

6 **"37-7-1513. Unlawful acts -- sanctions -- civil penalties.** (1) A pharmacist who fails to submit  
7 prescription drug order information to the board as required by 37-7-1503 or who willfully submits incorrect  
8 prescription drug order information must be referred to the board for consideration of administrative sanctions.

9 (2) A person or entity authorized to possess registry information pursuant to 37-7-1504 through 37-7-  
10 1506 who willfully discloses or uses the registry information in violation of 37-7-1504 through 37-7-1506 or a  
11 rule adopted pursuant to this part must be referred to the appropriate licensing board or regulatory agency for  
12 consideration of administrative sanctions.

13 (3) In addition to the administrative sanction provided in subsection (2), a person or entity who willfully  
14 discloses or uses information from the registry in violation of 37-7-1504 through 37-7-1506 or a rule adopted  
15 pursuant to this part is liable for a civil penalty of up to \$10,000 for each violation.

16 (4) The board may institute and maintain in the name of the state any enforcement proceedings under  
17 this section. Upon request of the department, the attorney general shall petition the district court to impose,  
18 assess, and recover the civil penalty.

19 (5) An action under subsection (3) or to enforce this part or a rule adopted under this part may be  
20 brought in the district court of any county where a violation occurs ~~or, if mutually agreed on by the parties in the~~  
21 ~~action, in the district court of the first judicial district.~~

22 (6) Civil penalties collected pursuant to this part must be deposited into the state special revenue  
23 account created pursuant to 37-7-1511 and must be used to defray the expenses of the board in establishing  
24 and maintaining the registry and in discharging its administrative and regulatory duties in relation to this part."  
25

26 **Section 16.** Section 50-5-112, MCA, is amended to read:

27 **"50-5-112. Civil penalties.** (1) A person who commits an act prohibited by 50-5-111 is subject to a  
28 civil penalty not to exceed \$1,000 for each day that a facility is in violation of a provision of part 1 or 2 of this

1 chapter or of a rule, license provision, or order adopted or issued pursuant to part 1 or 2. The department or,  
2 upon request of the department, the county attorney of the county in which the health care facility in question is  
3 located may petition the court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant  
4 to this section is in the county in which the facility is located ~~or in the first judicial district.~~

5 (2) In determining the amount of penalty to be assessed for an alleged violation under this section,  
6 the court shall consider:

7 (a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or  
8 patient;

9 (b) the degree of harm to the health, safety, rights, security, or welfare of a resident or patient;

10 (c) the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this  
11 chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2; and

12 (d) other matters as justice may require.

13 (3) A penalty collected under this section must be deposited in the state general fund.

14 (4) In addition to or exclusive of the remedy provided in subsection (1), the department may pursue  
15 remedies available for a violation, as provided for in 50-5-108, or any other remedies available to it."

16

17 **Section 17.** Section 50-5-113, MCA, is amended to read:

18 **"50-5-113. Criminal penalties.** (1) A person is guilty of a criminal offense under this section if the  
19 person knowingly conceals material information about the operation of the facility or does any of the following  
20 and by doing so threatens the health or safety of one or more individuals entrusted to the care of the person:

21 (a) commits an act prohibited by 50-5-111;

22 (b) omits material information or makes a false statement or representation in an application, record,  
23 report, or other document filed, maintained, or used for compliance with the provisions of part 1 or 2 of this  
24 chapter or with rules, license provisions, or orders adopted or issued pursuant to part 1 or 2; or

25 (c) destroys, alters, conceals, or fails to file or maintain any record, information, or application  
26 required to be maintained or filed in compliance with a provision of part 1 or 2 of this chapter or in compliance  
27 with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

28 (2) A person convicted under subsection (1) is subject to a fine of not more than \$1,000 for the first

1 offense and not more than \$2,000 for each subsequent offense for each day that a facility is in violation of a  
 2 provision of part 1 or 2 of this chapter or of a rule, license provision, or order adopted or issued pursuant to part  
 3 1 or 2.

4 (3) In determining the amount of penalty to be assessed for an alleged violation under this section,  
 5 the court shall consider:

6 (a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or  
 7 patient;

8 (b) the degree of harm to the health, safety, rights, security, or welfare of a resident or patient;

9 (c) the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this  
 10 chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2; and

11 (d) other matters as justice may require.

12 (4) Prosecution under this section does not bar enforcement under any other section of this chapter or  
 13 pursuit of any other appropriate remedy by the department.

14 (5) Venue for prosecution pursuant to this section is in the county in which the facility is located ~~or in~~  
 15 ~~the first judicial district.~~

16 (6) A penalty collected under this section must be deposited in the state general fund."  
 17

18 **Section 18.** Section 50-6-504, MCA, is amended to read:

19 **"50-6-504. Enforcement -- cessation order -- hearing -- injunction.** (1) If the department receives  
 20 information that an AED is being used in violation of this part or a rule adopted by the department pursuant to  
 21 50-6-503, it may send a written order to the entity responsible for use of the AED, as specified in the plan  
 22 prepared pursuant to 50-6-502, ordering the entity to cease the violation immediately. The order is effective  
 23 upon receipt by the entity, and the entity shall comply with the terms of the order. If the department receives  
 24 information that the violation has been corrected, the department may rescind its order by sending a notice to  
 25 that effect to the entity. The rescission is effective upon its receipt by the entity.

26 (2) The entity may request a hearing to contest an order issued by the department pursuant to  
 27 subsection (1) by submitting a written request to the department within 30 days after receipt of the order. A  
 28 request for a hearing does not stay the enforceability of the department's order. The hearing must be held

1 within 30 days after the department receives the request, unless the hearings officer sets a later date for good  
 2 cause. The hearing must be held pursuant to the contested case provisions of the Montana Administrative  
 3 Procedure Act.

4 (3) Either the county attorney for the county in which the violation occurred or the department may  
 5 bring an action in the district court of the county where the violation occurred ~~or in the district court for Lewis  
 6 and Clark County~~ to enforce the department's order or to directly enjoin a violation of this part or a rule adopted  
 7 pursuant to 50-6-503."

8

9 **Section 19.** Section 50-30-102, MCA, is amended to read:

10 **"50-30-102. Definitions.** In this chapter, the following definitions apply:

11 (1) "Commerce" means all commerce within this state and subject to the jurisdiction of this state and  
 12 includes the operation of any business or service establishment.

13 (2) "Court" means, ~~in 50-30-220, the district court for the first judicial district and, in 50-30-306 and 50-  
 14 30-307, the district court~~ in the district where the violation occurs.

15 (3) "Department" means the department of public health and human services provided for in 2-15-  
 16 2201.

17 (4) "Person" includes an individual, partnership, corporation, or association or its legal representative  
 18 or agent."

19

20 **Section 20.** Section 53-9-131, MCA, is amended to read:

21 **"53-9-131. Appeals.** After the office has made final determination concerning any matter relating to a  
 22 claim, if the claimant disputes the office's determination, the claimant may appeal to the district court for the  
 23 county in which the claimant resides ~~or Lewis and Clark County~~ for review. Review on appeal must be in  
 24 conformity with 2-4-701 through 2-4-704 of the Montana Administrative Procedure Act. The judge, after a  
 25 hearing, shall make a final determination concerning the dispute and issue an appropriate order affirming,  
 26 reversing, or modifying the office's determination."

27

28 **Section 21.** Section 61-4-107, MCA, is amended to read:



1           **"61-4-107. Cease and desist order.** (1) When the department has reasonable cause to believe, from  
2 information furnished to it or from an investigation made by it, that a person is engaged in any business  
3 regulated by this part without being licensed as required or if a dealer licensed under this part is conducting an  
4 off-premises sale without a permit, as required by 61-4-123(4), it shall immediately issue and serve upon the  
5 person, in person or by certified mail, a cease and desist order requiring the person to cease and desist from  
6 further engaging in that business or from conducting an off-premises sale without a permit. If the person fails to  
7 comply with the order, the department shall file an action in the district court of ~~Lewis and Clark County~~the  
8 county in which the conduct occurred to restrain and enjoin the person from engaging in the business. The  
9 court shall proceed in the action as in other actions for injunctions.

10           (2) When the department has reasonable cause to believe, from an investigation made by it or  
11 information furnished to it by a law enforcement officer, that a dealer or wholesaler has been improperly  
12 licensed, has used a dealer's license in a manner other than as authorized in this title, has provided a material  
13 misstatement of fact in an application for a license, is not qualified as a dealer or wholesaler under the  
14 requirements of this title, or has engaged in criminal conduct that renders the dealer or wholesaler unfit for  
15 licensure, the department may revoke the dealer's or wholesaler's license."

16

17           **Section 22.** Section 61-8-812, MCA, is amended to read:

18           **"61-8-812. Operation of out-of-service vehicle -- criminal and civil penalties -- suspension of**  
19 **commercial driver's license.** (1) A person may not operate a commercial motor vehicle during any period in  
20 which the person, the commercial motor vehicle the person is operating, or the motor carrier operation is  
21 subject to an out-of-service order issued under state or federal authority.

22           (2) A violation of this section is a misdemeanor and a person convicted of a violation of this section  
23 shall be fined not less than \$25 or more than \$500 for the first offense and not less than \$25 or more than  
24 \$1,000 for each subsequent offense.

25           (3) (a) In addition to the misdemeanor penalties provided in subsection (2) and suspension of the  
26 person's commercial driver's license as provided in subsection (4), a person who violates an out-of-service  
27 order issued under state or federal authority is subject to a civil penalty not to exceed \$2,985 for a first offense  
28 and a civil penalty of \$5,970 for a second or subsequent offense.

1 (b) The department or the county attorney of the county in which the violation occurred may petition  
2 the district court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant to this section  
3 is in the county in which the violation occurred ~~or in the first judicial district~~.

4 (c) A civil penalty collected under this section must be deposited in the state general fund.

5 (4) Upon receipt of notice from a court of competent jurisdiction or another licensing jurisdiction that a  
6 person holding a commercial driver's license has been convicted of violating an out-of-service order, the  
7 department shall suspend the person's commercial driver's license for:

8 (a) 6 months for a first conviction;

9 (b) 2 years for a second conviction if the vehicle being operated by the person at the time of the  
10 violation was not transporting placardable hazardous materials or was not designed or being used to transport  
11 more than 15 passengers, inclusive of the driver; and

12 (c) 3 years:

13 (i) for a second conviction if the vehicle:

14 (A) being operated at the time of the violation was transporting placardable hazardous materials; or

15 (B) was designed or being used to transport more than 15 passengers, inclusive of the driver; and

16 (ii) for a third or subsequent conviction.

17 (5) For purposes of this section, an offender is considered to have been previously convicted if less  
18 than 10 years have elapsed between the commission of the present offense and a previous conviction.

19 (6) A temporary or probationary commercial driver's license may not be issued while a commercial  
20 driver's license is suspended under subsection (4)."

21

22 **Section 23.** Section 61-8-815, MCA, is amended to read:

23 **"61-8-815. Employer not to permit operation of commercial motor vehicle in violation of state**

24 **law or federal regulation -- criminal and civil penalties.** (1) An employer may not knowingly allow, require,  
25 permit, or authorize a person to operate a commercial motor vehicle in the United States:

26 (a) during any period in which the person's commercial driver's license has been suspended, revoked,  
27 or canceled by a state, the person has lost the privilege to operate a commercial motor vehicle in a state, or the  
28 person has been disqualified from operating a commercial motor vehicle;

- 1 (b) during any period in which the person has more than one commercial driver's license;  
 2 (c) during any period in which the person, the commercial motor vehicle the person is operating, or  
 3 the motor carrier operation is subject to an out-of-service order; or  
 4 (d) in violation of a federal, state, or local law or regulation pertaining to railroad crossings.

5 (2) A violation of this section is a misdemeanor, and a person convicted of a violation of this section  
 6 shall be fined not less than \$25 or more than \$500 for the first offense and not less than \$25 or more than  
 7 \$1,000 for each subsequent offense.

8 (3) (a) Except as provided in subsection (3)(b), an employer who violates this section is subject to a  
 9 civil penalty of not less than \$2,750 or more than \$11,000.

10 (b) An employer who violates subsection (1)(d) is subject to a civil penalty of not more than \$10,000.

11 (c) The department or the county attorney of the county in which the violation occurred may petition  
 12 the district court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant to this section  
 13 is in the county in which the violation occurred ~~or in the first judicial district.~~

14 (d) A civil penalty collected under this section must be deposited in the state general fund."  
 15

16 **Section 24.** Section 75-1-108, MCA, is amended to read:

17 "**75-1-108. Venue.** A proceeding to challenge an action taken pursuant to parts 1 through 3, 10, and  
 18 11 must be brought in the county in which the activity that is the subject of the action is proposed to occur or will  
 19 occur. If an activity is proposed to occur or will occur in more than one county, the proceeding may be brought  
 20 in any of the counties in which the activity is proposed to occur or will occur."  
 21

22 **Section 25.** Section 75-2-401, MCA, is amended to read:

23 "**75-2-401. Enforcement -- notice -- order for corrective action -- administrative penalty.** (1)  
 24 When the department believes that a violation of this chapter, a rule adopted under this chapter, or a condition  
 25 or limitation imposed by a permit issued pursuant to this chapter has occurred, it may cause written notice to be  
 26 served personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the  
 27 provision of this chapter, the rule, or the permit condition or limitation alleged to be violated and the facts  
 28 alleged to constitute a violation. The notice may include an order to take necessary corrective action within a

1 reasonable period of time stated in the order or an order to pay an administrative penalty, or both. The order  
2 becomes final unless, within 30 days after the notice is received, the person named requests in writing a  
3 hearing before the board. On receipt of the request, the board shall schedule a hearing.

4 (2) If, after a hearing held under subsection (1), the board finds that violations have occurred, it shall  
5 issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking  
6 of other corrective action or assess an administrative penalty, or both. As appropriate, an order issued as part  
7 of a notice or after a hearing may prescribe the date by which the violation must cease; time limits for particular  
8 action in preventing, abating, or controlling the emissions; or the date by which the administrative penalty must  
9 be paid. If, after a hearing on an order contained in a notice, the board finds that a violation has not occurred or  
10 is not occurring, it shall rescind the order.

11 (3) (a) An action initiated under this section may include an administrative civil penalty of not more  
12 than \$10,000 for each day of each violation, not to exceed a total of \$80,000. If an order issued by the board  
13 under this section requires the payment of an administrative civil penalty, the board shall state findings and  
14 conclusions describing the basis for its penalty assessment.

15 (b) Administrative penalties collected under this section must be deposited in the alternative energy  
16 revolving loan account established in 75-25-101.

17 (c) Penalties imposed by an administrative order under this section may not be assessed for any day  
18 of violation that occurred more than 2 years prior to the issuance of the initial notice and order by the  
19 department under subsection (1).

20 (d) In determining the amount of penalty to be assessed for an alleged violation under this section,  
21 the department or board, as appropriate, shall consider the penalty factors in 75-1-1001.

22 (e) The department may bring a judicial action to enforce a final administrative order issued pursuant  
23 to this section. The action must be filed in the district court of the county in which the violation occurred ~~or, if~~  
24 ~~mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark~~  
25 ~~County.~~

26 (4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,  
27 part 6, apply to a hearing conducted under this section.

28 (5) Instead of issuing the order provided for in subsection (1), the department may either:

1 (a) require that the alleged violators appear before the board for a hearing at a time and place  
2 specified in the notice and answer the charges complained of; or

3 (b) initiate action under 75-2-412 or 75-2-413.

4 (6) This chapter does not prevent the board or department from making efforts to obtain voluntary  
5 compliance through warning, conference, or any other appropriate means.

6 (7) In connection with a hearing held under this section, the board may and on application by a party  
7 shall compel the attendance of witnesses and the production of evidence on behalf of the parties."  
8

9 **Section 26.** Section 75-2-413, MCA, is amended to read:

10 **"75-2-413. Civil penalties -- venue -- effect of action -- presumption of continuing violation**  
11 **under certain circumstances.** (1) (a) A person who violates any provision of this chapter, a rule adopted  
12 under this chapter, or any order or permit made or issued under this chapter is subject to a civil penalty not to  
13 exceed \$10,000 for each violation. Each day of each violation constitutes a separate violation. The department  
14 may institute and maintain in the name of the state any enforcement proceedings under this section. Upon  
15 request of the department, the attorney general or the county attorney of the county of violation shall petition  
16 the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal  
17 penalty provided for in 75-2-412, except for civil penalties for violation of the operating permit program required  
18 by Subchapter V of the federal Clean Air Act.

19 (b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty  
20 factors in 75-1-1001.

21 (2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order, or  
22 permit made or issued under this chapter by injunction or other appropriate civil remedies.

23 (b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or issued  
24 under this chapter may be brought in the district court of any county where a violation occurs or is threatened  
25 or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and  
26 Clark County.

27 (3) If the department has notified a person operating a commercial hazardous waste incinerator of a  
28 violation and if the department makes a prima facie showing that the conduct or events giving rise to the

1 violations are likely to have continued or recurred past the date of notice, the days of violation are presumed to  
 2 include the date of the notice and every day after the notice until the person establishes that continuous  
 3 compliance has been achieved. This presumption may be overcome to the extent that the person operating a  
 4 commercial hazardous waste incinerator can prove by a preponderance of evidence that there were intervening  
 5 days when a violation did not occur, that the violation was not continuing in nature, or that the telemetering  
 6 device was compromised or otherwise tampered with.

7 (4) Money collected under this section must be deposited in the alternative energy revolving loan  
 8 account established in 75-25-101. This subsection does not apply to money collected by an approved local air  
 9 pollution control program."  
 10

11 **Section 27.** Section 75-2-514, MCA, is amended to read:

12 **"75-2-514. Civil penalties -- venue for actions to recover.** (1) (a) A district court may assess a civil  
 13 penalty of not more than \$25,000 a day upon a person that violates any provision of this part, a rule adopted  
 14 under this part, or a permit or order issued under this part. In the case of a continuing violation, each day the  
 15 violation continues constitutes a separate violation.

16 (b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty  
 17 factors in 75-1-1001.

18 (2) An action under this section is not a bar to enforcement by injunction or other appropriate civil or  
 19 administrative remedies.

20 (3) Penalties provided for in subsection (1) are recoverable in an action brought by the department.  
 21 The action must be filed in the district court of the county in which the violation occurred ~~or, if mutually agreed~~  
 22 ~~on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County."~~

23

24 **Section 28.** Section 75-5-611, MCA, is amended to read:

25 **"75-5-611. Violation of chapter -- administrative actions and penalties -- notice and hearing.** (1)  
 26 When the department has reason to believe that a violation of this chapter, a rule adopted under this chapter, or  
 27 a condition of a permit or authorization required by a rule adopted under this chapter has occurred, it may have  
 28 a written notice letter served personally or by certified mail on the alleged violator or the violator's agent. The

1 notice letter must state:

2 (a) the provision of statute, rule, permit, or approval alleged to be violated;

3 (b) the facts alleged to constitute the violation;

4 (c) the specific nature of corrective action that the department requires;

5 (d) as applicable, the amount of the administrative penalty that will be assessed by order under  
6 subsection (2) if the corrective action is not taken within the time provided under subsection (1)(e); and

7 (e) as applicable, the time within which the corrective action is to be taken or the administrative  
8 penalty will be assessed. For the purposes of this chapter, service by certified mail is complete on the date of  
9 receipt. Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until the  
10 provisions of subsection (1) have been complied with.

11 (2) (a) The department may issue an administrative notice and order in lieu of the notice letter  
12 provided under subsection (1) if the department's action:

13 (i) does not involve assessment of an administrative penalty; or

14 (ii) seeks an administrative penalty only for an activity that it believes and alleges has violated or is  
15 violating 75-5-605.

16 (b) A notice and order issued under this section must meet all of the requirements specified in  
17 subsection (1).

18 (3) In a notice and order given under subsection (1), the department may require the alleged violator  
19 to appear before the board for a public hearing and to answer the charges. The hearing must be held no sooner  
20 than 15 days after service of the notice and order, except that the board may set an earlier date for hearing if it  
21 is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the  
22 alleged violator if the alleged violator shows good cause for delay.

23 (4) If the department does not require an alleged violator to appear before the board for a public  
24 hearing, the alleged violator may request the board to conduct the hearing. The request must be in writing and  
25 must be filed with the department no later than 30 days after service of a notice and order under subsection (2).  
26 If a request is filed, a hearing must be held within a reasonable time. If a hearing is not requested within 30  
27 days after service upon the alleged violator, the opportunity for a contested case appeal to the board under Title  
28 2, chapter 4, part 6, is waived.

1 (5) If a contested case hearing is held under this section, it must be public and must be held in the  
2 county in which the violation is alleged to have occurred ~~or in Lewis and Clark County.~~

3 (6) (a) After a hearing, the board shall make findings and conclusions that explain its decision.

4 (b) If the board determines that a violation has occurred, it shall also issue an appropriate order for  
5 the prevention, abatement, or control of pollution, the assessment of administrative penalties, or both.

6 (c) If the order requires abatement or control of pollution, the board shall state the date or dates by  
7 which a violation must cease and may prescribe timetables for necessary action in preventing, abating, or  
8 controlling the pollution.

9 (d) If the order requires payment of an administrative penalty, the board shall explain how it  
10 determined the amount of the administrative penalty.

11 (e) If the board determines that a violation has not occurred, it shall declare the department's notice  
12 void.

13 (7) The alleged violator may petition the board for a rehearing on the basis of new evidence, which  
14 petition the board may grant for good cause shown.

15 (8) Instead of issuing an order, the board may direct the department to initiate appropriate action for  
16 recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.

17 (9) (a) Except as provided in subsection (9)(d), an action initiated under this section may include an  
18 administrative penalty of not more than \$10,000 for each day of each violation; however, the maximum penalty  
19 may not exceed \$100,000 for any related series of violations.

20 (b) Administrative penalties collected under this section must be deposited in the general fund.

21 (c) In determining the amount of penalty to be assessed to a person, the department and board shall  
22 consider the penalty factors in 75-1-1001, rules promulgated under 75-5-201, and subsection (9)(d).

23 (d) A person who commits a violation that adversely affects the department's administration of this  
24 chapter, a rule adopted pursuant to this chapter, or a condition of a permit or authorization issued under this  
25 chapter but does not harm or have the potential to harm human health, the environment, or the department's  
26 ability to protect human health or the environment may not be assessed a penalty of more than \$500 for each  
27 day of the violation, not to exceed \$5,000 for all days of the same violation.

28 (e) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title



1 2, chapter 4, part 6, apply to a hearing conducted under this section."

2

3 **Section 29.** Section 75-5-631, MCA, is amended to read:

4 **"75-5-631. Civil penalties -- injunctions not barred -- venue.** (1) In an action initiated by the  
5 department to collect civil penalties against a person who is found to have violated this chapter or a rule, permit,  
6 effluent standard, or order issued under the provisions of this chapter, the person is subject to a civil penalty not  
7 to exceed \$25,000. Each day of violation constitutes a separate violation.

8 (2) Action under this section does not bar enforcement of this chapter or of rules or orders issued  
9 under it by injunction or other appropriate remedy.

10 (3) The department shall institute and maintain enforcement proceedings in the name of the state.  
11 Penalties are recoverable in an action brought by the department. The action must be brought in the district  
12 court of the county in which the violation occurred ~~or, if mutually agreed on by the parties in the action, in the~~  
13 ~~district court of the first judicial district, Lewis and Clark County.~~

14 (4) In determining the amount of penalties under this section, the district court shall take into account  
15 the penalty factors in 75-1-1001."

16

17 **Section 30.** Section 75-6-114, MCA, is amended to read:

18 **"75-6-114. Civil penalty.** (1) In an action initiated by the department to collect civil penalties against a  
19 person who is found to have violated this part or a rule, order, or condition of approval issued under this part,  
20 the person is subject to a civil penalty not to exceed \$10,000. The action must be filed in the district court of the  
21 county in which the violation occurred ~~or, if mutually agreed on by the parties in the action, in the district court of~~  
22 ~~the first judicial district, Lewis and Clark County.~~

23 (2) Each day of violation constitutes a separate violation.

24 (3) Action under this section does not bar enforcement of this part or a rule, order, or condition of  
25 approval issued under this part by injunction or other appropriate remedy.

26 (4) When seeking penalties under this section, the department shall take into account the penalty  
27 factors in 75-1-1001 in determining an appropriate settlement or judgment, as appropriate.

28 (5) Civil penalties collected pursuant to this section must be deposited in the state general fund."

1

2           **Section 31.** Section 75-10-228, MCA, is amended to read:

3           **"75-10-228. Civil penalties.** (1) A person who violates a provision of this part, a rule adopted or an  
4 order issued under this part, or a license provision is subject to an administrative penalty not to exceed \$250 or  
5 a civil penalty not to exceed \$1,000. Each day of violation constitutes a separate violation.

6           (2) The department may institute and maintain in the name of the state any enforcement proceedings  
7 under this section. The enforcement or collection action must be brought in the district court of the county in  
8 which the violation occurred ~~or, if mutually agreed upon by the parties, in the district court of the first judicial~~  
9 ~~district, Lewis and Clark County.~~ Upon request of the department, the attorney general or the county attorney of  
10 the county where the violation occurred shall petition the district court to impose, assess, and recover the civil  
11 penalty.

12           (3) Penalties assessed under this section must be determined in accordance with the penalty factors  
13 in 75-1-1001.

14           (4) Fines and penalties collected under this section must be deposited in the solid waste management  
15 account provided for in 75-10-117."

16

17           **Section 32.** Section 75-10-417, MCA, is amended to read:

18           **"75-10-417. Civil penalties.** (1) A person who violates any provision of this part, a rule adopted under  
19 this part, an order of the department or the board, or a permit is subject to a civil penalty not to exceed \$10,000  
20 for each violation. Each day of violation constitutes a separate violation. Penalties assessed under this section  
21 must be determined in accordance with the penalty factors in 75-1-1001.

22           (2) The department may institute and maintain in the name of the state any enforcement proceedings  
23 under this section. Upon request of the department, the attorney general or the county attorney of the county of  
24 violation shall petition the district court to impose, assess, and recover the civil penalty. An action to recover  
25 penalties must be brought in the district court of the county in which the violation occurred ~~or, if mutually agreed~~  
26 ~~on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.~~

27           (3) Action under this section does not bar:

28           (a) enforcement of this part, rules adopted under this part, orders of the department or the board, or

1 permits by injunction or other appropriate remedy; or

2 (b) action under 75-10-418.

3 (4) Money collected under this section must be deposited in the state general fund."

4

5 **Section 33.** Section 75-10-424, MCA, is amended to read:

6 **"75-10-424. Administrative penalty.** (1) The department may assess a person who violates a  
7 provision of this part or a rule adopted under this part an administrative penalty, not to exceed \$10,000 for each  
8 violation. Each day of violation constitutes a separate violation, but the maximum penalty may not exceed  
9 \$100,000 for any related series of violations. Assessment of an administrative penalty under this section must  
10 be made in conjunction with an order or administrative action authorized by this chapter.

11 (2) An administrative penalty may not be assessed under this section unless the alleged violator is  
12 given notice and opportunity for a hearing before the board pursuant to Title 2, chapter 4, part 6.

13 (3) In determining the appropriate amount of an administrative penalty, the department shall consider  
14 the penalty factors in 75-1-1001.

15 (4) If the department is unable to collect the administrative penalty or if a person fails to pay all or any  
16 portion of the administrative penalty as determined by the department, the department may file an action to  
17 recover the amount not paid. The action must be brought in the district court of the county in which the violation  
18 occurred ~~or, if mutually agreed on by the parties in the action, in the district court of the first judicial district,~~  
19 ~~Lewis and Clark County.~~

20 (5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other  
21 appropriate remedy.

22 (6) Administrative penalties collected under this section must be deposited in the state general fund."

23

24 **Section 34.** Section 75-10-542, MCA, is amended to read:

25 **"75-10-542. Penalties.** (1) A person who purposely or knowingly violates this part, except 75-10-520,  
26 is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed \$250, be imprisoned in  
27 the county jail for a term not to exceed 30 days, or both.

28 (2) A person who violates a provision of this part, except 75-10-520, a rule of the department, or an

1 order issued as provided in this part is subject to an administrative penalty of not more than \$50 or a civil  
2 penalty of not more than \$250. Each day upon which a violation of this part, a rule, or an order occurs is a  
3 separate violation.

4 (3) Penalties assessed under subsection (2) must be determined in accordance with the penalty  
5 factors in 75-1-1001. The penalties provided for in this section are recoverable in an enforcement or collection  
6 action brought by the department. An action to recover penalties must be brought in the district court of the  
7 county in which the violation occurred ~~or, if mutually agreed on by the parties in the action, in the district court of~~  
8 ~~the first judicial district, Lewis and Clark County."~~

9

10 **Section 35.** Section 75-10-711, MCA, is amended to read:

11 **"75-10-711. Remedial action -- orders -- penalties -- judicial proceedings.** (1) The department  
12 may take remedial action whenever:

13 (a) there has been a release or there is a substantial threat of a release into the environment that may  
14 present an imminent and substantial endangerment to the public health, safety, or welfare or to the  
15 environment; and

16 (b) none of the persons who are liable or potentially liable under 75-10-715(1) and who have been  
17 given the opportunity by letter to properly and expeditiously perform the appropriate remedial action will  
18 properly and expeditiously perform the appropriate remedial action. Any person liable under 75-10-715(1) shall  
19 take immediate action to contain, remove, and abate the release.

20 (2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe  
21 that a release has occurred or is about to occur, the department may undertake remedial action in the form of  
22 any investigation, monitoring, survey, testing, or other information gathering as authorized by 75-10-707 that is  
23 necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of  
24 release and the extent and imminence of the danger to the public health, safety, or welfare or to the  
25 environment.

26 (3) Except as provided in 75-10-712, the department is authorized to draw on the fund to take action  
27 under subsection (1) if it has made diligent good faith efforts to determine the identity of the person or persons  
28 liable for the release or threatened release and:

1 (a) is unable to determine the identity of the liable person or persons in a manner consistent with the  
2 need to take timely remedial action; or

3 (b) a person or persons determined by the department to be liable or potentially liable under 75-10-  
4 715(1) have been informed in writing of the department's determination and have been requested by the  
5 department to take appropriate remedial action but are unable or unwilling to take action in a timely manner;  
6 and

7 (c) the written notice informs the person that if subsequently found liable pursuant to 75-10-715(1),  
8 the person may be required to reimburse the fund for the state's remedial action costs and may be subject to  
9 penalties pursuant to this part.

10 (4) Whenever the department is authorized to act pursuant to subsection (1), it may issue to any  
11 person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or  
12 appropriate to protect the public health, safety, or welfare or the environment.

13 (5) (a) A person who violates or fails to comply with or refuses to comply with an order issued under  
14 75-10-707 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more  
15 than \$10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining  
16 the amount of any penalty assessed, the court may take into account:

17 (i) the nature, circumstances, extent, and gravity of the noncompliance;

18 (ii) with respect to the person liable under 75-10-715(1):

19 (A) the person's ability to pay;

20 (B) any prior history of violations;

21 (C) the degree of culpability; and

22 (D) the economic benefit or savings, if any, resulting from the noncompliance; and

23 (iii) any other matters as justice may require.

24 (b) Civil penalties collected under subsection (5)(a) must be deposited into the environmental quality  
25 protection fund established in 75-10-704.

26 (6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the  
27 following actions:

28 (a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;

1 (b) an action to enforce an order issued under 75-10-707 or this section;

2 (c) an action to recover a civil penalty for violation of or failure or refusal to comply with an order  
3 issued under 75-10-707 or this section; or

4 (d) an action by a person to whom an order has been issued to determine the validity of the order,  
5 only if the person has been in compliance and continues in compliance with the order pending a decision of the  
6 court.

7 (7) In considering objections raised in a judicial action regarding orders issued under this part, the  
8 court shall uphold and enforce an order issued by the department unless the objecting party can demonstrate,  
9 on the administrative record, that the department's decision to issue the order was arbitrary and capricious or  
10 otherwise not in accordance with law.

11 (8) Instead of issuing a notification or an order under this section, the department may bring an action  
12 for legal or equitable relief in the district court of the county where the release or threatened release occurred ~~or~~  
13 ~~in the first judicial district~~ as may be necessary to abate any imminent and substantial endangerment to the  
14 public health, safety, or welfare or to the environment resulting from the release or threatened release.

15 (9) A person who is not subject to an administrative or judicial order may not conduct any remedial  
16 action at any facility that is subject to an administrative or judicial order issued pursuant to this part without the  
17 written permission of the department. If a state or federal administrative or judicial order is issued relative to a  
18 facility, the order and any remedial activity conducted pursuant to the order may be admissible in a civil action  
19 pertaining to the facility or property adjacent to or allegedly impacted by the facility provided that the reviewing  
20 court in its discretion determines the order to be relevant and more probative than prejudicial. Admission of this  
21 evidence does not make the department a necessary party to the action. Remedial action performed in  
22 accordance with this part is intended to provide for the protection of the environmental life support system from  
23 degradation and to prevent unreasonable depletion and degradation of natural resources.

24 (10) The department may take remedial action pursuant to subsection (1) at a site that is regulated  
25 under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public  
26 Law 96-510, if the department determines that remedial action is necessary to carry out the purposes of this  
27 part.

28 (11) The department may take remedial action as provided for in 75-10-743(12)."

1

2           **Section 36.** Section 75-10-715, MCA, is amended to read:

3           **"75-10-715. Liability -- reimbursement and penalties -- proceedings -- defenses and exclusions.**

4 (1) Except as provided in 70-30-323 and 75-10-742 through 75-10-751, notwithstanding any other provision of  
5 law, and subject only to the defenses set forth in subsection (5) and the exclusions set forth in subsection (7),  
6 the following persons are jointly and severally liable for a release or threatened release of a hazardous or  
7 deleterious substance from a facility:

8           (a) a person who owns or operates a facility where a hazardous or deleterious substance was  
9 disposed of;

10           (b) a person who at the time of disposal of a hazardous or deleterious substance owned or operated a  
11 facility where the hazardous or deleterious substance was disposed of;

12           (c) a person who generated, possessed, or was otherwise responsible for a hazardous or deleterious  
13 substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment of the substance  
14 or arranged with a transporter for transport of the substance for disposal or treatment; and

15           (d) a person who accepts or has accepted a hazardous or deleterious substance for transport to a  
16 disposal or treatment facility.

17           (2) A person identified in subsection (1) is liable for the following costs:

18           (a) all remedial action costs incurred by the state; and

19           (b) damages for injury to, destruction of, or loss of natural resources caused by the release or  
20 threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim for  
21 the injury, destruction, or loss resulting from the release, unless the impaired natural resources were specifically  
22 identified as an irreversible and irretrievable commitment of natural resources in an approved final state or  
23 federal environmental impact statement or other comparable approved final environmental analysis for a project  
24 or facility that was the subject of a governmental permit or license and the project or facility was being operated  
25 within the terms of its permit or license.

26           (3) If the person liable under subsection (1) fails, without sufficient cause, to comply with a  
27 department order issued pursuant to 75-10-711(4) or to properly provide remedial action upon notification by  
28 the department pursuant to 75-10-711(3), the person may be liable for penalties in an amount not to exceed

1 two times the amount of any costs incurred by the state pursuant to this section.

2 (4) The department may initiate civil proceedings in district court to recover remedial action costs,  
3 natural resource damages, or penalties under subsections (1), (2), and (3). Proceedings to recover costs and  
4 penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs, damages, or  
5 penalties lies in the county where the release occurred or where the person liable under subsection (1) resides  
6 or has its principal place of business ~~or in the district court of the first judicial district.~~

7 (5) A person has a defense and is not liable under subsections (1), (2), and (3) if the person can  
8 establish by a preponderance of the evidence that:

9 (a) the department failed to provide notice to the person claiming the defense when required by 75-  
10 10-711. Establishment of this defense only prohibits the department from collecting those costs incurred or  
11 encumbered by the department prior to providing notice to the person and does not provide the person a  
12 defense to any other liability.

13 (b) the release did not emanate from any vessel, vehicle, or facility to which the person contributed  
14 any hazardous or deleterious substance or over which the person had any ownership, authority, or control and  
15 was not caused by any action or omission of the person;

16 (c) the release or threatened release occurred solely as a result of:

17 (i) an act or omission of a third party other than either an employee or agent of the person; or

18 (ii) an act or omission of a third party other than one whose act or omission occurs in connection with a  
19 contractual relationship, existing directly or indirectly, with the person, if the person establishes by a  
20 preponderance of the evidence that the person:

21 (A) exercised due care with respect to the hazardous or deleterious substance concerned, taking into  
22 consideration the characteristics of the hazardous or deleterious substance in light of all relevant facts and  
23 circumstances; and

24 (B) took precautions against foreseeable acts or omissions of a third party and the consequences that  
25 could foreseeably result from those acts or omissions;

26 (d) the release or threatened release occurred solely as the result of an act of God or an act of war;

27 (e) the release or threatened release was from a facility for which a permit had been issued by the  
28 department, the hazardous or deleterious substance was specifically identified in the permit, and the release



1 was within the limits allowed in the permit;

2 (f) in the case of assessment of penalties under subsection (3), factors beyond the control of the  
3 person prevented the person from taking timely remedial action; or

4 (g) the person transported only household refuse, unless that person knew or reasonably should have  
5 known that the hazardous or deleterious substance was present in the refuse.

6 (6) (a) For the purpose of subsection (5)(c)(ii), the term "contractual relationship" includes but is not  
7 limited to land contracts, deeds, or other instruments transferring title or possession, unless the real property on  
8 which the facility is located was acquired by the person after the disposal or placement of the hazardous or  
9 deleterious substance on, in, or at the facility and one or more of the following circumstances is also  
10 established by the person by a preponderance of the evidence:

11 (i) At the time the person acquired the facility, the person did not know and had no reason to know  
12 that a hazardous or deleterious substance that is the subject of the release or threatened release was disposed  
13 of on, in, or at the facility.

14 (ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or  
15 through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by  
16 purchase or condemnation pursuant to Title 70, chapter 30.

17 (iii) The person acquired the facility by inheritance or bequest.

18 (b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through  
19 (6)(a)(iii), the person shall establish that the person has satisfied the requirements of subsection (5)(c)(i) or  
20 (5)(c)(ii).

21 (c) To establish that the person had no reason to know, as provided in subsection (6)(a)(i), the person  
22 must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of  
23 the property consistent with good commercial or customary practice in an effort to minimize liability. For  
24 purposes of assessing this inquiry, the following must be taken into account:

25 (i) any specialized knowledge or experience on the part of the person;

26 (ii) the relationship of the purchase price to the value of the property if uncontaminated;

27 (iii) commonly known or reasonably ascertainable information about the property;

28 (iv) the obviousness of the presence or the likely presence of contamination on the property; and

1 (v) the ability to detect the contamination by appropriate inspection.

2 (d) (i) Subsections (5)(b) and (5)(c) or this subsection (6) may not diminish the liability of a previous  
3 owner or operator of the facility who would otherwise be liable under this part.

4 (ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge of  
5 the release or threatened release of a hazardous or deleterious substance at the facility when the person  
6 owned the real property and then subsequently transferred ownership of the property to another person without  
7 disclosing the knowledge, the previous owner is liable under subsections (1), (2), and (3) and a defense under  
8 subsection (5)(b) or (5)(c) is not available to that person.

9 (e) This subsection (6) does not affect the liability under this part of a person who, by any act or  
10 omission, caused or contributed to the release or threatened release of a hazardous or deleterious substance  
11 that is the subject of the action relating to the facility.

12 (7) A person has an exclusion and is not liable under this section if:

13 (a) the person generated or disposed of only household refuse, unless the person knew or reasonably  
14 should have known that the hazardous or deleterious substance was present in the refuse;

15 (b) the person owns or operates real property where hazardous or deleterious substances have come  
16 to be located solely as a result of subsurface migration in an aquifer from a source or sources outside the  
17 person's property, provided that the following conditions are met:

18 (i) the owner or operator did not cause, contribute to, or exacerbate the release or threatened release  
19 of any hazardous or deleterious substances through any act or omission. The failure to take affirmative steps to  
20 mitigate or address contamination that has migrated from a source outside the owner's or operator's property  
21 does not, in the absence of exceptional circumstances, constitute an omission by the owner or operator.

22 (ii) the person who caused, contributed to, or exacerbated the release or threatened release of any  
23 hazardous or deleterious substance is not and was not an agent or employee of the owner or operator and is  
24 not or was not in a direct or indirect contractual relationship with the owner or operator, unless the department  
25 provides a written determination that an existing or proposed contractual relationship is an insufficient basis to  
26 establish liability under this section;

27 (iii) there is no other basis of liability under subsection (1) for the owner or operator for the release or  
28 threatened release of a hazardous or deleterious substance; and

1 (iv) the owner or operator cooperates with the department and all persons conducting department-  
2 approved remedial actions on the property, including granting access and complying with and implementing all  
3 required institutional controls;

4 (c) the person owns or occupies real property of 20 acres or less for residential purposes, provided  
5 that the following conditions are met:

6 (i) the person did not cause, contribute to, or exacerbate the release or threatened release of any  
7 hazardous or deleterious substance through any act or omission;

8 (ii) the person uses or allows the use of the real property for residential purposes. This exclusion does  
9 not apply to any person who acquires or develops real property for commercial use or any use other than  
10 residential use.

11 (iii) at the time the person purchased or occupied the real property, there were no visible indications of  
12 contamination on the surface of the real property;

13 (iv) the person cooperates with the department and all persons conducting department-approved  
14 remedial actions on the property, including granting access and complying with and implementing all required  
15 institutional controls; and

16 (v) there is no other basis of liability under subsection (1) for the owner or occupier for the release or  
17 threatened release of a hazardous or deleterious substance.

18 (8) A person is liable under this section if the department provides substantial credible evidence that  
19 the person fails to satisfy any element of each exclusion in subsections (7)(a) through (7)(c).

20 (9) The liability of a fiduciary under the provisions of this part for a release or a threatened release of  
21 a hazardous or deleterious substance from a facility held in a fiduciary capacity may not exceed the assets held  
22 in the fiduciary capacity that are available to indemnify the fiduciary unless the fiduciary is liable under this part  
23 independent of the person's ownership or actions taken in a fiduciary capacity.

24 (10) A person who holds indicia of ownership in a facility primarily to protect a security interest is not  
25 liable under subsections (1)(a) and (1)(b) for having participated in the management of a facility within the  
26 meaning of 75-10-701(15)(b) because of any one or any combination of the following:

27 (a) holding an interest in real or personal property when the interest is being held as security for  
28 payment or performance of an obligation, including but not limited to a mortgage, deed of trust, lien, security

1 interest, assignment, pledge, or other right or encumbrance against real or personal property that is furnished  
2 by the owner to ensure repayment of a financial obligation;

3 (b) requiring or conducting financial or environmental assessments of a facility or a portion of a  
4 facility, making financing conditional upon environmental compliance, or providing environmental information or  
5 reports;

6 (c) monitoring the operations conducted at a facility or providing access to a facility to the department  
7 or its agents or to remedial action contractors;

8 (d) having the mere capacity or unexercised right to influence a facility's management of hazardous or  
9 deleterious substances;

10 (e) giving advice, information, guidance, or direction concerning the administrative and financial  
11 aspects, as opposed to day-to-day operational aspects, of a borrower's operations;

12 (f) providing general information concerning federal, state, or local laws governing the transportation,  
13 storage, treatment, and disposal of hazardous or deleterious substances and concerning the hiring of remedial  
14 action contractors;

15 (g) engaging in financial workouts, restructuring, or refinancing of a borrower's obligations;

16 (h) collecting rent, maintaining utility services, securing a facility from unauthorized entry, or  
17 undertaking other activities to protect or preserve the value of the security interest in a facility;

18 (i) extending or denying credit to a person owning or in lawful possession of a facility;

19 (j) in an emergency, requiring or undertaking activities to prevent exposure of persons to hazardous  
20 or deleterious substances or to contain a release;

21 (k) requiring or conducting remedial action in response to a release or threatened release if prior  
22 notice is given to the department and the department approves of the remedial action; or

23 (l) taking title to a facility by foreclosure, provided that the holder of indicia of ownership, from the time  
24 the holder acquires title, undertakes to sell, re-lease property held pursuant to a lease financing transaction  
25 (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the  
26 property in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or  
27 appropriate with respect to the facility and taking all facts and circumstances into consideration and provided  
28 that the holder does not:

1 (i) outbid or refuse a bid for fair consideration for the property or outbid or refuse a bid that would  
2 effectively compensate the holder for the amount secured by the facility;

3 (ii) worsen the contamination at the facility;

4 (iii) incur liability under subsection (1)(c) or (1)(d) by arranging for disposal of or transporting  
5 hazardous or deleterious substances; or

6 (iv) engage in conduct described in subsection (11).

7 (11) The protection from liability provided in subsections (9) and (10) is not available to a fiduciary or to  
8 a person holding indicia of ownership primarily to protect a security interest if the fiduciary or person through  
9 affirmative conduct:

10 (a) causes or contributes to a release of hazardous or deleterious substances from the facility;

11 (b) allows others to cause or contribute to a release of hazardous or deleterious substances; or

12 (c) in the case of a person holding indicia of ownership primarily to protect a security interest, actually  
13 participates in the management of a facility by:

14 (i) exercising decisionmaking control over environmental compliance; or

15 (ii) exercising control at a level comparable to that of a manager of the enterprise with responsibility for  
16 day-to-day decisionmaking either with respect to environmental compliance or substantially all of the  
17 operational, as opposed to financial or administrative, aspects of the facility."

18

19 **Section 37.** Section 75-10-1223, MCA, is amended to read:

20 **"75-10-1223. Penalties and fines.** (1) A person who disposes of septage in violation of 75-10-1210  
21 or of the standards adopted pursuant to 75-10-1202 is guilty of a misdemeanor and upon conviction shall be  
22 fined an amount not to exceed \$500.

23 (2) (a) A person who violates this part or a rule or order adopted pursuant to this part is subject to a  
24 civil penalty of not more than \$500. Each day that violation of this part, a rule of the department, or an order  
25 issued pursuant to this part occurs constitutes a separate violation. The department or the county attorney of  
26 the county in which the violation occurred may file an action to collect the penalty.

27 (b) Penalties assessed under this subsection (2) must be determined in accordance with the penalty  
28 factors in 75-1-1001. An action to recover penalties must be brought in the district court of the county in which

1 the violation occurred ~~or, if mutually agreed on by the parties in the action, in the district court of the first judicial~~  
 2 ~~district, Lewis and Clark County.~~

3 (3) Penalties collected by the department under this section must be deposited in the environmental  
 4 rehabilitation and response account in the state special revenue fund provided for in 75-1-110. Fines and  
 5 penalties collected by a county must be deposited in the general fund of the county."  
 6

7 **Section 38.** Section 75-11-223, MCA, is amended to read:

8 **"75-11-223. Civil and administrative penalties.** (1) (a) A person who violates a provision of this part,  
 9 a rule adopted under this part, or an order of the department or the board is subject to an administrative penalty  
 10 not to exceed \$500 for each violation or a civil penalty not to exceed \$10,000 for each violation. If an installer or  
 11 an inspector who is an employee is in violation, the employer of that installer or that inspector is the entity that  
 12 is subject to the provisions of this section unless the violation is the result of a grossly negligent or willful act.  
 13 Each day of violation of this part, a rule adopted under this part, or an order constitutes a separate violation.

14 (b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty  
 15 factors in 75-1-1001.

16 (2) The department may institute and maintain in the name of the state any enforcement proceedings  
 17 under this section. The enforcement or collection action must be brought in the district court of the county in  
 18 which the violation occurred ~~or, if mutually agreed upon by the parties, in the district court of the first judicial~~  
 19 ~~district, Lewis and Clark County.~~ Upon request of the department, the attorney general or the county attorney of  
 20 the county where the violation occurred shall petition the district court to impose, assess, and recover the civil  
 21 penalty.

22 (3) Action under this section does not bar:

23 (a) enforcement of this part, rules adopted under this part, orders of the department or the board, or  
 24 terms of a license or permit by injunction or other appropriate remedy; or

25 (b) action under 75-11-224."  
 26

27 **Section 39.** Section 75-11-516, MCA, is amended to read:

28 **"75-11-516. Civil penalties.** (1) (a) A person who violates any provision of this part, a rule adopted

1 under this part, or an order of the department or the board is subject to a civil penalty not to exceed \$10,000 for  
2 each violation. Each day of violation constitutes a separate violation.

3 (b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty  
4 factors in 75-1-1001.

5 (2) The department may institute and maintain in the name of the state any enforcement proceedings  
6 under this section. Upon request of the department, the attorney general or the county attorney of the county of  
7 violation shall petition the district court to impose, assess, and recover the civil penalty. Penalties are also  
8 recoverable in an action brought by the department. The action must be brought in the district court of the  
9 county in which the violation occurred ~~or, if mutually agreed on by the parties in the action, in the district court of~~  
10 ~~the first judicial district, Lewis and Clark County.~~

11 (3) Action under this section does not bar enforcement of this part, rules adopted under this part, or  
12 orders of the department or the board.

13 (4) Money collected under this section must be deposited in the state general fund."  
14

15 **Section 40.** Section 75-11-518, MCA, is amended to read:

16 **"75-11-518. Venue for legal actions.** All legal actions affecting underground storage tanks or the  
17 disposal of regulated substances must be brought in the county in which the underground storage tank is  
18 located ~~or, if mutually agreed upon by the affected parties, in the first judicial district, Lewis and Clark County.~~"  
19

20 **Section 41.** Section 75-11-525, MCA, is amended to read:

21 **"75-11-525. Administrative penalties for violations -- appeals -- venue.** (1) (a) A person who  
22 violates any of the provisions of this part or any rules promulgated under the authority of this part may be  
23 assessed and ordered by the department to pay an administrative penalty not to exceed \$500 for each  
24 violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each  
25 occurrence of the violation and each day that it remains uncorrected constitutes a separate violation. The  
26 department may suspend a portion of the administrative penalty assessed under this section if the condition  
27 that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative  
28 penalty under this section may be made in conjunction with any order or other administrative action authorized

1 by this chapter.

2 (b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty  
3 factors in 75-1-1001.

4 (2) When the department assesses an administrative penalty under this section, it must have written  
5 notice served personally or by certified mail on the alleged violator or the violator's agent. For purposes of this  
6 chapter, service by mail is complete on the day of receipt. The notice must state:

7 (a) the provision alleged to be violated;

8 (b) the facts alleged to constitute the violation;

9 (c) the amount of the administrative penalty assessed under this section;

10 (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused the  
11 assessment of the penalty;

12 (e) the nature of any corrective action that the department requires, whether or not a portion of the  
13 penalty is to be suspended;

14 (f) as applicable, the time within which the corrective action is to be taken and the time within which  
15 the administrative penalty is to be paid; and

16 (g) the right to appeal or to a hearing to mitigate the penalty assessed.

17 (3) A person assessed a penalty under this section may request a hearing before the board to either  
18 contest the alleged violation or request mitigation of the penalty. The contested case provisions of the Montana  
19 Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this  
20 section. If a hearing is held under this section, it must be held in ~~Lewis and Clark County~~ or the county in which  
21 the alleged violation occurred.

22 (4) If the department is unable to collect an administrative penalty assessed under this section or if a  
23 person fails to pay all or any portion of an administrative penalty assessed under this section, the department  
24 may take action in district court to recover the penalty amount and any additional amounts assessed or sought  
25 under this chapter. The action must be brought in the district court of the county in which the violation occurred  
26 ~~or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and~~  
27 ~~Clark County.~~

28 (5) Action under this section does not bar action under this chapter or any other remedy available to



1 the department for violations of underground storage tank laws or rules promulgated under those laws.

2 (6) Administrative penalties collected under this section must be deposited in the state general fund."

3

4 **Section 42.** Section 76-4-109, MCA, is amended to read:

5 **"76-4-109. Penalties.** (1) A person who violates a provision of this part, except 76-4-122(1), or a rule  
6 adopted or an order issued under this part is guilty of an offense and subject to a fine in an amount not to  
7 exceed \$1,000.

8 (2) (a) In addition to the fine specified in subsection (1), a person who violates any provision of this  
9 part or any rule adopted or order issued under this part is subject to an administrative penalty in an amount not  
10 to exceed \$250 or a civil penalty in an amount not to exceed \$1,000. Each day of violation constitutes a  
11 separate violation.

12 (b) Penalties assessed under this subsection (2) must be determined in accordance with the penalty  
13 factors in 76-4-1001. An action to recover penalties must be brought in the district court of the county in which  
14 the violation occurred ~~or, if mutually agreed on by the parties in the action, in the district court of the first judicial~~  
15 ~~district, Lewis and Clark County.~~

16 (3) Penalties imposed under subsection (1) or (2) do not bar enforcement of this part or rules or  
17 orders issued under it by injunction or other appropriate remedy.

18 (4) The purpose of this section is to provide additional and cumulative remedies."  
19

20 **Section 43.** Section 77-2-107, MCA, is amended to read:

21 **"77-2-107. Involvement of lessee when land subject to prior lease.** (1) Whenever any kind of  
22 right-of-way easement has been granted under this part and the state land in which it is granted is under lease,  
23 the party receiving the grant shall give timely notice to the lessee and shall make just settlement with the lessee  
24 for any damages resulting to the lessee's improvements, crops, or leasehold interests.

25 (2) After the settlement is made, the lessee shall open or move any fences that may obstruct the  
26 right-of-way over the lands under lease and otherwise cooperate in the opening of the right-of-way. Proof must  
27 be filed with the board that the settlement has been made before the deed to the easement is issued.

28 (3) (a) If the lessee and the party receiving the right-of-way easement are unable to agree on the

1 value of the damages resulting from the easement, the value of the damages must be ascertained and fixed by  
 2 three arbitrators, one of whom must be appointed by the lessee, one by the party receiving the easement, and  
 3 the third by the two appointed arbitrators.

4 (b) If a party refuses to appoint an arbitrator within 15 days of being requested to do so by the director  
 5 of the department, the director may appoint an arbitrator for that party. An arbitrator appointed by the director  
 6 has the same duties and powers as if appointed by one of the parties.

7 (c) The arbitrators may fix reasonable compensation for their services. The compensation must be  
 8 paid in equal shares by the owner of the easement and the lessee.

9 (d) The value of the damages as ascertained and fixed by the arbitrators is binding on both parties;  
 10 however, if either party is dissatisfied with the valuation, the party may, within 10 days, appeal from their  
 11 decision to the department. The department shall examine the easements, and, except as provided in  
 12 subsection (3)(e), its decision on the appeal is final. The department shall collect the actual cost of the  
 13 reexamination from the owner of the easement and the lessee in the proportion that, in its judgment, justice  
 14 may demand.

15 (e) If either party is dissatisfied with the valuation fixed by the department, the party may within 30  
 16 days after receipt of the department's decision petition the district court in the county in which the majority of the  
 17 state land is located ~~or the district court in Lewis and Clark County~~ for judicial review of the decision."  
 18

19 **Section 44.** Section 82-4-142, MCA, is amended to read:

20 **"82-4-142. Mandamus to compel enforcement.** (1) A resident of this state who has knowledge that  
 21 a requirement of this part or a rule adopted under this part is not being enforced by a public officer or employee  
 22 whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public  
 23 officer or employee by a written statement under oath that must state the specific facts of the failure to enforce  
 24 the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to  
 25 penalties prescribed in 45-7-202.

26 (2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the  
 27 statement to enforce the requirement or rule, the resident may bring an action of mandamus ~~in the district court~~  
 28 ~~of the first judicial district of this state or~~ in the district court of the county in which the land is located. If the court

1 finds that a requirement of this part or a rule adopted under this part is not being enforced, it shall order the  
2 public officer or employee whose duty it is to enforce the requirement or rule to perform the duties. If the officer  
3 or employee fails to do so, the public officer or employee must be held in contempt of court and is subject to the  
4 penalties provided by law."

5

6 **Section 45.** Section 82-4-254, MCA, is amended to read:

7 **"82-4-254. Violation -- penalty -- waiver.** (1) (a) Except as provided in subsection (2), a person or  
8 operator who violates any of the provisions of this part, rules adopted or orders issued under this part, or term  
9 or condition of a permit and any director, officer, or agent of a corporation who purposely or knowingly  
10 authorizes, orders, or carries out a violation shall pay an administrative penalty of not less than \$100 or more  
11 than \$5,000 for the violation and an additional administrative penalty of not less than \$100 or more than \$5,000  
12 for each day during which a violation continues and may be enjoined from continuing the violations as provided  
13 in this section. A person or operator who fails to correct a violation within the period permitted by law, rule of the  
14 board, or order of the department must be assessed a penalty of not less than \$750 for each day, up to 30  
15 days, during which the failure or violation continues.

16 (b) Penalties assessed under this section must be determined in accordance with the penalty factors  
17 in 82-4-1001.

18 (c) The period permitted for correction of a violation does not, in the case of any review proceeding  
19 under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an  
20 order of court ordering suspension of the abatement requirements. If the failure to abate continues for more  
21 than 30 days, the department shall, within 30 days after the 30-day period, take appropriate action pursuant to  
22 82-4-251(3) or request action under subsection (4) or (6) of this section.

23 (2) The department may waive the penalty for a minor violation of this part, a rule adopted or an order  
24 issued under this part, or a term or condition of a permit if the department determines that the violation is not of  
25 potential harm to public health, public safety, or the environment and does not impair the administration of this  
26 part. The department may not waive a penalty assessed under this section if the person or operator fails to  
27 abate the violation as directed under 82-4-251. The board shall adopt rules to implement and administer a  
28 procedure for waiver of a penalty under this subsection.

1           (3) (a) To assess an administrative penalty under this section, the department shall issue a notice of  
2 violation and penalty order to the person or operator, unless the penalty is waived pursuant to subsection (2).  
3 The notice and order must specify the provision of this part, rule adopted or order issued under this part, or  
4 term or condition of a permit that is violated and must contain findings of fact, conclusions of law, and a  
5 statement of the proposed administrative penalty. The notice and order must be served personally or by  
6 certified mail. Service by mail is complete 3 business days after the date of mailing. The notice and order  
7 become final unless, within 30 days after the order is served, the person or operator to whom the order was  
8 issued requests a hearing before the board. By submitting to the board a written request within 30 days of  
9 service of the notice of violation, stating the reason for the request, the person or operator is entitled to a  
10 hearing before the board under 82-4-206 on the issues of whether the alleged violation has occurred and  
11 whether the penalty proposed to be assessed is proper. On receipt of a request, the board shall schedule a  
12 hearing. After a hearing, the board shall make findings of fact and issue a written decision as to the occurrence  
13 of the violation and the amount of penalty warranted. If the board finds that the violation occurred and a penalty  
14 is warranted, it shall order the payment of the penalty. If the time for requesting a hearing expires without a  
15 hearing request, the person or operator shall remit the amount of the penalty within 30 days of the expiration of  
16 the period for requesting a hearing.

17           (b) If the person or operator to whom a final order is issued under subsection (3)(a) wishes to obtain  
18 judicial review of the order, the person or operator shall submit with any assessed penalty a statement that the  
19 penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is  
20 complete. Any person or operator who fails to request and submit testimony at the hearing provided for in  
21 subsection (3)(a) or who fails to pay any assessed penalty under protest within 30 days of the order assessing  
22 the penalty forfeits the right to seek judicial review of the violation and penalty determinations.

23           (c) Penalties provided for in this section are recoverable in an action brought by the department. The  
24 action must be filed in the district court of the first judicial district, Lewis and Clark County, if mutually agreed on  
25 by the parties in the action, or in the district court having jurisdiction over the defendant or in the first judicial  
26 district if no other district court has jurisdiction.

27           (4) The department may bring an action for a restraining order or temporary or permanent injunction  
28 against an operator or other person who:

1 (a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under  
2 this part;

3 (b) interferes with, hinders, or delays the department in carrying out the provisions of this part;

4 (c) refuses to admit an authorized representative of the department to the permit area;

5 (d) refuses to permit inspection of the permit area by an authorized representative of the department;

6 (e) refuses to furnish any information or report requested by the department in furtherance of the  
7 provisions of this part; or

8 (f) refuses to permit access to and copying of records that the department determines to be  
9 necessary in carrying out the provisions of this part.

10 (5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or  
11 final termination of all proceedings for review of relief granted under this part unless, prior to the final  
12 determination, the district court granting the relief sets it aside or modifies it.

13 (6) A person who violates any of the provisions of this part or any determination or order issued under  
14 this part or who purposely or knowingly violates any permit condition issued under this part is guilty of a  
15 misdemeanor and shall be fined an amount not less than \$500 and not more than \$10,000 or be imprisoned for  
16 not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

17 (7) A person who knowingly makes any false statement, representation, or certification or knowingly  
18 fails to make any statement, representation, or certification in any application, record, report, plan, or other  
19 document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of  
20 not more than \$10,000 or by imprisonment for not more than 1 year, or both.

21 (8) A person who except as permitted by law purposely or knowingly resists, prevents, impedes, or  
22 interferes with the department or its agents in the performance of duties pursuant to this part shall be punished  
23 by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.

24 (9) An employee of the department performing any function or duty under this part may not have a  
25 direct or indirect financial interest in any strip- or underground-coal-mining operation. A person who knowingly  
26 violates the provisions of this subsection shall upon conviction be punished by a fine of not more than \$2,500 or  
27 by imprisonment of not more than 1 year, or both.

28 (10) Within 30 days after receipt of full payment of an administrative penalty assessed under this

1 section, the department shall issue a written release of civil liability for the violations for which the penalty was  
2 assessed."

3

4 **Section 46.** Section 82-4-354, MCA, is amended to read:

5 **"82-4-354. Mandamus to compel enforcement.** (1) A person having an interest that is or may be  
6 adversely affected, with knowledge that a requirement of this part or a rule adopted under this part is not being  
7 enforced by a public officer or employee whose duty it is to enforce the requirement or rule, may bring the  
8 failure to the attention of the public officer or employee by an affidavit stating the specific facts of the failure.  
9 Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed for  
10 false swearing, as provided in 45-7-202.

11 (2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the  
12 affidavit to enforce the requirement or rule, the affiant may bring an action of mandamus in the district court of  
13 the first judicial district or in the district court of the county in which the land is located. If the court finds that a  
14 requirement of this part or a rule adopted under this part is not being enforced, it shall order the public officer or  
15 employee to perform the duties. If the officer or employee fails to do so, the public officer or employee must be  
16 held in contempt of court and is subject to the penalties provided by law.

17 (3) A person having an interest that is or may be adversely affected may commence a civil action to  
18 compel compliance with this part against a person for the violation of this part or any rule, order, or permit  
19 issued under it. However, an action may not be commenced:

20 (a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged  
21 violator; or

22 (b) if the department has commenced and is diligently prosecuting a civil action to require compliance  
23 with the provisions of this part or any rule, order, or permit issued under it. A person having an interest that is or  
24 may be adversely affected may intervene as a matter of right in the civil action.

25 (4) Legal actions under subsection (3)(a) must be brought in the district court of the county in which  
26 the alleged violation occurred ~~or, if mutually agreed to by the parties to the action, in any other judicial district.~~

27 (5) Nothing in this section restricts any right of any person under any statute or common law to seek  
28 enforcement of this part or the rules adopted under it or to seek any other relief."

1

2           **Section 47.** Section 82-4-361, MCA, is amended to read:

3           **"82-4-361. Violation -- penalties -- waiver.** (1) When the department has reason to believe that a  
4 person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a  
5 permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the  
6 provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the  
7 violation. The letter must also recommend corrective actions that are necessary to return to compliance.  
8 Issuance of a violation letter under this subsection does not limit the authority of the department under this part  
9 to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

10           (2) (a) By issuance of an order pursuant to subsection (6), the department may assess an  
11 administrative penalty of not less than \$100 or more than \$1,000 for each of the following violations and an  
12 additional administrative penalty of not less than \$100 or more than \$1,000 for each day during which the  
13 violation continues and may bring an action for an injunction from continuing the violation against:

14           (i) a person or operator who violates a provision of this part, a rule adopted or an order issued under  
15 this part, or a term or condition of a permit; or

16           (ii) any director, officer, or agent of a corporation who purposely or knowingly authorizes, orders, or  
17 carries out a violation of a provision of this part, a rule adopted or an order issued under this part, or a term or  
18 condition of a permit.

19           (b) If the violation created an imminent danger to the health or safety of the public or caused  
20 significant environmental harm, the maximum administrative penalty is \$5,000 for each day of violation.

21           (c) This subsection does not limit the authority of the department to bring a judicial action for penalties  
22 or injunctive relief prior to or instead of initiating an administrative enforcement action under this part.

23           (3) The department may bring a judicial action seeking a penalty of not more than \$5,000 for a  
24 violation listed in subsection (2)(a) and a penalty of not more than \$5,000 for each day that the violation  
25 continues.

26           (4) Penalties assessed under this section must be determined in accordance with the penalty factors  
27 in 82-4-1001.

28           (5) The department may bring an action for a restraining order or a temporary or permanent injunction

1 against an operator or other person violating or threatening to violate an order issued under this part.

2 (6) (a) In addition to the violation letter sent pursuant to subsection (1), the department may also  
3 issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must  
4 specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute  
5 the violation. The order may require necessary corrective action within a reasonable period of time, may assess  
6 an administrative penalty determined in accordance with this section, or both. The order must be served  
7 personally or by certified mail.

8 (b) An order issued pursuant to subsection (6)(a) becomes final unless, within 30 days after the order  
9 is served, the person to whom the order is issued submits to the board a written request for a hearing stating  
10 the reason for the request. Service of the order by mail is complete 3 business days after mailing. If a request  
11 for a hearing is submitted, a hearing must be held within a reasonable time under the contested case provisions  
12 of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board shall affirm,  
13 modify, or rescind the order.

14 (7) Legal actions for penalties or injunctive relief under this section must be brought in the district  
15 court of the county in which the alleged violation occurred ~~or, if mutually agreed to by the parties to the action,~~  
16 ~~in the first judicial district, Lewis and Clark County."~~

17

18 **Section 48.** Section 82-4-427, MCA, is amended to read:

19 **"82-4-427. Hearing -- appeal -- venue.** (1) (a) Subject to subsections (1)(b) and (1)(c), a person  
20 whose interests are or may be adversely affected by a final decision of the department to approve or  
21 disapprove a permit application and accompanying material or a permit amendment application and  
22 accompanying material under this part is entitled to a hearing before the board if a written request stating the  
23 reasons for the appeal is submitted to the board within 30 days of the department's decision.

24 (b) If an application was noticed publicly as required by this part, to be eligible to file for an appeal a  
25 person must have either submitted comments to the department on an application or submitted comments at a  
26 public meeting held under 82-4-432.

27 (c) Subsection (1)(b) does not apply to a person filing for an appeal of an application that was not  
28 required to be noticed publicly by this part.



- 1 (2) An operator may request a hearing before the board on:
- 2 (a) a final decision of the department director pursuant to 82-4-436(4) by submitting a request for a  
3 hearing within 15 days of receipt of notice of the director's decision; and
- 4 (b) an order of suspension or revocation issued under 82-4-442 by filing a request for hearing within  
5 30 days of receipt of the decision.
- 6 (3) The operator or the landowner may request a hearing before the board on a decision on a bond  
7 release application by submitting a written request stating the reasons for the appeal within 30 days of the  
8 receipt of the decision.
- 9 (4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,  
10 part 6, apply to a hearing held under this section.
- 11 (5) A petition for judicial review of a board decision made pursuant to this section must be brought in  
12 the county in which the permitted activity is proposed to occur ~~or, if mutually agreed upon by both parties in the~~  
13 ~~action, in the first judicial district, Lewis and Clark County.~~ If an activity is proposed to occur in more than one  
14 county, the action may be brought in any of the counties in which the activity is proposed to occur.
- 15 (6) The petition for judicial review must include the party to whom the permit was issued or the  
16 applicant unless otherwise agreed to by the permit holder or applicant. All judicial challenges of permits for  
17 projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any  
18 civil cause of a different nature pending in that court. If the court determines that the challenge was without  
19 merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or  
20 increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

21

22 **Section 49.** Section 82-4-441, MCA, is amended to read:

23 **"82-4-441. Administrative and judicial penalties -- enforcement.** (1) When the department has  
24 reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a  
25 term or condition of a permit issued under this part, it shall send a violation letter to the person. The violation  
26 letter must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts  
27 alleged to constitute the violation. The letter must also recommend corrective actions that are necessary to  
28 return to compliance. Issuance of a violation letter under this subsection does not limit the authority of the

1 department under this part to bring a judicial action for penalties or injunctive relief or to initiate an  
2 administrative enforcement action.

3 (2) By issuance of an order pursuant to subsection (5), the department may assess against a person  
4 who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a  
5 permit:

6 (a) an administrative penalty of not less than \$100 or more than \$1,000 for the violation; and

7 (b) an additional administrative penalty of not less than \$100 or more than \$1,000 for each day during  
8 which a violation continues.

9 (3) The department may bring a judicial action seeking a penalty of not more than \$5,000 against a  
10 person who violates any of the provisions of this part, rules adopted or orders issued under this part, or  
11 provisions of a permit and a penalty of not more than \$5,000 for each day that the violation continues. In  
12 determining the amount of the penalty, the district court shall consider the factors in subsection (4).

13 (4) Penalties assessed under this section must be determined in accordance with the penalty factors  
14 in 82-4-1001.

15 (5) (a) In addition to the violation letter sent pursuant to subsection (1), the department may also  
16 issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must  
17 specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute  
18 the violation. The order may require necessary corrective action within a reasonable period of time, may assess  
19 an administrative penalty determined in accordance with this section, or both. The order must be served  
20 personally or by certified mail.

21 (b) An order issued pursuant to subsection (5)(a) becomes final unless, within 30 days after the order  
22 is served, the person to whom the order is issued submits to the board a written request for a hearing stating  
23 the reason for the request. Service of an order by mail is complete 3 business days after mailing. If a request  
24 for a hearing is filed, a hearing must be held within a reasonable time under the contested case provisions of  
25 the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board shall affirm,  
26 modify, or rescind the order.

27 (6) The department may bring an action to enjoin an operator or other person violating or threatening  
28 to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part. Actions for

1 injunctions or penalties must be filed in the district court of the county in which the opencut operation is located  
2 or, if mutually agreed on by both parties in the action, in the first judicial district, Lewis and Clark County.

3 (7) The provisions of this section do not limit the authority of the department to bring a judicial action  
4 for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this  
5 part."

6

7 **Section 50.** Section 82-15-120, MCA, is amended to read:

8 **"82-15-120. Department of environmental quality to enforce prohibition on methyl tertiary butyl**

9 **ether -- notice requirements -- hearing -- penalties.** (1) (a) Whenever the department of environmental  
10 quality believes that a violation of 82-15-110(8) or of the rules adopted pursuant to 82-15-102(3) has occurred,  
11 it may serve written notice of the violation on the alleged violator or an agent of the alleged violator.

12 (b) The notice must specify the facts alleged to constitute a violation and may include an order  
13 assessing an administrative penalty pursuant to subsection (3), an order to take necessary corrective action  
14 within a reasonable period of time stated in the order, or both.

15 (c) The order becomes final unless, within 30 days after the notice is served, the person named in the  
16 order requests in writing a hearing before the board of environmental review. Service by mail is complete on the  
17 date of mailing.

18 (d) Upon receipt of the request, the board of environmental review shall schedule a hearing. The  
19 contested case provisions of the Montana Administrative Procedure Act provided in Title 2, chapter 4, part 6,  
20 apply to a hearing conducted under this section.

21 (2) If, after a hearing held under subsection (1), the board of environmental review finds that a  
22 violation has occurred, it shall either affirm or modify the order of the department of environmental quality. An  
23 order issued by the department of environmental quality or by the board of environmental review may prescribe  
24 the date by which the violation must cease and may prescribe time limits for a particular action. If, after hearing,  
25 the board of environmental review finds no violation has occurred, it shall rescind the department of  
26 environmental quality's order.

27 (3) A violation of 82-15-110(8) or of a rule adopted pursuant to 82-15-102(3) is subject to an  
28 administrative penalty of up to \$1,000. Each day of violation constitutes a separate violation.

1 (4) Any person who violates 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or an order  
2 issued under this section is subject to a civil penalty not to exceed \$5,000 for each violation. Each day of  
3 violation constitutes a separate violation.

4 (5) The department of environmental quality is authorized to commence a civil action seeking  
5 appropriate relief, including temporary and permanent injunctions and penalties under subsection (4) of this  
6 section, for a violation of 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or a violation of an order  
7 issued under this section. The action must be brought in the district court of the first judicial district, Lewis and  
8 Clark County, or in the district court of the county in which the violation occurred."

9

10 **Section 51.** Section 85-2-431, MCA, is amended to read:

11 **"85-2-431. Penalty.** (1) A person who fails to comply with the requirements of 85-2-424 is liable for a  
12 civil penalty of not more than \$75.

13 (2) An action to recover the penalty must be brought by the department and filed in the district court  
14 for the first judicial district. ~~At the discretion of the department, the judgment may be certified to the district court~~  
15 in the county where the real property is located.

16 (3) Any penalty fee collected under this section must be deposited in the water right appropriation  
17 account provided for in 85-2-318."

18

19 **Section 52.** Section 85-6-109, MCA, is amended to read:

20 **"85-6-109. Operation of projects with water users' association -- definitions.** (1) As used in this  
21 section, the following definitions apply:

22 (a) "Association" means a water users' association.

23 (b) "Department" means the department of natural resources and conservation provided for in Title 2,  
24 chapter 15, part 33.

25 (2) Whenever the department proposes a program of maintenance, repair, operation, or alteration of a  
26 project in excess of \$25,000, the cost of which will be borne by an association pursuant to the terms of a water  
27 marketing contract, the association must be informed of the program and given an opportunity to comment. The  
28 department shall notify the association of its decision. If the association believes the program to be

1 unnecessary or excessive in cost, it may appeal the department decision to the district court in any county  
2 where all or part of the project works is located ~~or to the district court in Lewis and Clark County.~~

3 (3) If an appeal is filed under subsection (2), the court shall hold a trial de novo on the question of  
4 necessity of the department program and the question of excessive costs. If the association prevails, the court  
5 may award costs to the association. The court may specify an acceptable program of maintenance, repair,  
6 operation, or alteration or may order the department and the association to develop a program, subject to court  
7 approval.

8 (4) Whenever a program of maintenance, repair, operation, or alteration is proposed, the department  
9 shall assist the association in attempting to secure sources of financing, including federal funds.

10 (5) Whenever the department proposes to abandon, sell, or otherwise dispose of a project that  
11 involves a water users' association, the department shall notify the association. Before the department may  
12 take further action to abandon, sell, or otherwise dispose of a project that involves a water users' association,  
13 the department must receive a petition approving the abandonment, sale, or disposition. The petition must be  
14 signed by stockholders of the association who represent 66 2/3% or more of the issued and outstanding stock  
15 of the association. If, within 30 days of receipt of the final proposal of abandonment, sale, or other disposal,  
16 stockholders of the association who represent 30% or more of the issued and outstanding stock of the  
17 association file a petition of protest with the department, the project may not be abandoned, sold, or otherwise  
18 disposed of without the consent of the legislature."

19 - END -