LAWS AND RESOLUTIONS OF THE STATE OF MONTANA

Enacted or Passed by the

SIXTY-FIRST LEGISLATURE IN REGULAR SESSION

Held at Helena, the Seat of Government January 5, 2009, through April 28, 2009

and the

SIXTIETH LEGISLATURE IN SPECIAL SESSION

Held at Helena, the Seat of Government September 5, 2007

Published and distributed by
Montana Legislative Services Division
Capitol Bldg Rm 110
1301 E 6th Ave
PO Box 201706
Helena MT 59620-1706
http://leg.mt.gov

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Printed and bound by West, a Thomson Reuters business 610 Opperman Dr Eagan MN 55123

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CHAPTER NO. 57

[HB 38]

AN ACT REVISING LAWS TO REFLECT THE ENACTMENT OF THE 6-MILL LEVY FOR UNIVERSITY SYSTEM PURPOSES; AMENDING SECTIONS 7-1-2111, 15-1-402, 15-10-420, 15-24-1703, 15-36-331, 15-39-110, AND 90-6-309, MCA; REPEALING SECTION 20-25-423, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-2111, MCA, is amended to read:

- **"7-1-2111. Classification of counties.** (1) For the purpose of regulating the compensation and salaries of all county officers not otherwise provided for and for fixing the penalties of officers' bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upon which the tax levy is made as follows:
- (a) first class—all counties having a taxable valuation of \$50 million or more;
- (b) second class—all counties having a taxable valuation of 30 million or more and less than 50 million;
- (c) third class—all counties having a taxable valuation of \$20 million or more and less than \$30 million;
- (d) fourth class—all counties having a taxable valuation of \$15\$ million or more and less than \$20\$ million;
- (e) fifth class—all counties having a taxable valuation of \$10\$ million or more and less than \$15\$ million;
- (f) sixth class—all counties having a taxable valuation of \$5 million or more and less than \$10 million;
- (g) seventh class—all counties having a taxable valuation of less than \$5 million.
- (2) As used in this section, "taxable valuation" means the taxable value of taxable property in the county as of the time of determination plus:
- (a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less:
- (b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a manufacturer's rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;
- (c) that portion of the taxable value of the county on December 31, 1997, attributable to buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors;
- (d) that portion of the taxable value of the county on December 31, 1997, attributable to trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds;
 - (e) the value provided by the department of revenue under 15-36-332(7);
- (f) 50% of the taxable value of the county on December 31, 1999, attributable to telecommunications property under 15-6-141;
- (g) 50% of the taxable value in the county on December 31, 1999, attributable to electrical generation property under 15-6-141;

- (h) the value provided by the department of revenue under 15-24-3001;
- (i) 6% of the taxable value of the county on January 1 of each tax year;
- (j) 45% of the contract sales price of the gross proceeds of coal in the county as provided in 15-23-703 and as reported under 15-23-702; and
- (k) $33\ 1/3\%$ of the value of bentonite produced during the previous year as provided in 15-39-110(14) 15-39-110(12) and as reported under 15-39-101."

Section 2. Section 15-1-402, MCA, is amended to read:

- **"15-1-402. Payment of property taxes or fees under protest.** (1) (a) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested.
 - (b) The protested payment must:
 - (i) be made to the officer designated and authorized to collect it;
 - (ii) specify the grounds of protest; and
- (iii) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.
- (c) If the protested property tax or fee is on property that is subject to central assessment pursuant to 15-23-101, the person shall report to the department the grounds of the protest and the amount of the protested payment for each county in which a protested payment was made. By November 1 of each year, the department shall mail a notice stating the requirements of this subsection (1)(c) to owners of property subject to central assessment under 15-23-101(1) and (2) who have filed a timely appeal under 15-1-211.
- (2) A person appealing a property tax or fee pursuant to chapter 2 or 15, including a person appealing a property tax or fee on property that is subject to central assessment pursuant to 15-23-101(1) or (2), shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.
- (3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.
- (4) (a) Except as provided in subsection (4)(b), all property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or

in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

- (b) (i) Property taxes that are levied by the state against property that is centrally assessed pursuant to 15-23-101 must be remitted by the county treasurer to the department.
- (ii) The department shall deposit 50% of that portion of the funds levied for the university system pursuant to 15-10-107 15-10-108 in the state special revenue fund to the credit of the university system, and the other 50% of the funds levied pursuant to 15-10-107 15-10-108 must be deposited in a centrally assessed property tax state special revenue fund.
- (iii) Fifty percent of the funds remaining after the deposit of university system funds must be deposited in the state general fund, and the other 50% must be deposited in a centrally assessed property tax state special revenue fund.
- (5) (a) Except as provided in subsection (5)(b), the governing body of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.
- (b) The governing body of a taxing jurisdiction affected by the payment of taxes under protest on property that is centrally assessed pursuant to 15-23-101 in the first and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled. The decision in a previous year of a taxing jurisdiction to leave protested taxes of centrally assessed property in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled.
- (6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the protested portions of the property tax or fee must be taken from the protest fund or the centrally assessed property tax state special revenue fund and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged to the local government units.
- (b) (i) If the action is finally determined adversely to the governmental entity levying the tax, then the treasurer of the municipality, county, or state entity levying the tax shall, upon receipt of a certified copy of the final judgment in the action and upon expiration of the time set forth for appeal of the final judgment, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee that the person holding the judgment is entitled to recover, together with interest from the date of payment under protest.

- (ii) The taxing jurisdiction shall pay interest at the rate of interest earned by the pooled investment fund provided for in 17-6-203 for the applicable period.
- (c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.
- (d) (i) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible. The treasurer is not responsible for the amount required to be refunded by the state treasurer as provided in subsection (6)(b).
- (ii) For an adverse protest action against the state for centrally assessed property, the department shall refund from the centrally assessed property tax state special revenue fund the amount of protested taxes and from the state general fund the amount of interest as required in subsection (6)(b). The amount refunded for an adverse protested action from the centrally assessed property tax state special revenue fund may not exceed the amount of protested taxes or fees required to be deposited for that action pursuant to subsections (4)(b)(ii) and (4)(b)(iii) or, for taxes or fees protested prior to April 28, 2005, an equivalent amount of the money transferred to the fund pursuant to section 3, Chapter 536, Laws of 2005. If the amount available for the adverse protested action in the centrally assessed property tax state special revenue fund is insufficient to refund the tax payments to which the taxpayer is entitled and for which the state is responsible, the department shall pay the remainder of the refund proportionally from the state general fund and from money deposited in the state special revenue fund levied pursuant to 15-10-107.
- (e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction, including the state, is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the rate referred to in subsection (6)(b) from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus 4 percentage points, from the date of final resolution of the protest until refund is made.
- (7) A taxing jurisdiction, except the state, may satisfy the requirements of this section by use of funds from one or more of the following sources:
- (a) imposition of a property tax to be collected by a special tax protest refund levy;
- (b) the general fund or any other funds legally available to the governing body; and
- (c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.
- (8) If the department revises an assessment that results in a refund of taxes of \$5 or less, a refund is not owed."

Section 3. Section 15-10-420, MCA, is amended to read:

- "15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.
- (b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.
- (c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.
- (2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.
 - (3) (a) For purposes of this section, newly taxable property includes:
 - (i) annexation of real property and improvements into a taxing unit;
 - (ii) construction, expansion, or remodeling of improvements;
 - (iii) transfer of property into a taxing unit;
 - (iv) subdivision of real property; and
 - (v) transfer of property from tax-exempt to taxable status.
- (b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.
- (4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:
 - (i) a change in the boundary of a tax increment financing district;
- (ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or
 - (iii) the termination of a tax increment financing district.
- (b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

- (c) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonqualified agricultural land as described in 15-6-133(1)(c).
 - (5) Subject to subsection (8), subsection (1)(a) does not apply to:
 - (a) school district levies established in Title 20; or
- (b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703.
- (6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.
- (7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.
- (8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107 15-10-108, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.
 - (9) (a) The provisions of subsection (1) do not prevent or restrict:
 - (i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;
 - (ii) a levy to repay taxes paid under protest as provided in 15-1-402;
 - (iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326; or
 - (iv) a levy for the support of a study commission under 7-3-184.
- (b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.
- (10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.
- (11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Section 4. Section 15-24-1703, MCA, is amended to read:

- "15-24-1703. Application of suspension or cancellation. The suspension or cancellation of delinquent property taxes pursuant to this part:
- (1) applies to all mills levied in the county or otherwise required under state law, including levies or assessments required under Title 15, chapter 10, 20-9-331, and 20-9-333, and 20-25-423;
- (2) does not apply to assessments made against property for the payment of bonds issued pursuant to Title 7, chapter 12."

Section 5. Section 15-36-331, MCA, is amended to read:

- "15-36-331. Distribution of taxes. (1) (a) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalties collected under this part.
- (b) For the purposes of distribution of oil and natural gas production taxes to county and school district taxing units under 15-36-332 and to the state, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.
- (2) (a) The amount of oil and natural gas production taxes collected for the privilege and license tax pursuant to 82-11-131 must be deposited, in accordance with the provisions of 17-2-124, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.
- (b) The amount of the tax for the oil, gas, and coal natural resource account established in 90-6-1001 must be deposited in the account.
- (3) (a) For each tax year, the amount of oil and natural gas production taxes determined under subsection (1)(b) is allocated to each county according to the following schedule:

Big Horn	45.05%
Blaine	58.39%
Carbon	48.27%
Chouteau	58.14%
Custer	69.53%
Daniels	50.81%
Dawson	47.79%
Fallon	41.78%
Fergus	69.18%
Garfield	45.96%
Glacier	58.83%
Golden Valley	58.37%
Hill	64.51%
Liberty	57.94%
McCone	49.92%
Musselshell	48.64%
Petroleum	48.04%
Phillips	54.02%
Pondera	54.26%
Powder River	60.9%
Prairie	40.38%
Richland	47.47%
Roosevelt	45.71%
Rosebud	39.33%
Sheridan	47.99%
Stillwater	53.51%
Sweet Grass	61.24%

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Teton		46.1%
Toole		57.61%
Valley		51.43%
Wibaux		49.16%
Yellowstone		46.74%
All other counties		50.15%

- (b) The oil and natural gas production taxes allocated to each county must be deposited in the state special revenue fund and transferred to each county for distribution, as provided in 15-36-332.
- (4) The department shall, in accordance with the provisions of 17-2-124, distribute the state portion of oil and natural gas production taxes remaining after the distributions pursuant to subsections (2) and (3) as follows:
- (a) for each fiscal year through the fiscal year ending June 30, 2011, to be distributed as follows:
- (i) 1.23% to the coal bed methane protection account established in 76-15-904;
- (ii) 1.45% to the natural resources projects state special revenue account established in 15-38-302;
- (iii) 1.45% to the natural resources operations state special revenue account established in 15-38-301;
 - (iv) 2.99% to the orphan share account established in 75-10-743;
- (v) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423 15-10-108; and
 - (vi) all remaining proceeds to the state general fund;
 - (b) for fiscal years beginning after June 30, 2011, to be distributed as follows:
- (i) 2.16% to the natural resources projects state special revenue account established in 15-38-302;
- (ii) 2.02% to the natural resources operations state special revenue account established in 15-38-301;
 - (iii) 2.95% to the orphan share account established in 75-10-743;
- (iv) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423 15-10-108; and
 - (v) all remaining proceeds to the state general fund."
 - Section 6. Section 15-39-110, MCA, is amended to read:
- "15-39-110. Distribution of taxes. (1) (a) For each semiannual period, the department shall determine the amount of tax, late payment interest, and penalties collected under this part from bentonite mines that produced bentonite before January 1, 2005. The tax is distributed as provided in subsections (2) through (11) (9).
- (b) For each semiannual period, the department shall determine the amount of tax, late payment interest, and penalties collected under this part from bentonite mines that first began producing bentonite after December 31, 2004. The tax is distributed as provided in subsection (12) (10).

- (2) The percentage of the tax determined under subsection (1)(a) and specified in subsections (3) through (11) (9) is allocated according to the following schedule:
- (a) 2.33% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423 15-10-108;
- (b) 18.14% to the state general fund to be appropriated for the purposes of the tax levies as provided in 20-9-331, 20-9-333, and 20-9-360;
- (c) 3.35% to Carbon County to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under 15-10-108, 20-9-331, 20-9-333, and 20-9-360, and 20-25-423; and
- (d) 76.18% to Carter County to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under 15-10-108, 20-9-331, 20-9-333, and 20-9-360, and 20-25-423.
- (3) For the production of bentonite occurring after December 31, 2006, and before January 1, 2008, 80% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 20% must be distributed as provided in subsection (12).
- (4) For the production of bentonite occurring after December 31, 2007, and before January 1, 2009, 70% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 30% must be distributed as provided in subsection (12).
- (5)(3) For the production of bentonite occurring after December 31, 2008, and before January 1, 2010, 60% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 40% must be distributed as provided in subsection (12) (10).
- (6)(4) For the production of bentonite occurring after December 31, 2009, and before January 1, 2011, 50% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 50% must be distributed as provided in subsection (12) (10).
- (7)(5) For the production of bentonite occurring after December 31, 2010, and before January 1, 2012, 40% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 60% must be distributed as provided in subsection (12) (10).
- (8)(6) For the production of bentonite occurring after December 31, 2011, and before January 1, 2013, 30% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 70% must be distributed as provided in subsection (12) (10).
- (9)(7) For the production of bentonite occurring after December 31, 2012, and before January 1, 2014, 20% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 80% must be distributed as provided in subsection (12) (10).
- (10)(8) For the production of bentonite occurring after December 31, 2013, and before January 1, 2015, 10% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 90% must be distributed as provided in subsection (12) (10).

- (11)(9) For the production of bentonite occurring in tax years beginning after December 31, 2014, 100% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (12) (10).
- (12)(10) For the production of bentonite, 100% of the tax determined under subsection (1)(b) and the distribution percentages determined under subsections (3) through (11) (9) are allocated according to the following schedule:
- (a) 1.30% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423 15-10-108;
- (b) 20.75% to the state general fund to be appropriated for the purposes of the tax levies as provided in 20-9-331, 20-9-333, and 20-9-360;
- (c) 77.95% to the county in which production occurred to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under 15-10-107, 15-10-108, 20-9-331, 20-9-333, and 20-9-360, and 20-9-36423
- (13)(11) The department shall remit the amounts to be distributed in this section to the county treasurer by the following dates:
- (a) On or before October 1 of each year, the department shall remit the county's share of bentonite production tax payments received for the semiannual period ending June 30 of the current year to the county treasurer.
- (b) On or before April 1 of each year, the department shall remit the county's share of bentonite production tax payments received to the county treasurer for the semiannual period ending December 31 of the previous year.
- (14)(12) (a) The department shall also provide to each county the amount of gross yield of value from bentonite, including royalties, for the previous calendar year. Thirty-three and one-third percent of the gross yield of value must be treated as taxable value for county classification purposes under 7-1-2111 and for determining school district debt limits under 20-9-406.
- (b) The percentage amount of the gross yield of value determined under subsection (14)(a) (12)(a) must be treated as assessed value under 15-8-111 for the purposes of local government debt limits and other bonding provisions as provided by law.
- (15)(13) The bentonite tax proceeds are statutorily appropriated, as provided in 17-7-502, to the department for distribution as provided in this section."
 - Section 7. Section 90-6-309, MCA, is amended to read:
- "90-6-309. Tax prepayment large-scale mineral development. (1) After permission to commence operation is granted by the appropriate governmental agency, and upon request of the governing body of a county in which a facility is to be located, a person intending to construct or locate a large-scale mineral development in this state shall prepay property taxes as specified in the impact plan. This prepayment shall must exclude the 6-mill university levy established under 20-25-423 15-10-108 and may exclude the mandatory county levies for the school BASE funding program established in 20-9-331 and 20-9-333.
- (2) The person who is to prepay under this section is not obligated to prepay the entire amount established in subsection (1) at one time. Upon request of the

governing body of an affected local government unit, the person shall prepay the amount shown to be needed from time to time as determined by the board.

- (3) The person who is to prepay shall guarantee to the hard-rock mining impact board, through an appropriate financial institution, as may be required by the board, that property tax prepayments will be paid as needed for expenditures created by the impacts of the large-scale mineral development.
- (4) When the mineral development facilities are completed and assessed by the department of revenue, they are subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that in each year after the start of production, the local government unit that received a property tax prepayment shall provide for repayment of prepaid property taxes in accordance with subsection (5).
- (5) A local government unit that received all or a portion of the property tax prepayment under this section shall provide for tax crediting as specified in the impact plan. The tax credit allowed in any year may not, however, exceed the tax obligation of the developer for that year, and the time period for tax crediting is limited to the productive life of the mining operation."

Section 8. Repealer. Section 20-25-423, MCA, is repealed.

Section 9. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 58

[HB 44]

AN ACT REVISING THE REQUIREMENTS FOR THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S PARTICIPATION IN FEDERAL FOREST MANAGEMENT PLANNING; AMENDING SECTION 76-13-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-702, MCA, is amended to read:

- **"76-13-702. Duties authority.** To implement the policy of 76-13-701, the department of natural resources and conservation:
- (1) shall support sustainable forest management practices, including forest restoration, on public forests in Montana consistent with all applicable laws and administrative requirements;
- (2) shall provide technical information and educational assistance to nonindustrial, private forest landowners;
- (3) shall promote forest management activities within and adjacent to the wildland-urban interface and promote the implementation of community wildfire protection plans;
- (4) shall promote a viable forest and wood products industry and other businesses and individual activities that rely on public forest lands;
- (5) shall represent the state's interest in the federal forest management planning and policy process, including establishing cooperative agency status and coordination with federal agencies;
- (6) may assist local government entities in establishing cooperative agency status and coordination with federal agencies;

- (6)(7) shall promote the development of an independent, long-term sustained yield calculation on Montana's federal forests;
- (7)(8) has the authority to intervene in litigation or appeals on federal forest management projects that comply with the policy in 76-13-701 and in which local and state interests are clearly involved;
- (8)(9) has the authority to enter into agreements with federal agencies to participate in forest management activities on federal lands; and
- (9)(10) shall participate in and facilitate collaboration between traditional forest interests in reaching consensus-based solutions on federal land management issues."

Section 2. Effective date. [This act] is effective on passage and approval. Approved March 25, 2009

CHAPTER NO. 59

[HB 46]

AN ACT CHANGING THE REPORTING PERIOD FOR ESTABLISHING EMPLOYMENT ELIGIBILITY FOR THE QUALITY EDUCATOR LOAN ASSISTANCE PROGRAM FROM THE PREVIOUS SCHOOL YEAR TO THE CURRENT SCHOOL YEAR; AMENDING SECTION 20-4-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-502, MCA, is amended to read:

- **"20-4-502. Definitions.** For purposes of this part, unless the context requires otherwise, the following definitions apply:
- (1) "Education cooperative" means a cooperative of Montana public schools as described in 20-7-451.
- (2) "Educational loans" means all loans made pursuant to a federal loan program, except federal parent loans for undergraduate students (PLUS) loans, as provided in 20 U.S.C. 1078-2.
- (3) "Federal loan program" means educational loans authorized by 20 U.S.C. 1071, et seq., 20 U.S.C. 1087a, et seq., and 20 U.S.C. 1087aa, et seq.
- (4) (a) "Quality educator" means a full-time equivalent educator, as reported to the superintendent of public instruction for accreditation purposes in the previous current school year, who:
- (i) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection (4)(b) in a position that requires an educator license in accordance with administrative rules adopted by the board of public education; or
- (ii) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-17-302, 37-22-301, 37-23-201, 37-24-301, or 37-25-302 and is employed by an entity listed in subsection (4)(b) of this section to provide services to students.
 - (b) For purposes of subsection (4)(a), an entity means:
 - (i) a school district;
 - (ii) an education cooperative;
 - (iii) the Montana school for the deaf and blind, as described in 20-8-101;

- (iv) the Montana youth challenge program; and
- (v) a state youth correctional facility, as defined in 41-5-103.
- (5) "School district" means a public school district, as provided in 20-6-101 and 20-6-701."

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved March 25, 2009

CHAPTER NO. 60

[HB 57]

AN ACT CLARIFYING SCHOOL DISTRICT CONSOLIDATIONS AND ANNEXATIONS; AMENDING SECTIONS 20-3-312, 20-6-411, 20-6-414, 20-6-422, AND 20-6-704, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-312, MCA, is amended to read:

"20-3-312. Trustees of district affected by boundary change. The trustees of any district to which the territory of another district is attached as a result of annexation, abandonment, territory transfer, or any other method of changing district boundaries, except by the consolidation of elementary districts, continue to be the trustees of the district with the same powers, duties, and responsibilities and subject to the same limitations provided by law as if there had been no boundary change. In the case of elementary district consolidation, the appointed trustees of the resulting elementary district shall assume their trustee positions under the authority of 20-6-423."

Section 2. Section 20-6-411, MCA, is amended to read:

"20-6-411. Bonded indebtedness to remain with original territory except when assumed by election. Whenever district boundaries are changed in any manner prescribed in this title, the existing bonded indebtedness against any district or territory affected by a change of boundaries shall remain remains the indebtedness of the original territory against which such the bonds were issued and shall must be paid by levies on the original territory, except when elementary districts are consolidated with the mutual assumption of bonded indebtedness or when an elementary a district is annexed with a joint assumption of the annexing district's bonded indebtedness with the annexing district. Any moneys money to the credit of the debt service fund of a district when its boundaries are changed shall must be used to pay the existing bond principal and interest of the original territory issuing such the bonds as it becomes due or for bond redemption under the bonding provisions of this title."

Section 3. Section 20-6-414, MCA, is amended to read:

"20-6-414. Cash disposition when districts consolidated. Whenever two or more districts are consolidated without the mutual assumption of bonded indebtedness, all cash and debts, other than cash credited to the debt service fund and debts for bonded indebtedness, shall must be credited or debited to the same types of funds of the consolidated district as the funds from which they were transferred by the county treasurer. In addition, when two or more elementary districts are consolidated with the mutual assumption of bonded indebtedness, the cash credited to the debt service fund and the bonded

indebtedness also shall must be transferred to a similar fund of the consolidated district."

Section 4. Section 20-6-422, MCA, is amended to read:

- **"20-6-422. District annexation.** (1) As used in this section, the following definitions apply:
- (a) "Annexing district" means the district to which another district is being attached through an annexation procedure.
- (b) "District to be annexed" means the district that is being attached to another district through an annexation procedure.
- (2) A district may be annexed to a contiguous district when one of the conditions of 20-6-421 is met in accordance with the following procedure:
- (a) An annexation proposition may be introduced in the district to be annexed by either of the two following methods:
- (i) the trustees may pass a resolution requesting the county superintendent of the county where the district is located to order an election to consider an annexation proposition for their district; or
- (ii) not less than 20% of the electors of the district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent of the county where the district is located requesting an election to consider an annexation proposition for their district.
- (b) The resolution or petition must state whether the annexation is to be made with or without the joint assumption of bonded indebtedness of the annexing district by the district to be annexed and the annexing district.
- (3) Before ordering an election on the proposition, the county superintendent of the county where the district to be annexed is located must first receive from the trustees of the annexing district a resolution giving the county superintendent the authority to annex the district. The resolution must state whether the annexation is to be made with or without the joint assumption of bonded indebtedness of the annexing district by the district to be annexed and the annexing district. The resolution from the annexing district and the resolution or petition from the district to be annexed must agree on whether or not there will be joint assumption of bonded indebtedness. Without agreement, the annexation proposition may not be considered further.
- (4) When the county superintendent of the county where the district to be annexed is located has received the resolution authorizing the annexation from the annexing district and the resolution or valid petition from the district to be annexed, the county superintendent shall, within 10 days and as provided by 20-20-201, order the trustees of the district to be annexed to call an annexation election.
- (5) The district to be annexed shall call and conduct an election in the manner prescribed in this title for school elections and subject to subsections (6) and (7). Any elector qualified to vote under the provisions of 20-20-301 may vote.
- (6) (a) If the district to be annexed is to jointly assume the bonded indebtedness of the annexing district, the ballots must read, after stating the annexation proposition, "FOR annexation with assumption of bonded indebtedness" and "AGAINST annexation with assumption of bonded indebtedness".

- (b) When the trustees in each *the* district conducting an *the* election canvass the vote under the provisions of 20-20-415, they shall determine the number of votes "FOR" and "AGAINST" the proposition.
- (c) The proposition is approved in the district if a majority of those voting approve the proposition.
- (7) If the district to be annexed is not to jointly assume the bonded indebtedness of the annexing district, the ballots must read, after stating the annexation proposition, "FOR annexation without assumption of bonded indebtedness" and "AGAINST annexation without assumption of bonded indebtedness". The annexation proposition is approved by a district if a majority of those voting in a district approve the proposition.
- (8) After the county superintendent of the county where the district to be annexed is located has received the election certification provided for in 20-20-416 from the trustees of the district conducting the annexation election and if the annexation proposition has been approved by the election, the county superintendent shall order the annexation of the territory of the district voting on the proposition to the district that has authorized the annexation to its territory effective July 1. The order must be issued within 10 days after the receipt of the election certificate. For annexation with joint assumption of bonded indebtedness, the order must specify that there will be joint assumption of the bonded indebtedness between the of the annexing district by the owners of all taxable real and personal property in the annexed territory and in the annexing district of the district to be annexed. The county superintendent of the county where the district to be annexed is located shall send a copy of the order to the board of county commissioners of each county involved in the annexation order.
- (9) If the annexation proposition is disapproved in the district to be annexed, the annexation proposition fails and the county superintendent of the county where the district to be annexed is located shall notify each district of the disapproval of the annexation proposition."
 - **Section 5.** Section 20-6-704, MCA, is amended to read:
- **"20-6-704. Dissolution of K-12 school district.** (1) Except as provided in subsection (2), in order to dissolve a K-12 district under the provisions of this section, the trustees of a district shall submit for approval to the electors of the K-12 district a proposition dissolving the K-12 district for the purpose of annexing or consolidating the K-12 district's elementary or high school program with a contiguous school district or districts in an ensuing school fiscal year under the provisions of 20-6-422 or 20-6-423.
- (2) If the trustees of the school district determine that the creation or continuation of the K-12 district has resulted in or will result in the loss of federal funding for the elementary or high school programs and that it is in the best interest of the district to dissolve into the original elementary district and high school district that existed prior to the formation of the K-12 district, the trustees may dissolve the district under the following procedure:
- (a) The trustees of the district shall pass a resolution requesting the county superintendent to order a dissolution of the district.
- (b) When the county superintendent receives the resolution from the district, the county superintendent shall, within 10 days, order the dissolution of the K-12 district into the original elementary district and high school district, to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the order to the board of

county commissioners, the trustees of the district, and the superintendent of public instruction.

- (3) If the entire territory of the dissolving K-12 district will be annexed to or consolidated with a contiguous district or districts, the resolution or petition required in subsection (1) or (2) must contain a description of the manner in which the real and personal property and funds of the district are to be apportioned in the dissolution of the district and the subsequent annexation to or consolidation with one or more other districts. If a portion of the dissolving K-12 district will not be annexed or consolidated with another district or districts, the resolution or petition must contain a description of the manner in which the property, funds, and financial obligations, including bonded indebtedness, of the K-12 district are to be apportioned to the district or districts whose territory is not annexed to or consolidated with another district.
- (4) After the county superintendent receives the certificate of election provided for in 20-20-416 from the trustees of the K-12 district and from each district included in a consolidation proposition, the county superintendent shall determine whether the dissolution and annexation or consolidation proposition or propositions have been approved. If the K-12 district has approved the dissolution proposition and each district involved in a consolidation has approved the consolidation proposition, the county superintendent shall, within 10 days after the receipt of the election certificate, order the dissolution of the K-12 district into the original elementary district and high school district, to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the dissolution order to the board of county commissioners, the trustees of the district included in the dissolution order, and the superintendent of public instruction.
 - (5) Whenever a K-12 district is dissolved, the following provisions apply:
- (a) The trustees of the elementary district whose territory is not annexed or consolidated upon dissolution of the K-12 district are responsible for the execution of remaining financial obligations of the K-12 district and for the apportionment between the elementary and high school programs of any obligations not identified in the resolution required under subsection (3).
- (b) The provisions of 20-6-410 apply for tenure teachers in the dissolution of a K-12 district.
- (c) For purposes of applying the budget limitation provisions of 20-9-308, the budget of a K-12 district during its last year of operations as a K-12 district will be prorated based on rules promulgated by the superintendent of public instruction."

Section 6. Effective date. [This act] is effective July 1, 2009.

Section 7. Applicability. [This act] applies to school district budgets for the school year beginning July 1, 2009.

Approved March 25, 2009

CHAPTER NO. 61

[HB 70]

AN ACT CLARIFYING EXCLUSIONS FROM DRUG SCHEDULES; AMENDING SECTION 50-32-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-32-205, MCA, is amended to read:

"50-32-205. Nonprescription drugs not to be scheduled. The board shall exclude any nonnarcotic drug from a schedule if the drug may, under the Federal Food, Drug, and Cosmetic Act and 50-31-307(2)(b) of the Montana Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 62

[HB 94]

AN ACT REVISING THE LAW GOVERNING SECURITY INTERESTS IN LIQUOR LICENSES; CLARIFYING THAT THE USE OF LOAN AND SECURITY DOCUMENTATION CONSISTENT WITH THAT USED BY THE REGULATED LENDER GENERALLY DOES NOT CONSTITUTE CONTROL OF THE OPERATION OF THE BUSINESS OR THE LICENSEE; AMENDING SECTION 16-4-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-801, MCA, is amended to read:

- **"16-4-801. Security interest in liquor license.** (1) (a) A security interest in a liquor license is an interest in the liquor license that secures payment or performance of an obligation. A contract for the sale of a liquor license, including a provision allowing the seller to retain an ownership interest in the license solely for the purpose of guaranteeing payment for the license, may, for the purposes of this section, be treated as a security interest.
 - (b) For the purposes of this section:
 - (i) "default" means that:
- (A) the defaulting party has acknowledged in writing pursuant to the terms of a written security agreement or contract for sale that the defaulting party no longer has any ownership interest or any other rights to possess or control the liquor license;
- (B) a court of competent jurisdiction has made an order foreclosing all of the defaulting party's interests in the license; or
- (C) there has been a nonjudicial sale by the secured party made pursuant to the Uniform Commercial Code and the secured party has provided written proof of the sale to the department; and
 - (ii) "liquor license" means a license issued under this chapter.
- (2) The department, after review of the underlying documents creating the security interest, may approve a transfer of ownership of a liquor license subject to a security interest as provided in subsection (1). A person holding a security interest may not have any control in the operation of the business operated under a license subject to a security interest nor may that person share in the profits or the liabilities of the business other than the payment or performance of the licensee's obligation under a security agreement.

- (3) (a) Within 7 days of a default by a licensee, the person holding the security interest shall give notice to the department of the licensee's default and either apply to have the license transferred to that person, subject to that person meeting the requirements of 16-4-401 and all other applicable provisions of this code, or the person shall place the license on nonuser status. Upon receipt of an application to transfer the license, the department may, pursuant to 16-4-404, grant the applicant temporary authority to operate the license. If the person holding the license places the license on nonuser status, the person shall transfer ownership of the license within 180 days from the date on which the notice of the default was given to the department. The operation of a business under a license by a person holding a security interest for more than 7 days after default of the license or without temporary authority issued by the department must be considered to be a violation of this code and constitutes grounds for the department to either deny an application for transfer of the license or for the revocation of the license pursuant to 16-4-406.
- (b) If the person holding the security interest does not qualify for or cannot qualify for ownership of a liquor license under 16-4-401, the secured party shall transfer ownership of the liquor license within 180 days of the notice of the default of the licensee.
- (c) The department, upon a showing of good cause, may in its discretion extend the time for sale of the license for an additional period of up to 180 days.
- (4) A regulated lender, as defined in 31-1-111, may obtain a security interest in a liquor license in order to secure a loan or a guaranty of a loan. This section does not prohibit or limit the ability of a regulated lender to use loan and security documentation consistent with that used by the regulated lender generally, and the documentation does not constitute control of the operation of the business or the licensee operating the business that is subject to the security interest."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 63

[HB 114]

AN ACT PROVIDING FOR RECOGNITION OF LICENSURE AND FOR REGISTRATION OF OUT-OF-STATE VOLUNTEER PROFESSIONALS WHEN A DISASTER OR EMERGENCY IS IN EFFECT; ESTABLISHING ADMINISTRATIVE DISCIPLINARY SANCTIONS FOR VOLUNTEER PROFESSIONALS; PROVIDING RULEMAKING AUTHORITY; DEFINING "VOLUNTEER PROFESSIONAL"; PROVIDING IMMUNITY FOR THE ACTIONS OF VOLUNTEER PROFESSIONALS; AND AMENDING SECTIONS 10-3-103 AND 10-3-111, MCA.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Interstate licensure recognition volunteer professionals. (1) (a) Subject to subsection (2), whenever a state of emergency or disaster is in effect, a volunteer professional who possesses an active, unrestricted license in another state may practice in Montana to the extent authorized by law as if the person had been licensed in Montana.
- (b) A volunteer professional shall adhere to the scope and standards of practice set forth in licensing provisions, practice acts, or other laws or policies of Montana.

- (2) (a) Prior to providing services in Montana, a volunteer professional who is licensed for professional services in another state shall register with the appropriate licensing agency in the state of Montana. The licensing agency shall verify the current licensure of the volunteer professional in the other state or states prior to registering the licensee.
- (b) Based on available funding, the licensing agency may request and accept funds for the purpose of implementing the provisions of subsection (2)(a).

Section 2. Administrative disciplinary sanctions. (1) A licensing board or a licensing program in Montana:

- (a) may impose administrative sanctions upon a volunteer professional for unprofessional conduct in response to an emergency or disaster that occurs in Montana; and
- (b) shall report any administrative sanctions imposed upon a volunteer professional licensed in another state to the appropriate licensing board or disciplinary authority in any other state in which the practitioner is known to be licensed.
- (2) In determining whether to impose administrative sanctions under subsection (1), a licensing board or other disciplinary authority in Montana shall consider any exigent circumstances in which the conduct took place in light of the emergency or disaster.
- **Section 3. Rulemaking authority.** The department of labor and industry may adopt rules necessary to implement [sections 1 and 2] to recognize and register out-of-state volunteer professionals.
 - **Section 4.** Section 10-3-103, MCA, is amended to read:
- "10-3-103. **Definitions.** As used in parts 1 through 4 of this chapter, the following definitions apply:
- (1) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and emergency services.
 - (2) "Department" means the department of military affairs.
- (3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or artificial cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, accidents involving radiation byproducts or other hazardous materials, outbreak of disease, bioterrorism, or incidents involving weapons of mass destruction.
- (4) "Disaster and emergency services" means the preparation for and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.
- (5) "Division" means the division of disaster and emergency services of the department.
- (6) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize.

- (7) (a) "Incident" means an event or occurrence, caused by either an individual or by natural phenomena, requiring action by disaster and emergency services personnel to prevent or minimize loss of life or damage to property or natural resources. The term includes the imminent threat of an emergency.
- (b) The term does not include a state of emergency or disaster declared by the governor pursuant to 10-3-302 or 10-3-303.
- (8) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.
- (9) "Principal executive officer" means the mayor, presiding officer of the county commissioners, or other chief executive officer of a political subdivision.
- (10) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings.
- (11) "Volunteer professional" means an individual with an active, unrestricted license to practice a profession under the provisions of Title 37, Title 50, or the laws of another state.'

Section 5. Section 10-3-111, MCA, is amended to read:

- "10-3-111. Personnel immune from liability. (1) The state, a political subdivision of the state, or the agents or representatives of the state or a political subdivision of the state are not liable for personal injury or property damage sustained by a person appointed or acting as a volunteer civilian defense worker, a volunteer professional, or a member of an agency engaged in civilian defense activity during an incident, disaster, or emergency. This section does not affect the right of a person to receive benefits or compensation to which the person might otherwise be entitled under the workers' compensation law or a pension law or an act of congress.
- (2) The following individuals or entities are not liable for the death or injury of individuals or for damage to property as a result of an act or omission specifically arising out of activities undertaken in response to an incident, disaster, or emergency and while complying with or reasonably attempting to comply with parts 1 through 4 and 12 of this chapter or [sections 1 through 3] or an order or rule promulgated under the provisions of parts 1 through 4 and 12 of this chapter or [sections 1 through 3]:
 - (a) the state or a political subdivision of the state or,;
 - (b) except in cases of willful misconduct, gross negligence, or bad faith;
- (i) the employees, agents, or representatives of the state or a political subdivision of the state; or
- (ii) a volunteer or auxiliary civilian defense worker, or α member of an agency engaged in civilian defense activity, a volunteer professional, during an incident, disaster, or emergency or the owners of facilities used for civil defense shelters, pursuant to a fallout shelter license or privilege agreement and while complying with or reasonably attempting to comply with parts 1 through 4 or 12 of this chapter or an order or rule promulgated under the provisions of parts 1 through 4 or 12 of this chapter or pursuant to an ordinance relating to blackout or other precautionary measures enacted by a political subdivision of the state, are not liable for the death of or injury to persons or for damage to property as a result of any activity specified in this subsection."

Section 6. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 10, chapter 3, part 1, and the provisions of Title 10, chapter 3, part 1, apply to [sections 1 through 3].

Approved March 25, 2009

CHAPTER NO. 64

[HB 122]

AN ACT REVISING THE MONTANA FALSE CLAIMS ACT; LIMITING THE GOVERNMENT ATTORNEYS WHO MAY BRING AN ACTION UNDER THE FALSE CLAIMS ACT; EXTENDING THE TIME PERIOD FOR FILING A FALSE CLAIMS ACTION; REVISING DAMAGE AWARDS TO PRIVATE PLAINTIFFS; AMENDING SECTIONS 17-8-402, 17-8-403, 17-8-404, 17-8-405, 17-8-406, 17-8-407, 17-8-410, 17-8-411, AND 17-8-412, MCA; REPEALING SECTION 17-8-408, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-8-402, MCA, is amended to read:

"17-8-402. **Definitions.** As used in this part, the following definitions apply:

- (1) "Claim" includes any request or demand for money, property, or services made to an employee, officer, or agent of a governmental entity or to a contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, a governmental entity.
 - (2) "Government attorney" means:
 - (a) the chief attorney for a governmental entity; or
- (b) the attorney general with respect to the state, except for complaints involving a unit of the university system.
 - (3) "Governmental entity" means:
 - (a) the state:
- (b) a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or
 - (c) a unit of the Montana university system.
- (4) (a) "Knowingly" means that a person, with respect to information, does any of the following:
 - (a)(i) has actual knowledge of the information;
 - (b)(ii) acts in deliberate ignorance of the truth or falsity of the information; or
 - (e)(iii) acts in reckless disregard of the truth or falsity of the information.
 - (b) A specific intent to defraud is not required.
- (5) "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust, or other legal or business entity."

Section 2. Section 17-8-403, MCA, is amended to read:

"17-8-403. False claims — procedures — penalties. (1) A Except as provided in subsection (2), a person causing damages in excess of \$500 to a

governmental entity is liable, as provided in 17-8-410 and 17-8-411, for any of the following acts to a governmental entity for a civil penalty of not less than \$5,000 and not more than \$10,000 for each act specified in this section, plus three times the amount of damages that a governmental entity sustains because of the person's act, along with expenses, costs, and attorney fees, if the person:

- (a) knowingly presenting or causing presents or causes to be presented to an officer or employee of the governmental entity a false or fraudulent claim for payment or approval;
- (b) knowingly making, using, or eausing makes, uses, or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the governmental entity;
- (c) conspiring conspires to defraud the governmental entity by getting a false or fraudulent claim allowed or paid by the governmental entity;
- (d) having has possession, custody, or control of public property or money used or to be used by the governmental entity and knowingly delivering or eausing with the intent to defraud the governmental entity or to willfully conceal the property, delivers or causes to be delivered less property or money than the amount for which the person receives a certificate or receipt;
- (e) being is authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and knowingly making or delivering with the intent to defraud the governmental entity or to willfully conceal the property, makes or delivers a receipt that falsely represents the property used or to be used without knowing that the information on the receipt is true;
- (f) knowingly buying or receiving buys or receives as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;
- (g) knowingly making, using, or causing makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the governmental entity or its contractors; or
- (h) as a beneficiary of an inadvertent submission of a false *or fraudulent* claim to the governmental entity, subsequently discovering discovers the falsity of the claim *or that the claim is fraudulent* and failing fails to disclose the false *or fraudulent* claim to the governmental entity within a reasonable time after discovery of the false *or fraudulent* claim.
- (2) (a) In a civil action brought under 17-8-405 or 17-8-406, a court shall assess a civil penalty of not less than \$5,000 and not more than \$10,000 for each act specified in this section, plus not less than two times and not more than three times the amount of damages that a governmental entity sustains because of the person's act, along with costs and attorney fees, and may impose a civil penalty of up to \$10,000 for each act. The court may not assess a civil penalty if the court finds all of the following:
- (a)(i) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.
- (b)(ii) The person fully cooperated with any investigation of the act by the government attorney.
- (e)(iii) At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative

action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

- (b) A person who violates the provisions of this section is also liable to the governmental entity for the expenses, costs, and attorney fees of the civil action brought to recover the penalty or damages.
- (3) Liability under this section is joint and several for any act committed by two or more persons.
- (4) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.
 - (5) A private citizen person may not file a complaint or civil action:
- (a) against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the governmental entity;
- (b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental entity is already a party;
- (c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house of representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the private citizen person has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint or civil action, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint or civil action and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or
- (d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time."
 - **Section 3.** Section 17-8-404, MCA, is amended to read:
- **"17-8-404. Limitation of actions.** (1) A complaint or civil action may not be filed under 17-8-405 or 17-8-406 must be brought by the later of:
 - (a) more than 6 years after the date on which the violation was committed; or
- (b) 3 years after the date on which an when facts material to the right of action are known or reasonably should have been known by the official of the governmental entity charged with responsibility to act in the circumstances. discovers the act or
- (2) In no event may an action brought pursuant to subsection (1)(b) be brought more than 10 years after the date on which the act occurred, whichever occurs first violation was committed."

Section 4. Section 17-8-405, MCA, is amended to read:

"17-8-405. Investigation and civil action by government attorney. A *The* government attorney may shall investigate an alleged violation of 17-8-403 and may file a civil action against any person who has violated or is violating 17-8-403."

Section 5. Section 17-8-406, MCA, is amended to read:

- "17-8-406. Complaint by private citizen person civil action. (1) A private citizen may file with the government attorney a notice alleging a violation of 17-8-403 against a governmental entity of which the private citizen is a resident. The private citizen shall file a complaint with the government attorney that includes a written disclosure of material evidence and information alleging violations. A person may bring a civil action for a violation of 17-8-403 on behalf of the person and the governmental entity. The action must be brought in the name of the governmental entity. The action may be dismissed only if the court and the government attorney give written consent to the dismissal and provide their reasons for consenting to the dismissal.
- (2) A copy of the complaint and written disclosure of substantially all material evidence and information that the person possesses must be served on the government attorney pursuant to Rule 4D, Montana Rules of Civil Procedure. The complaint must be filed under seal and must remain under seal for at least 60 days. The complaint may not be served upon the defendant until the court orders that it be served.
- (2)(3) Within 60 days after receiving a notice and the complaint, and the material evidence and information, the government attorney may elect to file a civil action and intervene and proceed with the action or to notify the court that the government attorney declines to take over the action. If the government attorney declines to intervene or take over the action, the person bringing the action has the right to conduct the action. The government attorney may, for good cause shown, move the court for extensions of the time for filing an action during which the complaint remains under seal.
- (4) The defendant may not be required to respond to any complaint until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4D, Montana Rules of Civil Procedure.
- (3)(5) If the government attorney files a civil action, the private citizen may enter the action as a coplaintiff, but the government attorney has control of the plaintiffs' strategy, tactics, and other decisionmaking. If the government attorney does not file a civil action within the time allowed under subsection (2), the private citizen may file a civil action proceeds with the action, the government attorney has the primary responsibility for prosecuting the action and is not bound by an act of the person bringing the action. The person bringing the action has the right to continue as a party to the action subject to the limitations set forth in this part.
- (4) The court shall permit the government attorney to intervene in an action that the government attorney declined to file under subsection (2) if the court determines that the interests of the governmental entity are not being adequately represented by the private citizen. If intervention is allowed, the private citizen retains principal responsibility for and control of the action and any damages, civil penalty, costs, and attorney fees must be awarded under 17-8-410 and 17-8-411 as if the government attorney had not intervened.
- (6) If the government attorney elects not to proceed with the action and the person who initiated the action conducts it:

- (a) the person who initiated the action shall, upon the government attorney's request, serve the governmental entity with copies of all pleadings filed in the action and shall supply the government attorney with copies of all deposition transcripts at the government attorney's expense;
- (b) the court, without limiting the status and rights of the person initiating the action, may permit the government attorney to intervene at a later date upon a showing of good cause.
- (5)(7) After a private citizen When a person files a civil action pursuant to this section, no other private citizen may file a civil action person other than the government attorney may intervene or bring a related action based on the facts underlying the pending action.
- (8) Upon a showing by the government attorney that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the government attorney's prosecution of the case or would be repetitious, irrelevant, or for purposes of harassment, the court may in its discretion impose limitations on the person's participation, including but not limited to:
 - (a) limiting the number of witnesses the person may call;
 - (b) limiting the length of testimony of witnesses called by the person;
 - (c) limiting the person's cross-examination of witnesses; or
 - (d) otherwise limiting the participation of the person in the litigation."

Section 6. Section 17-8-407, MCA, is amended to read:

"17-8-407. Dismissal of private citizen's civil action. On the motion of a the government attorney, the court may dismiss a private citizen's civil action for good cause. If an intervening government attorney seeks dismissal of a private citizen's civil action, the private citizen must be notified by the government attorney notwithstanding the objection of the person who initiated the action if the government attorney has notified the person of the filing of the motion to dismiss and must be the court has given the person an opportunity to oppose the motion and present evidence at a hearing."

Section 7. Section 17-8-410, MCA, is amended to read:

- "17-8-410. Distribution of damages and civil penalty. (1) If an action is settled or the governmental entity or private citizen prevails in an action:
- (a) filed by a governmental entity under 17-8-406(2) and the private citizen elected not to enter the action as a coplaintiff, except as provided in subsection (1)(c), the private citizen is entitled to between 10% and 15%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;
- (b) filed by a private citizen either as plaintiff or as coplaintiff, except as provided in subsection (1)(e), the private citizen is entitled to between 15% and 50%, as determined by the court, of any damages and civil penalty awarded the governmental entity in the settlement or judgment;
- (c) and if a private citizen referred to in subsection (1)(a) or (1)(b) participated in the act or acts found to be in violation of 17-8-403, an award of damages and civil penalty to the private citizen are at the discretion of the court; Except as provided in subsection (2), if the government attorney proceeds with an action brought by a person pursuant to 17-8-406, the person must receive at least 15% but not more than 25% of the proceeds recovered and collected in the action

or in settlement of the claim, depending on the extent to which the person substantially contributed to the prosecution of the action.

- (2) (a) The court may award an amount it considers appropriate but in no case more than 10% of the proceeds in an action that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions disclosed through:
 - (i) a criminal, civil, or administrative hearing;
- (ii) a legislative, administrative, auditor, or inspector general report, hearing, audit, or investigation; or
 - (iii) the news media.
- (b) In determining the award, the court shall take into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.
- (3) Any payment to a person bringing an action pursuant to this part may be made only from the proceeds recovered and collected in the action or in settlement of the claim. The person must also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. The expenses, fees, and costs must be awarded against the defendant.
- (4) If the government attorney does not proceed with an action pursuant to 17-8-406, the person bringing the action or settling the claim must receive an amount that the court decides is reasonable for collecting the civil penalty and damages on behalf of the government attorney or governmental entity. The amount may not be less than 25% or more than 30% of the proceeds recovered and collected in the action or settlement of the claim and must be paid out of the proceeds. The person must also receive an amount for reasonable expenses that the court finds were necessarily incurred, plus reasonable attorney fees and costs. All expenses, fees, and costs must be awarded against the defendant.
- (5) Whether or not the government attorney proceeds with the action, if the court finds that the action was brought by a person who planned, initiated, or knowingly participated in the violation of 17-8-403, the court may, to the extent the court considers appropriate, reduce or eliminate the share of the proceeds of the action that the person would otherwise receive pursuant to subsections (1) through (4) of this section, taking into account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of this part, the person must be dismissed from the civil action and may not receive any share of the proceeds of the action. The dismissal does not prejudice the right of the government attorney to continue the action.
- (d)(6) the *The* governmental entity is entitled to any damages and civil penalty not awarded to a private citizen the person, and the damages and civil penalty must be deposited in the general fund of the governmental entity, except that if a trust fund of the governmental entity suffered a loss as a result of the defendant's actions, the trust fund must first be fully reimbursed for the loss and the remainder of the damages and any civil penalty must be deposited in the general fund of the governmental entity.

(2)(7) Unless otherwise provided, the remedies or penalties provided by this part are cumulative to each other and to the remedies or penalties available under all other laws of the state."

Section 8. Section 17-8-411, MCA, is amended to read:

"17-8-411. Costs and attorney fees. A governmental entity in an action in which its The government governmental attorney entity that filed a civil action or intervened is entitled to its reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails. In an action in which outside counsel represents a governmental entity is engaged by a government attorney, the costs and attorney fees awarded to a governmental entity to that counsel must equal the outside counsel's charges reasonably incurred by the governmental entity for costs and attorney fees in prosecuting the action. In any other actions in which costs and attorney fees are awarded to a governmental entity the governmental entity, they must be calculated by reference to the hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies, multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action. A private citizen person who is a plaintiff or coplaintiff is entitled to an amount or reasonable expenses that the court finds to have been necessarily incurred, plus reasonable costs and attorney fees, if the action is settled favorably for the governmental entity or the governmental entity prevails in the action. A person who is the subject of a civil action and defendant in a civil action brought pursuant to this part who prevails in an action that is not settled and that the court finds was clearly frivolous or brought solely for harassment purposes is entitled to the person's defendant's reasonable costs and attorney fees, which must be equitably apportioned against the private eitizen person who brought the action and the governmental entity if a private citizen person and a governmental entity were coplaintiffs."

Section 9. Section 17-8-412, MCA, is amended to read:

- **"17-8-412. Prohibitions on employers employee remedies.** (1) A governmental entity *or private entity* may not adopt or enforce a rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a violation of 17-8-403 or an action brought pursuant to 17-8-405 or 17-8-406.
- (2) A governmental entity or private entity may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee in the terms and conditions of employment because of the employee's disclosure of information to a government or law enforcement agency pertaining to a violation of 17-8-403.
- (3) (a) A governmental entity or private entity that violates the provisions of subsection (2) is liable for:
- (i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;
 - (ii) back pay plus interest on the back pay;
- (iii) compensation for any special damages sustained as a result of the discrimination; and

- (iv) reasonable court or administrative proceeding costs and reasonable attorney fees.
- (b) An employee may file an action for the relief provided in this subsection (3)."
- Section 10. Settlement by government attorney. The government attorney may settle the case with the defendant notwithstanding the objections of the persons who initiated the action if the court determines, after a hearing, that the settlement is fair, adequate, and reasonable under the circumstances. Upon a showing of good cause, the hearing may be held in camera.
 - Section 11. Repealer. Section 17-8-408, MCA, is repealed.
- **Section 12. Codification instruction.** [Section 10] is intended to be codified as an integral part of Title 17, chapter 8, part 4, and the provisions of Title 17, chapter 8, part 4, apply to [section 10].

Section 13. Effective date. [This act] is effective July 1, 2009.

Approved March 25, 2009

CHAPTER NO. 65

[HB 136]

AN ACT AUTHORIZING THE GOVERNOR TO APPOINT SUBSTITUTE MEMBERS TO THE BOARD OF PERSONNEL APPEALS WHEN A BOARD MEMBER IS UNABLE TO PARTICIPATE IN A PROCEEDING; AMENDING SECTION 2-15-1705, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1705, MCA, is amended to read:

- "2-15-1705. Board of personnel appeals allocation composition vote necessary for decision quasi-judicial. (1) There is a board of personnel appeals.
- (2) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.
- (3) (a) The board consists of five members and three substitute members appointed by the governor as follows:
- (i) two members who are full-time management employees in organizations with collective bargaining units or who represent management in collective bargaining activities and a substitute member with the same qualifications as the other two members who is to serve in place of an absent member and to participate only in the decisions of the proceeding that the substitute member is attending:
- (ii) two members who are full-time employees or elected officials of a labor union or an association recognized by the board and a substitute member with the same qualifications as the other two members who is to serve in place of an absent member and to participate only in the decisions of the proceeding that the substitute member is attending; and
- (iii) one other member having general labor-management experience, who is the presiding officer, and a substitute member with the same qualifications as the other member who is to serve in place of an absent member and to participate only in the decisions of the proceeding that the substitute member is attending.

- (b) All members of the board shall serve as impartial decisionmakers and are not appointed to serve the interests of the organizations they represent.
- (c) A substitute board member is entitled to the same compensation and per diem when serving as the other members of the board.
- (4) When the presiding officer is unable to participate in a proceeding before the board, the remaining members of the board shall select an individual who qualifies under subsection (3)(a)(iii) to serve in the place of the presiding officer in that proceeding. The individual selected shall participate in the decisions in that proceeding. There may be only one presiding officer replacement appointed and serving at any one time. The individual selected is entitled to the same compensation and per diem that members of the board receive.
- (5) When a board member other than the presiding officer is unable to participate in a proceeding before the board, the remaining members of the board shall select a substitute member who possesses the qualifications described in subsection (3)(a)(i) or (3)(a)(ii), depending on the qualifications of the absent board member. The substitute member shall serve in place of the absent board member and participate in the decisions in that proceeding. A substitute board member is entitled to the same compensation and per diem that members of the board receive.
- (6)(4) In all proceedings before the board, a favorable vote of at least a majority of a quorum is sufficient to adopt any resolution, motion, or other decision.
- (7)(5) The board is designated a quasi-judicial board for purposes of 2-15-124."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 66

[HB 149]

AN ACT REVISING THE COLLECTION OF RESTITUTION AND SUPERVISORY FEES BY THE DEPARTMENT OF CORRECTIONS FROM AN INDIVIDUAL CONVICTED OF A CRIMINAL OFFENSE; AMENDING SECTIONS 46-18-241, 46-18-246, AND 46-23-1031, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-241, MCA, is amended to read:

- **"46-18-241. Condition of restitution.** (1) As provided in 46-18-201, a sentencing court shall, as part of the sentence, require an offender to make full restitution to any victim who has sustained *a* pecuniary loss, including a person suffering an economic loss. The duty to pay full restitution under the sentence remains with the offender or the offender's estate until full restitution is paid and, whether or not the offender is under state supervision. If the offender is under state supervision, payment of restitution is a condition of any probation or parole.
- (2) (a) The court shall require the offender to shall pay the cost of supervising the payment of restitution, as provided in 46-18-245, if the offender is able to pay, by paying an amount equal to 10% of the amount of restitution ordered, but not less than \$5.

- (b) A felony offender shall pay the restitution and cost of supervising the payment of restitution to the department of corrections until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The department shall pay the restitution to the person or entity to whom the court ordered restitution to be paid. The department may contract with a government agency or private entity for the collection of the payments for restitution and the cost of collecting the payments for restitution during the period following state supervision or state custody of the offender. The department shall adopt rules to implement this subsection (2)(b).
- (c) In a misdemeanor case, payment of restitution and of the cost of supervising the payment of restitution must be made to the court until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The court shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245, which shall disburse the restitution to the person or entity to whom the court ordered restitution to be paid.
- (3) If at any time the court finds that, because of circumstances beyond the offender's control, the offender is not able to pay any restitution, the court may order the offender to perform community service during the time that the offender is unable to pay. The offender must be given a credit against restitution due at the rate of the hours of community service times the state minimum wage in effect at the time that the community service is performed."

Section 2. Section 46-18-246, MCA, is amended to read:

"46-18-246. Waiver or modification of payment. An offender may at any time petition the sentencing court to adjust or otherwise waive payment of any part of any ordered restitution or amount to be paid pursuant to 46-18-241(2)(a). The court shall schedule a hearing and give a victim to whom restitution was ordered notice of the hearing date, place, and time and inform the victim that the victim will have an opportunity to be heard. If the court finds that the circumstances upon which it based the imposition of restitution, amount of the victim's pecuniary loss, or method or time of payment no longer exist or that it otherwise would be unjust to require payment as imposed, the court may adjust or waive unpaid restitution or the amount to be paid pursuant to 46-18-241(2)(a) or modify the time or method of making restitution. The court may extend the restitution schedule."

Section 3. Section 46-23-1031, MCA, is amended to read:

- **"46-23-1031. Supervisory fees account established.** (1) (a) Except as provided in subsection (1)(c), a probationer, parolee, or person committed to the department who is supervised by the department:
- (i) under intensive supervision or conditional release shall pay to the department a supervisory fee of no less than \$120 a year and no more than \$360 a year, prorated at no less than \$10 a month for the number of months under supervision; or
- (ii) under continuous satellite-based monitoring shall pay to the department a supervisory fee of no more than \$4,000 a year as established by rules adopted by the department under 46-23-1010.
- (b) A person allowed to transfer supervision to another state shall pay a fee of \$50 to cover the cost of processing the transfer. The interstate transfer fees required by this subsection must be collected by the department.

- (c) The court, department, or board may reduce or waive a fee required by subsection (1)(a) or (1)(b) or suspend the monthly payment of the supervisory fee if it determines that the payment would cause the person a significant financial hardship.
- (2) (a) There is an account in the state special revenue fund for the supervisory fees collected under the provisions of this section.
- (b) The department shall deposit the total supervisory fees collected pursuant to subsection (1) into the state special revenue account established in subsection (2)(a)."

Section 4. Effective date. [This act] is effective on passage and approval. Approved March 25, 2009

CHAPTER NO. 67

[HB 151]

AN ACT CLARIFYING INSURANCE COVERAGE FOR RECONSTRUCTIVE BREAST SURGERY AFTER A MASTECTOMY; AMENDING SECTION 33-22-135, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-135, MCA, is amended to read:

- "33-22-135. Coverage for reconstructive breast surgery after mastectomy benefits and conditions. (1) Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for reconstructive breast surgery resulting from a mastectomy that resulted from breast cancer for:
- (a) all stages of reconstruction of the breast on which a mastectomy has been performed;
- (b) surgery and reconstruction of the other breast to produce a symmetrical appearance; and
- (c) prostheses and physical complications of a mastectomy, including lymphedemas.
- (2) The treatment covered under subsection (1) must be determined in consultation with the attending physician and the patient.
- (3) The coverage required under this section may be subject to annual deductibles and coinsurance provisions consistent with those established for other benefits under an insurance policy, membership contract, or a certificate of insurance.
- (2) Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for all stages of one reconstructive breast surgery on the nondiseased breast to establish symmetry with the diseased breast after definitive reconstructive breast surgery on the diseased breast has been performed.
 - (3)(4) For the purposes of this section:
- (a) "mastectomy" means the surgical removal of all or part of a breast as a result of breast cancer;

- (b) "reconstructive breast surgery" means surgery performed as a result of a mastectomy to reestablish symmetry between the breasts. The term includes *but is not limited to* augmentation mammoplasty, reduction mammoplasty, and mastopexy.
- (4)(5) Benefits for reconstructive breast surgery include but are not limited to the costs of prostheses and, under any contract providing outpatient x-ray or radiation therapy, *include* benefits for outpatient chemotherapy following surgical procedures in connection with the treatment of breast cancer that must be included as a part of the outpatient x-ray or radiation therapy benefit.
- (6) An insurer shall provide written notice in compliance with the model language of the Women's Health and Cancer Rights Act of 1998 to a covered person of the availability of benefits with respect to the Women's Health and Cancer Rights Act of 1998 upon enrollment and subsequently on an annual basis.
- (7) (a) An insurer may not deny to an individual eligibility or continued eligibility to enroll or to renew coverage under the terms of a plan solely for the purpose of avoiding the requirements of this section.
- (b) An insurer may not penalize or otherwise reduce or limit the reimbursement of an attending health care provider or provide incentives to an attending health care provider to induce the health care provider to provide care for a covered person in a manner that is inconsistent with this section."

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved March 25, 2009

CHAPTER NO. 68

[HB 172]

AN ACT CREATING A PROVISIONAL HUNTER SAFETY AND EDUCATION CERTIFICATE FOR PERSONS WITH CERTAIN DEVELOPMENTAL DISABILITIES; ESTABLISHING CONDITIONS OF LICENSURE FOR PERSONS WHO USE A PROVISIONAL CERTIFICATE WHEN OBTAINING A HUNTING LICENSE; AMENDING SECTION 87-2-105, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Provisional hunter safety and education certificate for person with developmental disability conditions of licensure definition. (1) A person with a diagnosed developmental disability who satisfactorily completes the classroom portion and field course of the firearms safety course but who is unable to pass the written or an alternate-format exam portion of the course because of a developmental disability may be issued a provisional hunter safety and education certificate. The certificate is valid only when used according to this section.
- (2) A person with a developmental disability may obtain a hunting license with a provisional hunter safety and education certificate.
- (3) Each person who uses a provisional hunter safety and education certificate must be in the company of and assisted by the person's parent or guardian or by an adult designated by the person or by the person's parent or guardian when hunting and shall conduct all hunting within the terms and

conditions of the license issued. A person who is accompanying and assisting a person with a disability:

- (a) must have successfully completed a hunter safety and education course pursuant to 87-2-105(1);
- (b) must have as the sole priority the direct supervision of the person with a disability at all times;
- (c) may only be actively engaged in hunting a game animal that may be taken with the license of the person with a disability; and
- (d) must be able to immediately intervene and control the firearm of the person with a disability at any time.
- (4) (a) This section does not entitle a person to possess a firearm if the person is otherwise prohibited from possessing a firearm under state or federal law or a court order.
- (b) A person may not knowingly authorize or permit a person with a developmental disability who is incapable of safely possessing a firearm to possess a firearm for hunting in this state.
- (5) As used in this section, "developmental disability" means a developmental disability as defined in 53-20-102.

Section 2. Section 87-2-105, MCA, is amended to read:

- **"87-2-105. Safety instruction required.** (1) Except for a youth who qualifies for a license pursuant to 87-2-805(4), a hunting license may not be issued to a person who is born after January 1, 1985, unless the person authorized to issue the license determines proof of completion of:
- (a) a Montana hunter safety and education course established in subsection (4) or (6); Θ
 - (b) a hunter safety course in any other state or province; or
- (c) a Montana hunter safety and education course that qualifies the person for a provisional certificate as provided in [section 1].
- (2) A hunting license may not be issued to a member of the regular armed forces of the United States or to a member of the armed forces of a foreign government attached to the armed forces of the United States who is assigned to active duty in Montana and who is otherwise considered a resident under 87-2-102(1) or to a member's dependents, as defined in 15-30-113, who reside in the member's Montana household, unless the person authorized to issue the license determines proof of completion of a hunter safety course approved by the department or a hunter safety course in any state or province.
- (3) A bow and arrow license may not be issued to a resident or nonresident unless the person authorized to issue the license receives an archery license issued for a prior hunting season or determines proof of completion of a bowhunter education course from the national bowhunter education foundation or any other bowhunter education program approved by the department. Neither the department nor the license agent is required to provide records of past archery license purchases. As part of the department's bow and arrow licensing procedures, the department shall notify the public regarding bowhunter education requirements.
- (4) The department shall provide for a hunter safety and education course that includes instruction in the safe handling of firearms and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of hunter safety and education. The department may designate

as an instructor any person it finds to be competent to give instructions in hunter safety and education, including the handling of firearms. A person appointed shall give the course of instruction and shall issue a certificate of completion from Montana's hunter safety and education course to a person successfully completing the course.

- (5) The department shall provide for a course of instruction from the national bowhunter education foundation or any other bowhunter education program approved by the department and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of bow hunting tackle. The department may designate as an instructor any person it finds to be competent to give bowhunter education instruction. A person appointed shall give the course of instruction and shall issue a certificate of completion to any person successfully completing the
- (6) The department may develop an adult hunter safety and education course.
- (7) The department may adopt rules regarding how a person authorized to issue a license determines proof of completion of a required course."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 1, and the provisions of Title 87, chapter 2, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective March 1, 2010.

Approved March 25, 2009

CHAPTER NO. 69

[HB 245]

AN ACT AUTHORIZING A BOARD OF COUNTY COMMISSIONERS TO ESTABLISH A COMPENSATED ABSENCE LIABILITY FUND TO PAY ACCUMULATED SICK AND VACATION LEAVE WHEN AN EMPLOYEE TERMINATES EMPLOYMENT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Compensated absence liability fund. (1) A board of county commissioners may establish a compensated absence liability fund for the purpose of paying for any accumulated amount of:
- (a) sick leave that a county employee is entitled to upon termination of employment with the county in accordance with the provisions of 2-18-618; and
- (b) vacation leave that an employee is entitled to upon termination of employment with the county.
- (2) The compensated absence liability fund may be used only for the purpose provided in this section.
- (3) The compensated absence liability fund may receive money from any source, including funds that have been allocated in any year but have not been expended or encumbered by the end of the fiscal year.
- (4) The maximum amount in the fund may not exceed the amount necessary to pay for accumulated sick leave and accumulated vacation leave of county employees on June 30 of the prior fiscal year.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 5, part 21, and the provisions of Title 7, chapter 5, part 21, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 70

[HB 247]

AN ACT CLARIFYING THAT TO QUALIFY AS MONTANA-CERTIFIED NATURAL BEEF CATTLE, THE BEEF CATTLE MUST BE RAISED WITHOUT ANY ANTIBIOTICS; AMENDING SECTION 80-11-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-11-801, MCA, is amended to read:

- "80-11-801. Montana-certified natural beef cattle marketing program. (1) The department and the department of livestock shall administer a program to qualify and market beef cattle from Montana that have been certified as natural.
- (2) To qualify as Montana-certified natural beef cattle, the beef cattle must have been born and raised in Montana and finished following naturally raised protocols. The beef cattle must be:
- (a) raised in an environmentally prudent manner that is consistent with Montana's best grazing standards;
- (b) raised pursuant to beef quality assurance standards or similar guidelines;
- (c) raised without subtherapeutie antibiotics, synthetic hormones, synthetic growth promotants, and ionophores; and
- (d) fed only natural feeds that contain no drugs, chemicals, or animal byproducts.
- (3) To qualify as Montana-certified natural grass-fed beef cattle, the beef cattle must meet the requirements of subsection (2) and must also have been finished on grass.
- (4) A producer who desires natural beef cattle certification shall maintain records of the birth of the beef cattle by month and keep health records for the beef cattle, including vaccine lot numbers, the vaccine manufacturer, and dates of vaccination.
- (5) To ensure compliance, the department and the department of livestock shall jointly adopt rules requiring at least one inspection of the ranch of origin of the beef cattle as well as development of the necessary protocols for recordkeeping and verification for the certification of natural and natural grass-fed beef cattle.
- (6) The department shall include the promotion of Montana-certified natural beef cattle in its agricultural product marketing programs."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 71

[HB 273]

AN ACT GENERALLY REVISING SEARCH AND RESCUE FUNDING; INCREASING THE MAXIMUM AMOUNT THAT SEARCH AND RESCUE UNITS OF A COUNTY SHERIFF'S OFFICE ARE ABLE TO BE REIMBURSED; AND AMENDING SECTION 10-3-801, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-801, MCA, is amended to read:

- "10-3-801. Account created for funding search and rescue operations rules. (1) There is an account in the state special revenue fund established in 17-2-102. The account must be administered by the disaster and emergency services division of the department exclusively for the purposes of search and rescue as provided in this section. The department may retain up to 5% of the money in the account to pay its costs of administering this section.
 - (2) There must be deposited in the account:
 - (a) fund transfers pursuant to 15-1-122(3)(f);
- (b) fund transfers pursuant to 87-1-601(9). These funds may be used only as provided in 87-1-601(9).
- (c) all money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for search and rescue operations.
- (3) (a) Not less than 50% of the money in the account must be used by the department to defray costs of:
- (i) local search and rescue units for search and rescue missions conducted through a county sheriff's office at a maximum of \$3,000 \$6,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved. To fulfill the purposes of this subsection (3)(a)(i), the department shall transmit reimbursement money to the county treasurer, who shall deposit the funds in a separate search and rescue fund accessible by the local search and rescue unit that requested the reimbursement. The county treasurer shall notify the reimbursed local search and rescue unit by mail when the deposit occurs.
- (ii) a county sheriff's office at a maximum of \$3,000 \$6,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved.
 - (b) The remaining money in the account may be used by the department:
- (i) to match local funds for the purchase of equipment for use by local search and rescue units at a maximum of \$2,000 \$6,000 for each unit in a calendar year. The cost-sharing match must be 35% local funds to 65% from the account.
- (ii) for reimbursement of expenses related to the training of search and rescue volunteers.
- (4) The department may adopt rules to implement the proper administration of the account. The rules may include:
- (a) a method of reimbursing local search and rescue units or a county sheriff's office, on a case-by-case basis, for authorized search and rescue operations conducted pursuant to subsection (3)(a), including verification of search missions, claims procedures, fiscal accountability, and the number and

circumstances of search missions involving persons engaged in hunting, fishing, and trapping in a fiscal year;

- (b) methods for processing requests for equipment matching funds and training funds made pursuant to subsection (3)(b), including any verification and accounting necessary to ensure that the provisions of subsection (3)(b) are met, and determining the percentage of all search missions involving persons engaged in hunting, fishing, or trapping in a fiscal year;
- (c) a system involving input from representatives of county sheriff organizations and state and local search and rescue organizations for assistance in verifying and processing claims for reimbursement, equipment, and training; and
- (d) a method for compiling and keeping current a contact list of all search and rescue units in Montana and in neighboring states and provinces in order to ensure collaboration, communication, and cooperation between the various county search and rescue units and between the department and the county units and dedication of a page on the department's website for posting the contact list and other relevant search and rescue information."

Approved March 25, 2009

CHAPTER NO. 72

[HB 278]

AN ACT PROVIDING THAT LIMITED VEGETATIVE COVER OF WATER MANAGEMENT FACILITIES AND OTHER SUPPORT FACILITIES IN A STRIP MINE OPERATION IS ELIGIBLE FOR EARLY BOND RELEASE IF THE VEGETATIVE COVER MEETS RECLAMATION STANDARDS; AND AMENDING SECTION 82-4-235, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-235, MCA, is amended to read:

- "82-4-235. Determination of successful revegetation final bond release. (1) Success of revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233. Standards for success are:
- (a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior to mining based on comparison with historical data, comparable reference areas, or United States department of agriculture publications applicable to the area of the operation, as referenced in rules adopted by the board;
- (b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of living plants on the revegetated area must be at least equal to that of a reference area or other standard approved by the department as appropriate for the postmining land use;
- (c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of revegetation must be determined on the basis of approved tree density standards or shrub density standards, or both, and vegetative ground cover required to achieve the postmining land use;
- (d) reestablished vegetation is considered effective if the postmining land use is achieved and erosion is controlled;

- (e) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-year responsibility period specified under subsection (2); and
- (f) plant species composing the reestablished vegetation are considered to have the same seasonal characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to be compatible with the plant and animal species of the area if those plant species are native to the area or are introduced species approved by the department as desirable and necessary to achieve the postmining land use.
- (2) Inspection and evaluation of reclaimed vegetative cover must be made as soon as possible following an application for final bond release to determine if a satisfactory stand has been established. If the department determines that a satisfactory vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). The Except as provided in subsection (3), the remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.
- (3) (a) Vegetative cover of water management facilities and other support facilities composing no more than 10% of the area for which bond release is sought is not subject to the 10-year responsibility period. Water management facilities and other support facilities include but are not limited to sedimentation ponds, diversions, other water management structures, soils stockpiles, access roads, segments of haul roads, and electrical substations.
- (b) Vegetative cover of water management facilities and other support facilities composing no more than 10% of the area for which bond release is sought is eligible for bond release if the vegetative cover otherwise meets the reclamation standards in subsection (1).
- (4) (a) Notwithstanding the provision in subsection provisions of subsections (2) and (3), on land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection with this part after May 2, 1978, pursuant to a permit issued by the department under this part, the department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:
- (i) it was seeded using a seed mixture that was approved by the department under the criteria established pursuant to 82-4-233 and that included introduced species; and
 - (ii) at least one of the following conditions exists:
 - (A) the standards of 82-4-233(1) are otherwise achieved;
- (B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;
- (C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or
- (D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards of 82-4-232 and the department approves and the operator completes that conversion.

- (b) On lands that meet the criteria described in subsection (3)(a) (4)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection (2)."
- **Section 2. Contingent voidness.** (1) If any portion of [section 1] is disapproved by the United States secretary of the interior pursuant to 30 CFR 732.17, then [section 1] is void.
- (2) Within 15 days of the effective date of the disapproval under subsection (1), the department of environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1) has occurred.

Approved March 25, 2009

CHAPTER NO. 73

[HB 285]

AN ACT AUTHORIZING GRAY WATER REUSE FOR SYSTEMS OTHER THAN PRIVATE, SINGLE-FAMILY RESIDENCES; CLARIFYING THE BOARD OF ENVIRONMENTAL REVIEW'S RULEMAKING AUTHORITY; REVISING THE DEFINITION OF "GRAY WATER REUSE SYSTEM"; AND AMENDING SECTIONS 75-5-305, 75-5-317, AND 75-5-325, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-305, MCA, is amended to read:

- "75-5-305. Adoption of requirements for treatment of wastes variance procedure appeals. (1) The board may establish minimum requirements for the treatment of wastes. For cases in which the federal government has adopted technology-based treatment requirements for a particular industry or activity in 40 CFR, chapter I, subchapter N, the board shall adopt those requirements by reference. To the extent that the federal government has not adopted minimum treatment requirements for a particular industry or activity, the board may do so, through rulemaking, for parameters likely to affect beneficial uses, ensuring that the requirements are cost-effective and economically, environmentally, and technologically feasible. Except for the technology-based treatment requirements set forth in 40 CFR, chapter I, subchapter N, minimum treatment may not be required to address the discharge of a parameter when the discharge is considered nonsignificant under rules adopted pursuant to 75-5-301.
- (2) (a) The board shall establish minimum requirements for the control and disposal of sewage from private and public buildings, including standards and procedures for variances from the requirements.
- (b) For gray water reuse systems in private, single-family residences, the board shall establish rules that:
- (i) allow the diversion of gray water from wastewater treatment systems and limit the amount of gray water flow allowed by permit;
- (ii) address the uses of gray water, including when and how gray water may be applied to land; and
- (iii) include any other provisions that the board considers necessary to ensure that gray water reuse systems comply with laws and regulations and protect public health and the environment.

- (3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant to 50-2-116 may appeal the local board of health's final decision to the department by submitting a written request for a hearing within 30 days after the decision. The written request must describe the activity for which the variance is requested, include copies of all documents submitted to the local board of health in support of the variance, and specify the reasons for the appeal of the local board of health's final decision.
- (4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department shall base its decision on the board's standards for a variance.
- (5) A decision of the department pursuant to subsection (4) is appealable to district court under the provisions of Title 2, chapter 4, part 7."
 - **Section 2.** Section 75-5-317, MCA, is amended to read:
- "75-5-317. Nonsignificant activities. (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).
- (2) The following categories or classes of activities are not subject to the provisions of 75-5-303:
- (a) existing activities that are nonpoint sources of pollution as of April 29, 1993;
- (b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;
- (c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;
- (d) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;
- (e) changes in existing ground water quality resulting from treatment of a public water supply system, as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar means that is designed to protect the public health or the environment and that is approved, authorized, or required by the department;
- (f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department-approved water quality protection practices and if no discharge to surface water will occur;
- (g) short-term changes in existing water quality resulting from activities authorized by the department pursuant to 75-5-308;
- (h) land application of animal waste, domestic septage, or waste from public sewage treatment systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

- (i) use of gray water, as defined in 75-5-325, from nonpublic gray water reuse systems for irrigation during the growing season in accordance with gray water reuse rules adopted pursuant to 75-5-305;
- (i)(j) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and constructed in accordance with Title 75, chapter 6;
- (i)(k) discharges of water to ground water from water well or monitoring well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in accordance with department-approved water quality protection practices;
- (k)(l) oil and gas drilling, production, abandonment, plugging, and restoration activities that do not result in discharges to surface water and that are performed in accordance with Title 82, chapter 10, or Title 82, chapter 11;
- (+)(m) short-term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to:
- (i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;
- (ii) fording of streams or other bodies of water by vehicular or other means; and
- (iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;
- $\frac{\text{(m)}(n)}{n}$ coal and uranium prospecting that does not result in a discharge to surface water, that does not involve a test pit located in surface water or that may affect surface water, and that is performed in accordance with Title 82, chapter 4;
- (n)(o) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;
- (o)(p) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;
- (p)(q) metallic and nonmetallic mineral exploration that does not result in a discharge to surface water and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;
- (q)(r) stream-related construction projects or stream enhancement projects that result in temporary changes to water quality but do not result in long-term detrimental effects and that have been authorized pursuant to 75-5-318;
- (x)(s) diversions or withdrawals of water established and recognized under Title 85, chapter 2;
- (s)(t) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that are related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short term; and
- (t)(u) any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c)."

Section 3. Section 75-5-325, MCA, is amended to read:

"75-5-325. **Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

- (1) "Gray water" means wastewater that is collected separately from a sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets.
- (2) "Gray water reuse system" means a plumbing system for a private, single family residence that collects gray water."

Approved March 25, 2009

CHAPTER NO. 74

[HB 287]

AN ACT AUTHORIZING A UTILITY TO REMOVE OR ALTER VEGETATION OR OTHER MATERIAL WITHIN A UTILITY RIGHT-OF-WAY; PROVIDING THAT THE UTILITY PROVIDE NOTICE UNDER CERTAIN CIRCUMSTANCES; PROHIBITING A PERSON FROM DENYING ACCESS OR INTERFERING WITH A UTILITY'S REMOVAL OR ALTERATION ACTIVITIES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Authorization to remove vegetation or other materials from utility right-of-way notice prohibition. (1) A utility, as defined in 69-5-102, may remove or alter any vegetation or other material within a utility right-of-way or easement if the utility:
- (a) determines that the removal or alteration is reasonably necessary for the safe repair, use, operation, or maintenance of the utility's electricity or gas transmission or distribution facilities; and
 - (b) complies with the notice provisions of subsection (2).
- (2) (a) Except as provided in subsection (2)(b), a utility shall provide an affected property owner with written notice at least 15 days prior to the removal or alteration of vegetation or other materials when the action is part of a preventative maintenance program for the utility's easements and rights-of-way. The written notice must include contact information for the utility where the affected property owner can receive information regarding the utility's right to remove or alter any vegetation or material within a utility right-of-way or easement.
- (b) A utility is not required to give notice to an affected property owner when the removal or alteration of the vegetation or other materials is undertaken to alleviate an imminent threat to the safe and reliable operation of the utility's electricity or gas transmission or distribution facilities.
- (3) An affected property owner may not deny access to or interfere with the activities of a utility within a utility's right-of-way or easement to remove vegetation as provided in this section.
- (4) Nothing in this section may be construed to expand a utility's right-of-way or easement.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2009.

Approved March 25, 2009

CHAPTER NO. 75

[HB 293]

AN ACT REVISING TRAINING STANDARDS FOR PEACE OFFICERS; PROVIDING FOR RECOGNITION OF COURSES TAUGHT BY THE FEDERAL GOVERNMENT, OTHER STATES, AND THE UNITED STATES MILITARY; PROVIDING FOR THE EMPLOYMENT OF MILITARY LAW ENFORCEMENT WHO SERVED IN THAT CAPACITY IN THE PRIOR 5 YEARS; AND AMENDING SECTION 7-32-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-303, MCA, is amended to read:

- "7-32-303. Peace officer employment, education, and certification standards suspension or revocation penalty. (1) For purposes of this section, unless the context clearly indicates otherwise, "peace officer" means a deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park ranger, campus security officer, or airport police officer.
- (2) A sheriff of a county, mayor of a city, board, or commission or other person authorized by law to appoint peace officers in this state may not appoint any person as a peace officer who does not meet the following qualifications plus any additional qualifying standards for employment promulgated by the Montana public safety officer standards and training council established in 2-15-2029:
 - (a) be a citizen of the United States;
 - (b) be at least 18 years of age;
- (c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;
- (d) not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary;
- (e) be of good moral character, as determined by a thorough background investigation;
- (f) be a high school graduate or have passed the general education development test and have been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;
- (g) be examined by a licensed physician, who is not the applicant's personal physician, appointed by the employing authority to determine if the applicant is free from any mental or physical condition that might adversely affect performance by the applicant of the duties of a peace officer;
- (h) successfully complete an oral examination conducted by the appointing authority or its designated representative to demonstrate the possession of communication skills, temperament, motivation, and other characteristics necessary to the accomplishment of the duties and functions of a peace officer; and
 - (i) possess or be eligible for a valid Montana driver's license.
- (3) At the time of appointment, a peace officer shall take a formal oath of office.

- (4) Within 10 days of the appointment, termination, resignation, or death of any peace officer, written notice thereof of the event must be given to the Montana public safety officer standards and training council by the employing authority.
- (5) (a) Except as provided in subsections (5)(b) and (5)(c), it is the duty of an appointing authority to cause each peace officer appointed under its authority to attend and successfully complete, within 1 year of the initial appointment, an appropriate peace officer basic course certified by the Montana public safety officer standards and training council. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic course as required by this subsection (5)(a) forfeits the position, authority, and arrest powers accorded a peace officer in this state.
- (b) A peace officer who has been issued a basic certificate by the Montana public safety officer standards and training council and whose last date of employment as a peace officer was less than 36 months prior to the date of the person's present appointment as a peace officer is not required to fulfill the basic educational requirements of subsection (5)(a). If the peace officer's last date of employment as a peace officer was 36 or more but less than 60 months prior to the date of present employment as a peace officer, the peace officer may satisfy the basic educational requirements as set forth in subsection (5)(c).
- (c) A peace officer under the provisions of referred to in subsection (5)(b) or a peace officer who has completed a basic peace officer's course in another state that is taught by a federal, state, or United States military law enforcement agency and that is reviewed and approved by the Montana public safety officer standards and training council as equivalent with current training in Montana and whose last date of employment as a peace officer or member of the military law enforcement was less than 60 months prior to the date of present appointment as a peace officer may, within 1 year of the peace officer's present employment or initial appointment as a peace officer within this state, satisfy the basic educational requirements by successfully passing completing a basic equivalency test course administered by the Montana law enforcement academy and successfully completing a legal training course conducted by the academy. The prior employment of a member of the military law enforcement must be reviewed and approved by the Montana public safety officer standards and training council. If the peace officer fails the basic equivalency test course, the peace officer shall complete the appropriate basic equivalency course within 120 days of the date of the test failure of the equivalency course.
- (6) The Montana public safety officer standards and training council may extend the 1-year time requirements of subsections (5)(a) and (5)(c) upon the written application of the peace officer and the appointing authority of the officer. The application must explain the circumstances that make the extension necessary. Factors that the council may consider in granting or denying the extension include but are not limited to illness of the peace officer or a member of the peace officer's immediate family, absence of reasonable access to the basic equivalency course or the legal training course, and an unreasonable shortage of personnel within the department. The council may not grant an extension to exceed 180 days.
- (7) A peace officer who has successfully met the employment standards and qualifications and the educational requirements of this section and who has completed a 1-year probationary term of employment must, upon application to the Montana public safety officer standards and training council, be issued a

basic certificate by the council, certifying that the peace officer has met all the basic qualifying peace officer standards of this state.

(8) It is unlawful for a person whose certification as a peace officer, detention officer, or detention center administrator has been revoked or suspended by the Montana public safety officer standards and training council to act as a peace officer, detention officer, or detention center administrator. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine not to exceed \$500, or both."

Approved March 25, 2009

CHAPTER NO. 76

[HB 298]

AN ACT CLARIFYING THAT JUDGES HAVE THE AUTHORITY TO DEFER TRAFFIC VIOLATIONS EXCEPT FOR HOLDERS OF COMMERCIAL DRIVER'S LICENSES; AMENDING SECTION 61-11-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-11-101, MCA, is amended to read:

- "61-11-101. Report of convictions and suspension or revocation of driver's licenses surrender of licenses. (1) If a person is convicted of an offense for which chapter 5 or chapter 8, part 8, makes mandatory the suspension or revocation of the driver's license or commercial driver's license of the person by the department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses then held by the convicted person. The court shall, within 5 days after the conviction becomes final, forward the license and a record of the conviction to the department. If the person does not possess a driver's license, the court shall indicate that fact in its report to the department.
- (2) A court having jurisdiction over offenses committed under a statute of this state or a municipal ordinance regulating the operation of motor vehicles on highways, except for standing or parking statutes or ordinances, shall forward a record of the conviction, as defined in 61-5-213, to the department within 5 days after the conviction becomes final. The court may recommend that the department issue a restricted probationary license on the condition that the individual comply with the requirement that the person attend and complete a chemical dependency education course, treatment, or both, as ordered by the court under 61-8-732.
- (3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department.
 - (4) A conviction becomes final for the purposes of this part upon the later of:
- (a) expiration of the time for appeal of the court's judgment or sentence to the next highest court;
 - (b) forfeiture of bail that is not vacated; or

- (c) imposition of a fine or court cost as a condition of a deferred imposition of a sentence or a suspended execution of a sentence.
- (5) (a) A On a conviction referred to in subsection (1) of a person who holds a commercial driver's license or who is required to hold a commercial driver's license, a court may not take any action, including deferring imposition of judgment, on a conviction that would prevent a conviction for any violation of a state or local traffic control law or ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving record. The provisions of this subsection (5)(a) apply only to the conviction of a person who holds a commercial driver's license or who is required to hold a commercial driver's license and do not apply to the conviction of a person who holds any other type of driver's license.
- (b) For purposes of this subsection (5), "who is required to hold a commercial driver's license" refers to a person who did not have a commercial driver's license but who was operating a commercial motor vehicle at the time of a violation of a state or local traffic control law or ordinance resulting in a conviction referred to in subsection (1)."
 - **Section 2.** Effective date. [This act] is effective on passage and approval.
- **Section 3. Applicability.** [This act] applies to convictions occurring on or after [the effective date of this act].

Approved March 25, 2009

CHAPTER NO. 77

[HB 426]

AN ACT CLARIFYING THE APPOINTMENT OF COMMISSIONERS OF REGIONAL AIRPORT AUTHORITIES AND SUBJECTING THE COMMISSIONERS TO ETHICS LAWS FOR LOCAL GOVERNMENT OFFICIALS; AND AMENDING SECTIONS 2-2-102 AND 67-11-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-102, MCA, is amended to read:

- "2-2-102. **Definitions.** As used in this part, the following definitions apply:
- (1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.
- (2) "Compensation" means any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person or another.
- (3) (a) "Gift of substantial value" means a gift with a value of \$50 or more for an individual.
 - (b) The term does not include:
- (i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;
- (ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer's or public employee's office or employment or when the officer or employee is in attendance in an official capacity;

- (iii) educational material directly related to official governmental duties;
- (iv) an award publicly presented in recognition of public service; or
- (v) educational activity that:
- (A) does not place or appear to place the recipient under obligation;
- (B) clearly serves the public good; and
- (C) is not lavish or extravagant.
- (4) "Local government" means a county, a consolidated government, an incorporated city or town, a school district, or a special district.
- (5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.
 - (6) "Private interest" means an interest held by an individual that is:
 - (a) an ownership interest in a business;
 - (b) a creditor interest in an insolvent business;
- (c) an employment or prospective employment for which negotiations have begun;
 - (d) an ownership interest in real property;
 - (e) a loan or other debtor interest; or
 - (f) a directorship or officership in a business.
 - (7) "Public employee" means:
 - (a) any temporary or permanent employee of the state;
 - (b) any temporary or permanent employee of a local government;
- (c) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and
 - (d) a person under contract to the state.
- (8) (a) "Public officer" includes any state officer and any elected officer of a local government.
- (b) For the purposes of 67-11-104, the term also includes a commissioner of an airport authority.
- (9) "Special district" means a unit of local government, authorized by law to perform a single function or a limited number of functions. The term includes but is not limited to conservation districts, water districts, weed management districts, irrigation districts, fire districts, community college districts, hospital districts, sewer districts, and transportation districts. The term also includes any district or other entity formed by interlocal agreement.
 - (10) (a) "State agency" includes:
 - (i) the state;
 - (ii) the legislature and its committees;
- (iii) all executive departments, boards, commissions, committees, bureaus, and offices;
 - (iv) the university system; and
- (v) all independent commissions and other establishments of the state government.
 - (b) The term does not include the judicial branch.

(11) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102."

Section 2. Section 67-11-104, MCA, is amended to read:

- **"67-11-104. Commissioners.** (1) The powers of each authority shall be are vested in the commissioners thereof of the authority. A majority of the commissioners of an authority shall constitute a quorum for the purpose of conducting business of the authority and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present.
- (2) There shall must be elected a chairman presiding officer and vice-chairman vice presiding officer from among the commissioners. An authority may employ an executive director, secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as that it may require and shall determine their qualifications, duties, and compensation. An authority may delegate to one or more of its agents or employees such powers or duties as that it may deem considers proper.
- (3) A commissioner of an authority shall be is entitled to the necessary expense, including travel expenses, as provided for in 2-18-501 through 2-18-503, incurred in the discharge of his the commissioner's duties. Each commissioner shall hold office until his a successor has been appointed and has qualified by law to serve. The certificates of the appointment and reappointment of commissioners shall must be filed with the authority."

Approved March 25, 2009

CHAPTER NO. 78

[SB 5]

AN ACT REQUIRING APPROVAL BY THE BOARD OF LAND COMMISSIONERS FOR THE GIFT OR PURCHASE OF LAND FOR THE PURPOSE OF RECLAMATION OF MINES; AMENDING SECTIONS 82-4-239 AND 82-4-371, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-239, MCA, is amended to read:

- "82-4-239. Reclamation. (1) The department may have reclamation work done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons. The board may construct, operate, and maintain plants for the control and treatment of water pollution resulting from mine drainage.
- (2) Any funds or any public works programs available to the department must be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining and that have not been reclaimed and rehabilitated in accordance with the standards of this part. The department shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.
- (3) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether the land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine

the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon request of the director of the department, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection. The action must be brought in the county in which the mine is located.

- (4) (a) The department shall take the actions described in subsection (4)(b) when it makes a finding of fact that:
- (i) land or water resources have been adversely affected by past coal-mining practices;
- (ii) the adverse effects are at a stage at which, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and
- (iii) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.
- (b) After giving notice by mail to the owner, if known, and any purchaser under contract for deed, if known, or, if neither is known, by posting notice on the premises and advertising in a newspaper of general circulation in the county in which the land lies, the agents, employees, or contractors of the department may enter on the property adversely affected by past coal-mining practices and on any other property necessary for access to the mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.
- (c) Action taken under subsection (4)(b) is not an act of condemnation of property or of trespass, but rather is an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.
- (5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money expended and may file a statement of those expenses in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money expended resulted in a significant increase in property value. The statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. A lien under this subsection (5)(a) may not be filed against the property of a person who owned the surface prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.
- (b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises constitutes the amount of the lien and must be recorded

with the statement provided for in this section. Any party aggrieved by the decision may appeal as provided by law.

- (c) The lien provided in this section must be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of the date of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.
- (6) The department may acquire the necessary property by gift or purchase. A gift or purchase must be approved by the board of land commissioners. If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:
 - (a) the property is necessary for successful reclamation;
- (b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and
- (c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past strip- or underground-coal-mining practices; or
- (ii) acquisition of coal refuse disposal sites and all coal refuse on the land will serve the purposes of this part because public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices."

Section 2. Section 82-4-371, MCA, is amended to read:

- "82-4-371. Reclamation of abandoned mine sites. (1) Agents, employees, or contractors of the department may enter upon property for the purpose of conducting studies or exploratory work to determine whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or prevention of the adverse effects of past mining practices. The department may bring an injunctive action to restrain interference with the exercise of the right to enter and inspect granted in this subsection.
- (2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding that:
- (i) land or water resources on the property have been adversely affected by past mining practices;
- (ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the property or to abate, control, or prevent the adverse effects should be taken; and
- (iii) the owners of the land or water resources where entry must be made to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices.
- (b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or contractors of the department may enter upon property

adversely affected by past mining practices and other property necessary for access to the adversely affected property to do all things necessary or expedient to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

- (i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or
- (ii) if neither is known, posting notice upon the property and advertising in a newspaper of general circulation in the county in which the property lies.
- (c) Entry upon property pursuant to this section is not an act of condemnation of property or of trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.
- (3) The board may acquire the necessary property by gift or purchase. A gift or purchase must be approved by the board of land commissioners. Or if If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:
 - (a) acquisition of the property is necessary for successful reclamation;
- (b) the acquired property after restoration or reclamation or after abatement, control, or prevention of the adverse effects of past mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and
- (c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the adverse effects of past mining practices; or
- (ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.
- (4) The department may record in the office of the clerk and recorder in the county in which property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been mined and reclaimed. The notice must include the date and a brief description of the reclamation."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 79

[SB 25]

AN ACT ELIMINATING CERTAIN CONTINGENCIES RELATED TO VIOLATIONS, PENALTIES, AND WAIVERS UNDER THE COAL AND URANIUM MINE AND RECLAMATION LAWS; AND REPEALING SECTION 6, CHAPTER 486, LAWS OF 2005, AND SECTION 30, CHAPTER 487, LAWS OF 2005.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 6, Chapter 486, Laws of 2005, and section 30, Chapter 487, Laws of 2005, are repealed.

Approved March 25, 2009

CHAPTER NO. 80

[SB 40]

AN ACT CLARIFYING THE DEFINITION OF "FRIEND OF RESPONDENT" IN INVOLUNTARY COMMITMENT PROCEDURES; REQUIRING A FINDING THAT THERE IS A PERSON WILLING AND ABLE TO SERVE AS A FRIEND OF RESPONDENT AND CONSENT OF THE RESPONDENT PRIOR TO APPOINTMENT OF A FRIEND OF RESPONDENT; REQUIRING THE APPOINTMENT OF AN ALTERNATE FRIEND OF RESPONDENT AT THE REQUEST OF THE RESPONDENT OR IF A CONFLICT OF INTEREST IS DETERMINED TO EXIST; AMENDING SECTIONS 53-21-102 AND 53-21-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-102, MCA, is amended to read:

"53-21-102. Definitions. As used in this part, the following definitions apply:

- (1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.
- (2) "Behavioral health inpatient facility" means a facility or a distinct part of a facility of 16 beds or less licensed by the department that is capable of providing secure, inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency.
- (3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.
- (4) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.
 - (5) "Court" means any district court of the state of Montana.
- (6) "Department" means the department of public health and human services provided for in 2-15-2201.
- (7) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.
- (8) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

- (9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.
 - (b) The term does not include:
 - (i) addiction to drugs or alcohol;
 - (ii) drug or alcohol intoxication;
 - (iii) mental retardation; or
 - (iv) epilepsy.
 - (c) A mental disorder may co-occur with addiction or chemical dependency.
- (10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.
 - (11) "Mental health professional" means:
 - (a) a certified professional person;
 - (b) a physician licensed under Title 37, chapter 3;
 - (c) a professional counselor licensed under Title 37, chapter 23;
 - (d) a psychologist licensed under Title 37, chapter 17;
 - (e) a social worker licensed under Title 37, chapter 22; or
- (f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.
- (12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.
 - (b) The term includes but is not limited to:
- (i) deprivation of food, shelter, appropriate clothing, nursing care, or other services:
 - (ii) failure to follow a prescribed plan of care and treatment; or
- (iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.
- (13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.
- (14) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.
- (15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.
 - (16) "Professional person" means:
 - (a) a medical doctor;
- (b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing;

- (c) a licensed psychologist; or
- (d) a person who has been certified, as provided for in 53-21-106, by the department.
- (17) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.
- (18) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.
 - (19) "State hospital" means the Montana state hospital."

Section 2. Section 53-21-122, MCA, is amended to read:

- "53-21-122. Petition for commitment filing of initial hearing on.
 (1) The petition must be filed with the clerk of court who shall immediately notify the judge.
- (2) (a) The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in 47-1-201, to immediately assign counsel for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and a friend of respondent and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.
- (b) The desires of the respondent must be taken into consideration in the appointment of the friend of respondent If the court finds that an appropriate person is willing and able to perform the functions of a friend of respondent as set out in this part and the respondent personally or through counsel consents, the court shall appoint the person as the friend of respondent. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court. Only one person may at any one time be the friend of respondent within the meaning of this part. The court may at any time, for good cause, change its designation of the friend of respondent. The court shall change the designation of the friend of respondent at the request of the respondent or if it determines that a conflict of interest exists between the respondent and the friend of respondent.
- (3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in 47-1-201, to immediately provide assigned counsel. The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well as to furnish the respondent with a copy of the order. The justice of the peace shall ascertain the desires of the respondent with respect to the assignment of counsel or the hiring of private

counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 81

[SB 54]

AN ACT REVISING THE MONTANA DEFERRED DEPOSIT LOAN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO REFUSE TO ISSUE OR RENEW A DEFERRED DEPOSIT LENDER'S LICENSE ON VARIOUS GROUNDS INCLUDING AN APPLICANT'S MAKING MATERIAL MISSTATEMENTS OF FACT; PROVIDING THAT A PERSON MAY NOT APPLY FOR A LICENSE FOR 1 YEAR FOLLOWING A DENIAL OR REFUSAL BY THE DEPARTMENT TO ISSUE OR RENEW A LICENSE; PROVIDING THAT THE VIOLATION OF CERTAIN SPECIFIED FEDERAL ACTS, INCLUDING THE TRUTH IN LENDING ACT AND THE FAIR CREDIT REPORTING ACT, IS ALSO A VIOLATION OF THE MONTANA DEFERRED DEPOSIT LOAN ACT; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; ELIMINATING THE EXEMPTION FROM THE PROVISIONS OF THE MONTANA DEFERRED DEPOSIT LOAN ACT FOR A COLLECTION AGENCY THAT HAS ENTERED INTO AN AGREEMENT WITH A DEFERRED DEPOSIT LENDER FOR THE COLLECTION OF CLAIMS; REVISING LICENSE APPLICATION REQUIREMENTS; REVISING THE DEPARTMENT'S FEES FOR EXAMINING LICENSEES; PROVIDING THAT A COLLECTION AGENCY ACTING ON BEHALF OF A LICENSEE MAY NOT COLLECT CERTAIN DAMAGES; AND AMENDING SECTIONS 31-1-704, 31-1-705, 31-1-711, AND 31-1-722, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Denial of license and license renewal. (1) (a) Except as provided in subsection (1)(b), the department shall deny any new license or refuse to renew any license if:

- (i) the applicant does not meet the qualifications stated in this part or in rules adopted pursuant to this part;
- (ii) the department finds that the criminal history of any employee of the applicant at the time of application or renewal demonstrates any conviction involving fraud or financial dishonesty or if the department's findings show civil judgments involving fraudulent or dishonest financial dealings;
- (iii) the financial responsibility, experience, character, and general fitness of the applicant do not warrant the belief that the business will be operated lawfully and fairly and within the provisions of this part;
- (iv) the applicant does not have unencumbered assets of at least \$25,000 for each location to be operated by the applicant;
- (v) the applicant has not provided a sworn statement that the applicant will not in the future, directly or indirectly, use a criminal process to collect the payment of deferred deposit loans or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default;

- (vi) other information that the department considers necessary has not been provided; or
- (vii) the applicant makes any material misstatement of fact or any material omission of fact in the application.
- (b) A denial is not required pursuant to subsection (1)(a)(ii) if the department finds that the applicant dismissed the employee promptly upon learning of the employee's conviction involving fraud or financial dishonesty or of civil judgments involving fraudulent or dishonest financial dealings by the employee.
- (2) The department shall provide written notice to the applicant of the denial or refusal, setting forth in the notice the grounds upon which the denial or refusal is based.
- (3) The applicant has the right to a hearing under the Montana Administrative Procedure Act on any denial or refusal to issue a license. The request for a hearing must be made within 10 days of the date of receipt of the written notice of denial or refusal.
- (4) An applicant whose application for licensure or renewal has been denied or refused may not reapply for 1 year following the denial or refusal.
- Section 2. Violation of specified federal laws rulemaking authority. (1) A violation of any applicable provision of the Truth in Lending Act, 15 U.S.C. 1601, et seq., the Equal Credit Opportunity Act, 15 U.S.C. 1691, et seq., the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq., the Fair Debt Collection Practices Act, 15 U.S.C. 1692, et seq., the Financial Services Modernization Act of 1999 (Gramm-Leach-Bliley Act), 15 U.S.C. 6801, et seq., the USA PATRIOT Act of 2001, as reauthorized, Public Law 107-56, or the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, or any regulation promulgated under those acts is also a violation of this part.
 - (2) The department shall adopt rules to implement this section.
 - **Section 3.** Section 31-1-704, MCA, is amended to read:
- **"31-1-704. Scope.** (1) This part applies to deferred deposit lenders and to persons who facilitate, enable, or act as a conduit for persons making deferred deposit loans.
 - (2) This part does not apply to:
- (a) retail sellers who cash checks incidental to or independent of a sale and who do not charge more than 2 a check for the service; or
- (b) a collection agency doing business in this state that has entered into an agreement with a deferred deposit lender for the collection of claims owed or due or asserted to be owed or due the deferred deposit lender."
 - **Section 4.** Section 31-1-705, MCA, is amended to read:
- "31-1-705. License application requirements business locations. (1) A person may not engage in or offer to engage in the business of making deferred deposit loans unless licensed by the department. A license may be granted to a person located within the state or to a person located outside of the state who uses the internet, facsimiles, or third persons to conduct transactions with consumers in this state.
- (2) An applicant for a license to engage in the business of making deferred deposit loans shall pay to the department a license application fee of \$500.

- (3) (a) The department may not issue or renew a license unless findings are made that:
- (i) the financial responsibility, experience, character, and general fitness of the applicant warrant the belief that the business will be operated lawfully and fairly and within the provisions of this part;
- (ii) the applicant has unencumbered assets of at least \$25,000 for each location:
- (iii) the applicant has provided a sworn statement that the applicant will not in the future, directly or indirectly, use a criminal process to collect the payment of deferred deposit loans or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default; and
- (iv) other information that the department considers necessary has been provided.
- (b) The department may not issue or renew a license if the criminal history of the employees of the applicant demonstrates any convictions involving fraud or financial dishonesty or if the department's findings show adverse civil judgments involving fraudulent or dishonest financial dealings.
- (3) The application for licensure must be in writing, under oath, and in the form prescribed by the department. The application must contain:
 - (a) the name of the applicant;
 - (b) the date of formation if a business entity;
- (c) the physical address of each deferred deposit loan office to be operated by the applicant;
- (d) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and
 - (e) any other pertinent information that the department may require.
- (4) A license may not be issued for longer than 1 year. The license year must coincide with the calendar year, and the license fee for any period less than 6 months is \$250.
- (5) Each licensee shall post a bond in the amount of \$10,000 for each location. The bond must continue in effect for 2 years after the licensee ceases operation in the state. The bond must be available to pay damages and penalties to consumers harmed by any violation of this part.
- (6) More than one place of business may not be maintained under the same license, but the department may issue more than one license to the same licensee upon compliance with the provisions of this section governing issuance of a single license."
 - Section 5. Section 31-1-711, MCA, is amended to read:
- "31-1-711. Examinations fee. (1) The department may conduct an examination of each licensee's deferred deposit lending operation to ensure that the licensee is in compliance with the provisions of this part.
- (2) (a) A licensee shall pay the department a fee in the amount of \$300 a day \$37.50 an hour for each examiner required to conduct an examination.
- (b) The department may charge a licensee for no more than three examinations a year under this section.

(3) A licensee shall make available to a department examiner the information required under 31-1-714 or as required by rule."

Section 6. Section 31-1-722, MCA, is amended to read:

- "31-1-722. Prohibited and permitted fees attorney fees and costs.
 (1) A licensee may not charge or receive, directly or indirectly, any interest, fees, or charges except those specifically authorized by this section.
- (2) A licensee may not charge a fee for each deferred deposit loan entered into with a consumer that exceeds 25% of the principal amount of the deferred deposit loan that is advanced or, in the case of an electronic transaction, 25% of the principal amount of the deferred deposit loan.
- (3) If there are insufficient funds to pay a check on the date of presentment, a licensee may charge a fee, not to exceed \$30. Only one fee may be collected pursuant to this subsection with respect to a particular check even if it has been redeposited and returned more than once. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment. A licensee or any collection agency acting as an agent of a licensee, as a holder in due course of a licensee, or under an agreement with a licensee to collect amounts due or asserted to be due may not collect damages under 27-1-717(3) for an insufficient funds check.
- (4) If the loan involves an electronic deduction and there are insufficient funds to deduct on the date on which the payment is due, a licensee may charge a fee, not to exceed \$30. Only one fee may be collected pursuant to this subsection with respect to a particular loan even if the licensee has attempted more than once to deduct the amount due from the consumer's account. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment. A licensee or any collection agency acting as an agent of a licensee, as a holder in due course of a licensee, or under an agreement with a licensee to collect amounts due or asserted to be due may not collect damages under 27-1-717(3) for an electronic deduction for which there are insufficient funds.
- (5) If the loan agreement in 31-1-721 requires, reasonable attorney fees and court costs may be awarded to the party in whose favor a final judgment is rendered in any action on a deferred deposit loan entered into pursuant to this part."
- **Section 7. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 31, chapter 1, part 7, and the provisions of Title 31, chapter 1, part 7, apply to [sections 1 and 2].

Approved March 25, 2009

CHAPTER NO. 82

[SB 77]

AN ACT DEFINING VOLUNTEER EMERGENCY MEDICAL TECHNICIAN; ADDING A VOLUNTEER EMERGENCY MEDICAL TECHNICIAN TO THE BOARD OF MEDICAL EXAMINERS; REQUIRING ONE PHYSICIAN MEMBER OF THE BOARD TO HAVE EXPERIENCE IN EMERGENCY MEDICINE; AMENDING SECTION 2-15-1731, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definition. "Volunteer emergency medical technician" means an individual who is licensed pursuant to this part and provides emergency medical care:

- (1) on the days and the times of the day chosen by the individual; and
- (2) for an emergency medical service other than:
- (a) a private ambulance company, unless the care is provided without compensation and outside of the individual's regular work schedule; or
- (b) a private business or a public agency, as defined in 7-1-4121, that employs the individual on a regular basis with a regular, hourly wage to provide emergency medical care as part of the individual's job duties.

Section 2. Section 2-15-1731, MCA, is amended to read:

- **"2-15-1731. Board of medical examiners.** (1) There is a Montana state board of medical examiners.
- (2) The board consists of 1112 members appointed by the governor with the consent of the senate. Appointments made when the legislature is not in session may be confirmed at the next session.
 - (3) The members are:
- (a) five members having the degree of doctor of medicine, including one member with experience in emergency medicine;
 - (b) one member having the degree of doctor of osteopathy;
 - (c) one member who is a licensed podiatrist;
 - (d) one member who is a licensed nutritionist;
 - (e) one member who is a licensed physician assistant;
- (f) one member who is a volunteer emergency medical technician, as defined in [section 1]; and
 - (f)(g) two members of the general public who are not medical practitioners.
- (4) (a) The members having the degree of doctor of medicine may not be from the same county.
- (b) The volunteer emergency medical technician must have a demonstrated interest in and knowledge of state and national issues involving emergency medical service.
 - (c) Each member must be a citizen of the United States.
- (d) Each member, except for public members, must have been licensed and must have practiced medicine, *emergency medical care*, or dietetics-nutrition in this state for at least 5 years and must have been a resident of this state for at least 5 years.
- (5) Members shall serve staggered 4-year terms. A term eommences begins on September 1 of each year of appointment. A member may be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.
- (6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."
- **Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 50, chapter 6, part 2, and the provisions of Title 50, chapter 6, part 2, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 83

[SB 88]

AN ACT REVISING ALTERED SPEED LIMIT PROVISIONS FOR SCHOOL ZONES; DEFINING "SCHOOL ZONE"; CLARIFYING SIGNING REQUIREMENTS FOR SCHOOL ZONES; AND AMENDING SECTIONS 61-1-101, 61-8-310, AND 61-8-726, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-101, MCA, is amended to read:

- **"61-1-101. Definitions.** As used in this title, unless the context indicates otherwise, the following definitions apply:
- (1) (a) "Authorized agent" means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department's motor vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or purposes upon behalf of a third party.
- (b) For purposes of this subsection (1), "person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.
- (2) "Authorized agent agreement" means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent is required to operate in performing specific motor vehicle or driver-related record functions.
- (3) "Bus" means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.
- (4) (a) "Business entity" means a corporation, association, partnership, limited liability partnership, limited liability company, or other legal entity recognized under state law.
 - (b) The term does not include an individual.
- (5) (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.
 - (b) The term does not include a truck canopy cover or topper.
- (6) "Certificate of title" means the paper record issued by the department or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor vehicle specifically described in the record and that provides notice of a perfected security interest in the motor vehicle.
 - (7) "Commercial driver's license" means:

- (a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; and
- (b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.
- (8) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:
- (i) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
- (ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;
 - (iii) is designed to transport at least 16 passengers, including the driver;
 - (iv) is a school bus; or
- (v) is of any size and is used in the transportation of hazardous materials as defined in 61-8-801.
 - (b) The following vehicles are not commercial motor vehicles:
 - (i) an authorized emergency service vehicle:
- (A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and
 - (B) entitled to the exemptions granted under 61-8-107;
 - (ii) a vehicle:
- (A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;
- (B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and
 - (C) not used to transport goods for compensation or for hire; or
- (iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United States coast guard personnel.
 - (c) For purposes of this subsection (8):
- (i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;
- (ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;
- (iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; and
 - (iv) "school bus" has the meaning provided in 49 CFR 383.5.
 - (9) "Commission" means the state transportation commission.
 - (10) "Custom-built motorcycle" means a motorcycle that is equipped with:

- (a) an engine that was manufactured 20 years prior to the current calendar year and that has been altered from the manufacturer's original design;
- (b) an engine that was manufactured to resemble an engine 20 or more years old and that has been constructed in whole or in part from nonoriginal materials.
 - (11) "Custom vehicle" means a motor vehicle other than a motorcycle that:
- (a) (i) was manufactured with a model year after $1948\,\mathrm{and}$ that is at least 25 years old; or
- (ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and
- (b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.
 - (12) "Customer identification number" means:
- (a) a driver's license or identification card number when the customer is an individual who has been issued a driver's license or identification card by a state driver licensing authority;
- (b) a federal employer or tax identification number when the customer is a business entity that has been issued a federal employer or tax identification number;
- (c) the identification number assigned by the secretary of state to a business entity authorized to do business in this state under Title 35 if the customer is a business entity that does not have a federal employer or tax identification number other than a social security number; or
- (d) if the customer has not been issued one of the numbers described in subsections (12)(a) through (12)(c), a number assigned to the customer by the department when a transaction is initiated under this title.
- (13) (a) "Dealer" means a person that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, or accepting on consignment new or used motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, off-highway vehicles, or special mobile equipment that is not registered in the name of the person.
 - (b) The term does not include the following:
- (i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;
- (ii) employees of the persons included in subsection (13)(b)(i) when engaged in the specific performance of their duties as employees; or
 - (iii) public officers while performing or in the operation of their duties.
- (14) "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.
- (15) "Department" means the department of justice acting directly or through its duly authorized officers or agents.
- (16) "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.

- (17) "Domiciled" means a place where:
- (a) an individual establishes residence;
- (b) a business entity maintains its principal place of business;
- (c) the business entity's registered agent maintains an address; or
- (d) a business entity most frequently uses, dispatches, or controls a motor vehicle, trailer, semitrailer, or pole trailer that it owns or leases.
- (18) "Driver" means a person who drives or is in actual physical control of a vehicle.
- (19) "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:
 - (a) any temporary license or instruction permit;
- (b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;
 - (c) any nonresident's driving privilege;
 - (d) a motorcycle endorsement; or
 - (e) a commercial driver's license.
- (20) "Electric personal assistive mobility device" means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to $12\ 1/2$ miles an hour.
- (21) "For hire" means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.
- (22) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.
- (23) "Highway" or "public highway" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.
- (24) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.
- (25) "Implement of husbandry" means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner's agricultural operations.
- (26) "Kit vehicle" is a motor vehicle assembled from a manufactured kit either as:
- (a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or
- (b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.
- (27) "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.
 - (28) "Manufactured home" has the meaning provided in 15-24-201.

- (29) "Manufacturer" includes any person engaged in the manufacture of motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, or off-highway vehicles as a regular business.
- (30) "Manufacturer's certificate of origin" means the original paper record produced and issued by the manufacturer of a vehicle or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.
- (31) (a) "Medium-speed electric vehicle" is a motor vehicle, upon or by which a person may be transported, that:
- (i) has a maximum speed of 35 miles an hour as certified by the manufacturer;
- (ii) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;
- (iii) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;
 - (iv) is fully enclosed and includes at least one door for entry;
- (v) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;
- (vi) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565;
- (vii) bears a sticker, affixed by the manufacturer or dealer, on the left side of the rear window that indicates the vehicle's maximum speed rating; and
 - (viii) as certified by the manufacturer, is equipped as provided in 61-9-432.
- (b) A medium-speed electric vehicle must be treated as a light vehicle for purposes of titling and registration under Title 61, chapter 3.
 - (32) "Mobile home" or "housetrailer" has the meaning provided in 15-24-201.
 - (33) "Montana resident" means:
 - (a) an individual who resides in Montana as determined under 1-1-215;
- (b) for the purposes of chapter 3, a business entity that maintains a principal place of business or a registered agent in this state.
- (34) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.
- (b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.
- (35) (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis.
- (b) The term does not include motor carriers regulated under Title 69, chapter 12.

- (36) (a) "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the operator and that is designated to travel on not more than three wheels in contact with the ground. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.
- (b) The term does not include a tractor, a bicycle as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.
- (37) (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.
- (b) The term does not include a bicycle, as defined in 61-8-102, or a motorized nonstandard vehicle.
 - (38) "Motor home" means a motor vehicle:
- (a) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;
- (b) containing permanently installed independent life support systems that meet the ANSIA/A119.2 standard; and
 - (c) providing at least four of the following types of facilities:
 - (i) cooking, refrigeration, or icebox;
 - (ii) self-contained toilet;
 - (iii) heating or air-conditioning, or both;
 - (iv) potable water supply, including a faucet and sink; or
- (v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply; or both.
- (39) (a) "Motorized nonstandard vehicle" means a vehicle, upon or by which a person may be transported, that:
- (i) is propelled by its own power, using an internal combustion engine or an electric motor;
- (ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and
- (iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.
- (b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".
- (c) The term does not include an electric personal assistive mobility device or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.
 - (40) (a) "Motor vehicle" means:
- (i) a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state; and
- (ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9.
- (b) The term does not include a bicycle as defined in 61-8-102, an electric personal assistive mobility device, a motorized nonstandard vehicle, or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

- (41) "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.
 - (42) "Nonresident" means a person who is not a Montana resident.
- (43) (a) "Not used for general transportation purposes" means the operation of a motor vehicle, registered as a collector's item, a custom vehicle, a street rod, or a custom-built motorcycle to or from a car or motorcycle club activity or event or an exhibit, show, cruise night, or parade, or other occasional transportation activity.
- (b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.
- (44) (a) "Off-highway vehicle" means a self-propelled vehicle designed for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.
 - (b) The term does not include:
 - (i) vehicles designed primarily for travel on, over, or in the water;
 - (ii) snowmobiles; or
- (iii) motor vehicles designed to transport persons or property upon the highways unless the vehicle is used for off-road recreation on public lands.
- (45) "Operator" means a person who is in actual physical control of a motor vehicle.
- (46) "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.
- (47) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.
- (48) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.
- (49) "Pole trailer" means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.
- (50) "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

- (51) (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor capable of producing not more than 50 horsepower.
 - (b) The term does not include golf carts.
- (52) "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.
- (53) (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated upon rails.
 - (b) The term does not include streetcars.
 - (54) "Recreational vehicle" includes a motor home, travel trailer, or camper.
- (55) "Registration" or "register" means the act or process of creating an electronic record, maintained by the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.
- (56) "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county treasurer to the owner of a motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat, personal watercraft, or snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department under 61-3-101.
- (57) "Registration receipt" means a paper record that is produced and issued or, if authorized by the department, an electronic record that is transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.
- (58) "Retail sale" means the sale of a motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment by a dealer to a person for purposes other than resale.
- (59) "Revocation" means the termination by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for and be issued a driver's license for a period of time designated by law, during which the license or privilege may not be renewed, restored, or exercised. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.
- (60) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.
- (61) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.
 - (b) The term does not include a canoe or kayak propelled by wind.
- (62) "School zone" means an area near a school beginning at the school's front door, encompassing the campus and school property, and including the streets directly adjacent to the school property and for as many blocks surrounding the

school as determined by the local authority establishing a special speed limit under 61-8-310(1)(d).

(62)(63) "Sell" means to transfer ownership from one person to another person or from a dealer to another person for consideration.

(63)(64) "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

(64)(65) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that is not otherwise registered or licensed under the laws of the state of Montana.

(65)(66) "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.

(66)(67) (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:

- (i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;
- (ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles:
- (iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;
- (iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or
- (v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.
- (b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.

(67)(68) (a) "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.

- (b) The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.
- (68)(69) (a) "Stop", when required, means complete cessation from movement.
- (b) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrol officer, or traffic control sign or signal.

(69)(70) "Storage lot" means property owned, leased, or rented by a dealer that is not contiguous to the dealer's established place of business where a motor vehicle from the dealer's inventory may be placed when space at the dealer's established place of business is not available.

(70)(71) "Street" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

(71)(72) "Street rod" means a motor vehicle, other than a motorcycle, that:

- (a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and
- (b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.
- (72)(73) "Suspension" means the temporary withdrawal by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for or be issued a driver's license for a period of time designated by law.

(73)(74) "Temporary registration permit" means a paper record:

- (a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:
 - (i) required vehicle and owner information; and
 - (ii) the purpose for which the record was generated; and
- (b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs.
- (74)(75) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.
- (75)(76) (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.
- (b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.
- (76)(77) "Transaction summary receipt" means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.

(77)(78) "Travel trailer" means a vehicle:

(a) that is 40 feet or less in length;

- (b) that is of a size or weight that does not require special permits when towed by a motor vehicle;
 - (c) with gross trailer area of less than 320 square feet; and
- (d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.
- (78)(79) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.
- (79)(80) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.
 - (80)(81) "Under the influence" has the meaning provided in 61-8-401.
- (81)(82) "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, given away, or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as "secondhand" within the ordinary meaning of that term.
- (82)(83) "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.
- (83)(84) (a) "Vehicle" means a device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.
- (b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.
- (84)(85) "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the motor vehicle or a component part of the motor vehicle.
- (85)(86) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.
- (86)(87) "Wholesaler" means a person that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment only to dealers and auto auctions licensed under chapter 4, part 1."
 - **Section 2.** Section 61-8-310, MCA, is amended to read:
- **"61-8-310.** When local authorities may and shall alter limits *or establish or alter area of school zone.* (1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit that:

- (a) decreases the limit at an intersection;
- (b) increases the limit within an urban district, but not to more than 65 miles an hour during the nighttime;
- (c) decreases the limit outside an urban district, but not to less than $35\,\mathrm{miles}$ an hour; or
- (d) decreases the limit in an area near a school zone or in an area near, a senior citizen center, as defined in 23-5-112, or a designated crosswalk that is close to a school or a senior citizen center to not less than 80%, rounded down to the nearest whole number evenly divisible by 5, of the limit that would be set on the basis of an engineering and traffic investigation, but not less than 15 miles an hour. If warranted by an engineering and traffic investigation, a local authority may adopt variable speed limits to adapt to traffic conditions by time of day, provided that the variable limits comply with the provisions of 61-8-206.
- (2) A board of county commissioners may set limits, as provided in subsection (1)(c), without an engineering and traffic investigation on a county road.
- (3) A local authority in its jurisdiction may determine the proper speed for all arterial streets and shall set a reasonable and safe limit on arterial streets that may be greater or less than the speed permitted under 61-8-303 for an urban district.
- (4) (a) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.
- (b) If a local authority decreases a speed limit in a school zone, the local authority shall erect signs conforming with the manual adopted by the department of transportation under 61-8-202 giving notice that the school zone has been entered, of the altered speed limit and the penalty provided in 61-8-726, and that the school zone has ended.
- (5) Except as provided in subsection (1)(d), the commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions of federal-aid highways in all municipalities or urban areas. The commission shall set these limits in accordance with 61-8-309.
- (6) A local authority establishing or altering the area of a school zone shall consult with the department of transportation and the commission if the school zone includes a state highway or a federal-aid highway or extension of a federal-aid highway.
 - (7) A local authority shall consult with district officials for a school when:
 - (a) establishing or altering the area of a school zone near the school; or
- (b) setting a speed limit pursuant to subsection (1)(d) in a school zone near the school."

Section 3. Section 61-8-726, MCA, is amended to read:

"61-8-726. Violating speed limit near in school zone — penalty doubled — disposition of fines. (1) A person convicted of violating a special speed limit near in a school zone imposed by a local authority pursuant to 61-8-310(1)(d) is guilty of a misdemeanor. Upon arrest and conviction, the person shall be punished by a fine of not less than double the penalty provided for the violation in 61-8-711.

- (2) The fine proceeds must be allocated as follows:
- (a) 50% of the fine collected must be distributed as provided in 3-10-601, 46-17-402, or 46-18-235; and
- (b) 50% must be forwarded to the local authority that adopted the special speed limit as provided in 61-8-310(1)(d) for the purposes of erecting signs providing notification notice of the school zone, the speed limit, and the penalty or for other local law enforcement needs."

Approved March 25, 2009

CHAPTER NO. 84

[SB 89]

AN ACT MAKING PERMANENT THE PRIMARY SECTOR BUSINESS WORKFORCE TRAINING ACT; REPEALING SECTION 10, CHAPTER 567, LAWS OF 2003, AND SECTION 4, CHAPTER 169, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 10, Chapter 567, Laws of 2003, and Section 4, Chapter 169, Laws of 2005, are repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 85

[SB 102]

AN ACT AUTHORIZING THE ADOPTION OF RULES FOR CORRECTIVE ACTION BY PUBLIC WATER SUPPLY SYSTEMS OR PUBLIC SEWAGE SYSTEMS TO PREVENT OR CORRECT CONTAMINATION OF DRINKING WATER; AND AMENDING SECTION 75-6-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6-103, MCA, is amended to read:

- **"75-6-103. Duties of board.** (1) The board has general supervision over all state waters that are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.
- (2) The board shall, subject to the provisions of 75-6-116, adopt rules and standards concerning:
- (a) maximum contaminant levels for waters that are or will be used for a public water supply system;
 - (b) fees, as described in 75-6-108, for services rendered by the department;
- (c) monitoring, recordkeeping, and reporting by persons who own or operate public water supply systems;
- (d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;
- (e) the siting, construction, operation, and modification of a public water supply system or public sewage system, *including requirements to remedy:*

- (i) defects in the design, operation, or maintenance of a public water supply system or public sewage system in order to prevent or correct introduction of contamination into water used for a public water supply system, for domestic purposes, or as a source of ice;
 - (ii) fecal contamination in water used by a public water supply system; or
- (iii) failure or malfunction of the sources, treatment, storage, or distribution portion of a public water supply system in order to prevent or correct introduction of contamination into water used for a public water supply system, for domestic purposes, or as a source of ice;
- (f) the review of the technical, managerial, and financial capacity of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;
- (g) the collection and analysis of samples of water used for drinking or domestic purposes;
- (h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part;
- (i) administrative enforcement procedures and administrative penalties authorized under this part;
- (j) standards and requirements for the review and approval of programs that may be voluntarily submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-connection, including provisions to exempt cross-connections from the standards and requirements if all connected systems are department-approved public water supply systems; and
- (k) any other requirement necessary for the protection of public health as described in this part.
 - (3) Board rules must provide for the following:
- (a) a water supply or water distribution facility reviewed and approved by the department is not subject to changes in department design and construction criteria for a period of 36 months after written approval of the facility is issued by the department;
- (b) except for facilities subject to permit requirements under Title 75, chapter 5, part 4, a system of water supply, drainage, wastewater, or sewage reviewed and approved under this section is not subject to changes in department design or construction criteria for a period of 36 months after written approval is issued by the department;
- (c) plans and specifications for a portion of a facility or system subject to a 36-month limit on criteria changes pursuant to subsections (3)(a) and (3)(b), but not constructed within the 36-month timeframe, must be resubmitted for department review and approval before construction of that portion of the facility;
- (d) the provisions of this subsection (3) may not limit an applicant's ability to alter a proposed project that is otherwise in conformance with applicable laws, rules, standards, and criteria.
- (4) The board may issue orders necessary to fully implement the provisions of this part."

Approved March 25, 2009

CHAPTER NO. 86

[SB 120]

AN ACT GENERALLY REVISING CONTROLLED GROUND WATER LAWS; GRANTING RULEMAKING AUTHORITY; ALLOWING PETITIONS FROM LOCAL ENTITIES AND WATER RIGHT HOLDERS; ALLOWING CONSIDERATION OF FUNDING AND STUDIES; REVISING CRITERIA FOR DESIGNATING OR MODIFYING A CONTROLLED GROUND WATER AREA; EXPANDING CONTROL PROVISIONS; REMOVING PREFERENCES FOR DOMESTIC AND LIVESTOCK WITHDRAWALS; ELIMINATING GROUND WATER SUPERVISORS; REMOVING PENALTIES ASSOCIATED WITH NONCOMPLIANCE WITH GROUND WATER STATUTES; AMENDING SECTIONS 85-2-306, 85-2-402, 85-2-501, 85-2-506, AND 85-2-508, MCA; REPEALING SECTIONS 85-2-507, 85-2-509, 85-2-511, 85-2-513, 85-2-518, AND 85-2-520, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-306, MCA, is amended to read:

- "85-2-306. Exceptions to permit requirements. (1) (a) Except as provided in subsection (1)(b), ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works
- (b) If another person has rights in the ground water development works, water may be appropriated with the written consent of the person with those property rights or, if the ground water development works are on national forest system lands, with any prior written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.
- (c) If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.
- (2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:
 - (a) according to a permit received pursuant to 85-2-508; or
- (b) according to the requirements of an order issued pursuant to 85-2-507 a rule promulgated pursuant to 85-2-506.
- (3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.

- (b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.
- (ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.
- (iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiling a correct and complete notice with the department.
- (c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification or a written federal special use authorization as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.
- (4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.
- (5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.
- (6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:
- (a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;
 - (b) the appropriation is less than 30 acre-feet a year;
- (c) the appropriation is from a source other than a perennial flowing stream; and
- (d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.
- (7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a

provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

- (b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.
- (8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113."

Section 2. Section 85-2-402, MCA, is amended to read:

- "85-2-402. Changes in appropriation rights definition. (1) (a) The right to make a change in appropriation right subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change in appropriation right proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.
- (b) If an application involves a change in a point of diversion, conveyance, or place of use located on national forest system lands, the application is not correct and complete until the applicant has submitted proof to the department of any written special use authorization required by federal law for the proposed change in occupancy, use, or traverse of national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.
- (c) As used in this part, "national forest system lands" has the same meaning as that provided in 85-20-1401, Article I.
- (2) Except as provided in subsections (4) through (6), (15), and (16) and, if applicable, subject to subsection (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:
- (a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.
- (b) Except for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource pursuant to 85-2-436 or a temporary change in appropriation right authorization to maintain or enhance streamflows to benefit the fishery resource pursuant to 85-2-408 or a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320, the proposed means of diversion, construction, and operation of the appropriation works are adequate.
 - (c) The proposed use of water is a beneficial use.

- (d) Except for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource pursuant to 85-2-436 or a temporary change in appropriation right authorization pursuant to 85-2-408 or a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.
- (e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.
 - (f) The water quality of an appropriator will not be adversely affected.
- (g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.
- (3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.
- (4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:
 - (a) the criteria in subsection (2) are met; and
- (b) the proposed change in appropriation right is a reasonable use. A finding of reasonable use must be based on a consideration of:
- (i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;
 - (ii) the benefits to the applicant and the state;
- (iii) the effects on the quantity and quality of water for existing uses in the source of supply;
- (iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;
- (v) the effects on private property rights by any creation of or contribution to saline seep; and
- (vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.
- (5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

- (a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and
- (b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.
- (6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:
- (a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:
- (i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;
- (ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and
- (iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.
- (b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:
- (i) whether there are present or projected water shortages within the state of Montana;
- (ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;
- (iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and
- (iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.
- (c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.
- (7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in appropriation right in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change in appropriation right. The department shall provide notice and may hold one or

more hearings upon any other proposed change in appropriation right if it determines that the proposed change in appropriation right might adversely affect the rights of other persons.

- (8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change in appropriation right. The department may extend time limits specified in the change in appropriation right approval under the applicable criteria and procedures of 85-2-312(3).
- (9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.
- (10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change in appropriation right approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change in appropriation right approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change in appropriation right approval.
- (11) The original of a change in appropriation right approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.
- (12) A person holding an issued permit or change in appropriation right approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change in appropriation right pursuant to this section.
- (13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.
- (14) The department may adopt rules to implement the provisions of this section.
- (15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:
 - (i) the appropriation right is for:
- (A) ground water outside the boundaries of a controlled ground water area;
- (B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring rule establishing the controlled ground water area do not restrict a change in appropriation right;
- (ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

- (iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:
 - (A) 450 gallons a minute for a municipal well; or
 - (B) 35 gallons a minute and 10 acre-feet a year for all other wells;
- (iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and
- (v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).
- (b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.
- (ii) (A) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.
- (B) If the replacement well is located on national forest system lands, the notice is not correct and complete under this subsection (15) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the replacement well.
- (iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.
- (iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:
- (A) cease appropriation of water from the replacement well pending approval by the department; and
- (B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).
- (c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.
- (d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.
- (e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).
- (16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:
- (i) withdraws water from the same ground water source as the original well; and
 - (ii) is required by a state or federal agency.
- (b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

- (c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion. If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.
- (d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this subsection (16).
- (17) The department shall accept and process an application for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320 and this section and to benefit the fishery resource pursuant to 85-2-436 and this section."
 - Section 3. Section 85-2-501, MCA, is amended to read:
- "85-2-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:
- (1) "Aquifer" means any underground geological structure or formation that is capable of yielding water *in usable quantities* or is capable of recharge.
- (2) "Aquifer test" means stressing an aquifer by removing or adding water at a known rate or changing the pressure by a known quantity and measuring the resultant change in hydraulic head for the purpose of determining the aquifer's hydraulic properties near the tested well.
- (3) "Bureau" means the Montana state bureau of mines and geology provided for in 20-25-211.
 - (4) "Ground water" means any water that is beneath the ground surface.
- (5) "Ground water area" means an area that, as nearly as known facts permit, may be designated so as to enclose a single and distinct body of ground water, which must be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations if conditions dictate vertical limits to be desirable."
- **Section 4. Rulemaking.** The department shall adopt rules for the purpose of implementing 85-2-506 and other controlled ground water area statutes. The rules must include but are not limited to petition requirements and the hearing procedure and process for controlled ground water areas.
 - **Section 5.** Section 85-2-506, MCA, is amended to read:
- "85-2-506. Controlled ground water areas designation or modification. (1) The department may by rule designate or modify permanent or temporary controlled ground water areas as provided in this part. The rule for each controlled ground water area must designate the boundaries of the controlled ground water area.
- (2) Designation The rulemaking process for designation or modification of an area of a controlled ground water area use may be proposed to initiated by:
 - (a) the department; on its own motion, by
- (b) submission of a correct and complete petition of from a state or local public health agency for identified public health risks; or
 - (c) submission of a correct and complete petition:

- (i) by a municipality, county, conservation district, or local water quality district formed under Title 7, chapter 13, part 45; or
- (ii) signed by at least one-third of the water right holders in a proposed controlled ground water area., or by petition signed by at least 20 or one-fourth of the users, whichever is the lesser number, of ground water in a ground water area in which there are alleged to be facts showing that:
- (a) ground water withdrawals are in excess of recharge to the aquifer or aquifers within the ground water area;
- (b) excessive ground water withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the ground water area;
- (c) significant disputes regarding priority of rights, amounts of ground water in use by appropriators, or priority of type of use are in progress within the ground water area;
- (d) ground water levels or pressures in the area in question are declining or have declined excessively;
- (e) excessive ground water withdrawals would cause contaminant migration;
- (f) ground water withdrawals adversely affecting ground water quality within the ground water area are occurring or are likely to occur; or
- (g) water quality within the ground water area is not suited for a specific beneficial use defined by 85-2-102(4)(a).
 - (3) (a) A correct and complete petition must:
- (i) be in a form prescribed by the department and must contain analysis prepared by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer concluding that one or more of the criteria provided in subsection (5) are met; and
- (ii) describe proposed measures, if any, to mitigate effects of the criteria identified in subsection (5) that are alleged in the petition.
- (3)(b) When the department proposes a rule pursuant to this section, a proposal is made, the department shall fix a time and place for a hearing, which may not be less than 90 days from the making of the proposal. The the place for the hearing must be within or as close as practical to the proposed or existing controlled ground water area.
 - (4) The department shall publish a notice of the hearing, setting forth:
 - (a) the names of the petitioners;
- (b) the description by legal subdivisions (section, township, range) of all lands included in or proposed to be included in the ground water area or subarea;
 - (c) the purpose of the hearing; and
- (d) the time and place of the hearing where any interested person may appear, either in person or by attorney, file written objections to the granting of the proposal, and be fully heard.
- (c) (i) The department shall notify the petitioner of any defects in a petition within 180 days. If the department does not notify the petitioner of any defects within 180 days, the petition must be treated as correct and complete.

- (ii) A petition that is not made correct and complete within 90 days from the date of notification by the department of any defect is terminated.
- (4) (a) Within 60 days after a petition is determined to be correct and complete, the department shall:
- (i) deny in writing the petition in whole or in part, stating the reasons for denial:
- (ii) inform the petitioner that the department will study the information presented in the petition for a period not to exceed 90 days before denying or proceeding with the petition; or
- (iii) initiate rulemaking proceedings in accordance with Title 2, chapter 4, part 3.
- (b) Failure of the department to act under subsection (4)(a) does not mandate that the department grant the petition for rulemaking.
- (c) In addition to the notice requirements of Title 2, chapter 4, parts 1 through 4, the department shall provide public notice of the rulemaking hearing by:
- (i) (5) (a) The notice of hearing must be published publishing a notice at least once each week for 3 successive weeks, with the first notice not less than 30 days before the date of the hearing in a newspaper of general circulation in the county or counties in which the proposed controlled ground water area or subarea is located;. The department shall also cause a copy of the notice, together with a copy of the petition, to be served by mail, not less than 30 days before the hearing, upon:
- (i) each well driller licensed in Montana whose address is within any county in which any part of the area in question is located;
- (ii) serving by mail a copy of the notice, not less than 30 days before the hearing, upon each person or public agency known from an examination of the records in the department's office to be a claimant or appropriator of ground water in the area in question;

(iii) the bureau; and

- (iv) the mayor or presiding officer of the governing body of each incorporated municipality located in whole or in part within the proposed ground water area. of the department to be a water right holder with a diversion within the proposed controlled ground water area, all landowners of record within the proposed controlled ground water area, and each well driller licensed in Montana whose address is within any county in which any part of the proposed controlled ground water area is located; and
- (b)(iii) The department may also serve notice serving by mail a copy of the notice upon any other person or state or federal agency that the department feels may be interested in or affected by the proposed designation or modification of a controlled ground water area. The petition need not be served on any petitioner. A copy of the notice, together with a copy of the proposal, must be mailed to each person at the person's last-known address, and service is complete upon depositing it in the post office, postage prepaid, addressed to each person on whom it is to be served.
- (d) The notice under subsection (4)(c) must include a summary of the basis for the proposed rule. Publication and mailing of the notice as prescribed in this section, when completed, is considered to be sufficient notice of the hearing to all interested persons.

- (c) As used in subsection (5)(a), "claimant or appropriator" means a person who diverts, impounds, or withdraws ground water and not merely a person who uses or obtains ground water from another person who diverts, impounds, or withdraws ground water.
- (5) The department may designate a permanent controlled ground water area by rule if it finds by a preponderance of the evidence that any of the following criteria have been met and cannot be appropriately mitigated:
- (a) current or projected reductions of recharge to the aquifer or aquifers in the proposed controlled ground water area will cause ground water levels to decline to the extent that water right holders cannot reasonably exercise their water rights;
- (b) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have reduced or will reduce ground water levels or surface water availability necessary for water right holders to reasonably exercise their water rights;
- (c) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have induced or altered or will induce or alter contaminant migration exceeding relevant water quality standards;
- (d) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have impaired or will impair ground water quality necessary for water right holders to reasonably exercise their water rights based on relevant water quality standards;
- (e) ground water within the proposed controlled ground water area is not suited for beneficial use; or
 - (f) public health, safety, or welfare is or will become at risk.
- (6) (a) If the department finds that sufficient facts are not available to designate a permanent controlled ground water area, it may designate by rule a temporary controlled ground water area to allow studies to obtain the facts needed to determine whether or not it is appropriate to designate a permanent controlled ground water area. The department shall set the length of time that the temporary controlled ground water area will be in effect. Subject to subsection (6)(c), the term of a temporary controlled ground water area may be extended by rule.
- (b) A temporary controlled ground water area designation is for the purpose of study and cannot include the control provisions provided in subsection (7), other than measurement, water quality testing, and reporting requirements.
- (c) A temporary controlled ground water area designation may not exceed a total of 6 years, including any extensions.
- (d) Prior to expiration of a temporary controlled ground water area, the department may amend or repeal the rule establishing the temporary controlled ground water area or may designate a permanent controlled ground water area through the rulemaking process under this section.
- (e) Studies for temporary controlled ground water areas may be considered for funding under the renewable resource grant and loan program in Title 85, chapter 1, part 6.
- (f) If there is a ground water investigation program within the bureau, the ground water assessment steering committee established by 2-15-1523 shall consider temporary controlled ground water areas for study.

- (7) A controlled ground water area may include but is not limited to the following control provisions:
- (a) a provision closing the controlled ground water area to further appropriation of ground water;
- (b) a provision restricting the development of future ground water appropriations in the controlled ground water area by flow, volume, purpose, aquifer, depth, water temperature, water quality, density, or other criteria that the department determines necessary;
- (c) a provision requiring measurement of future ground water or surface water appropriations;
- (d) a provision requiring the filing of notice on land records within the boundary of a permanent controlled ground water area to inform prospective holders of an interest in the property of the existence of a permanent controlled ground water area. Notice of the designation must be removed or modified as necessary to accurately reflect modification or repeal of a permanent designation within 60 days.
- (e) a provision for well spacing requirements, well construction constraints, and prior department approval before well drilling, unless the well is regulated pursuant to Title 82, chapter 11;
 - (f) a provision for mitigation of ground water withdrawals;
 - (g) a provision for water quality testing;
 - (h) a provision for data reporting to the department; and
- (i) other control provisions that the department determines are appropriate and adopts through rulemaking."
 - Section 6. Section 85-2-508, MCA, is amended to read:
- "85-2-508. Controlled ground water areas permits to appropriate.
 (1) A person may appropriate ground water in a controlled ground water area by:
- (a) applying for and receiving a permit from the department in accordance with part 3 of this chapter; or
- (b) following the requirements of an order issued a rule promulgated pursuant to 85-2-507 85-2-506.
- (2) The department may not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the *controlled* ground water area to yield ground water within a reasonable or feasible pumping lift, in the case of pumping developments, or within a reasonable or feasible reduction of pressure, in the case of artesian developments."
- Section 7. Criteria for petition applications. Municipalities, counties, conservation districts, and local water quality districts may establish specific criteria for acceptance of an application to the municipality, county, conservation district, or local water quality district to petition for creation of a controlled ground water area and other criteria necessary to implement this part. Those criteria may include but are not limited to:
- (1) the submission of substantial credible evidence that one or more of the criteria provided in 85-2-506(5) are met;
- (2) a description of proposed measures, if any, to mitigate effects of the criteria identified in 85-2-506(5);

- (3) a description of proposed studies for a temporary controlled ground water area:
- (4) a requirement that an application be supported by owners of at least one-fourth of the water rights with a point of diversion of water within the boundaries of the proposed controlled ground water area;
- (5) a requirement that an applicant pay an application or processing fee for the application; and
- (6) a description of proposed funding for studies for a controlled ground water area.
- **Section 8. Repealer.** Sections 85-2-507, 85-2-509, 85-2-511, 85-2-513, 85-2-518, and 85-2-520, MCA, are repealed.
- **Section 9.** Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].
- **Section 10. Codification instruction.** [Sections 4 and 7] are intended to be codified as an integral part of Title 85, chapter 2, part 5, and the provisions of Title 85, chapter 2, part 5, apply to [sections 4 and 7].

Section 11. Effective date. [This act] is effective on passage and approval. Approved March 25, 2009

CHAPTER NO. 87

[SB 135]

AN ACT REVISING THE SMALL BUSINESS HEALTH INSURANCE PROGRAM; ALLOWING THE INSURANCE COMMISSIONER TO EXEMPT THE SMALL BUSINESS HEALTH INSURANCE PURCHASING POOL FROM REPORTING AS REQUIRED FOR VOLUNTARY PURCHASING POOLS; CLARIFYING TERMS FOR PREMIUM INCENTIVE PAYMENT SCHEDULES; CLARIFYING THE DESCRIPTION OF HEALTH PLANS AS THOSE PROVIDING CREDITABLE COVERAGE; PROVIDING REVISED ELIGIBILITY TERMS FOR OWNERS, PARTNERS, OR SHAREHOLDERS EARNING MORE THAN \$75,000 AND FOR CERTAIN EMPLOYEES OR DEPENDENTS; REVISING FUNDING TERMS FOR PREMIUM ASSISTANCE AND PREMIUM INCENTIVE PAYMENTS; AMENDING SECTIONS 33-22-1816, 33-22-2004, 33-22-2006, 33-22-2007, 33-22-2008, AND 53-4-1004, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-1816, MCA, is amended to read:

- "33-22-1816. Commissioner powers and duties application for registration reporting insolvency. (1) The commissioner shall develop forms for registration of an organization as a voluntary purchasing pool.
- (2) An organization seeking to be registered as a voluntary purchasing pool shall make application to the commissioner. The commissioner shall register an organization as a voluntary purchasing pool upon proof of fulfillment of the qualifications provided in 33-22-1815.
- (3) Except as provided in subsection (5), on March 1 of each year, the voluntary purchasing pool shall provide a report and financial statement for the

previous calendar year to the commissioner $\frac{1}{100}$ or $\frac{1}{100}$ or that the commissioner may determine:

- (a) whether the operation of the voluntary purchasing pool is fiscally sound;
- (b) whether the voluntary purchasing pool is bearing any risk; and
- (c) the number of individuals covered.
- (4) The annual report of the voluntary purchasing pool must disclose its total administrative cost.
- (5) A voluntary purchasing pool may choose to operate on a fiscal year other than on the calendar year. A voluntary purchasing pool that establishes a fiscal year that is other than the calendar year shall provide the report required in subsection (3) to the commissioner within 60 days of the voluntary purchasing pool's fiscal yearend.
- (6) The commissioner may exempt the small business health insurance purchasing pool established in 33-22-2001 from the reporting requirements under subsection (3)."

Section 2. Section 33-22-2004, MCA, is amended to read:

"33-22-2004. Powers and duties of board. (1) The board shall:

- (a) establish an operating plan that includes but is not limited to administrative and accounting procedures for the operation of the purchasing pool and a schedule for premium incentive and premium assistance payments and that complies with the powers and duties provided for in this section;
- (b) require employers and employees to reapply for premium incentive payments or premium assistance payments on an annual basis;
- (c) upon reapplication, give priority to employers and their employees who are already receiving the premium incentive payments and premium assistance payments;
- (d) upon reapplication, allow employers to retain eligibility to receive premium incentive payments and premium assistance payments on behalf of their employees if the number of their employees goes over the maximum number, not to exceed nine employees, established by the commissioner in administrative rule;
- (e) renew purchasing pool group health plan coverage for all employer groups, even if the employer group no longer receives or is eligible for a premium incentive *or premium assistance* payment;
- (f) adopt a premium incentive payment amount schedule that is based on a percentage of the employer's share of the premium and apply the schedule uniformly to the same for all registered eligible small employers who join the purchasing pool or obtain qualified association health plan coverage;
- (g) adopt premium assistance payment amounts that, in combination with the premium incentive payments, are consistent with the amounts provided for in 33-22-2006 and 33-22-2008 or, with the assistance of the department of public health and human services, adopt a premium assistance payment schedule that is equitably proportional to the income or wage level for employees;
- (h) establish criteria for determining which employees will be eligible for a premium assistance payment and the amount that the employees will receive from among those eligible small employer groups that have registered with the commissioner pursuant to 33-22-2008 and applied for coverage under the purchasing pool group health plan or qualified association health plan.

However, to the extent that federal funds are used to make some premium assistance payments, criteria for those payments must be consistent with any waiver requirements determined by the department of public health and human services pursuant to 53-2-216. Eligibility for employees is not limited to the waiver eligibility groups.

- (i) make appropriate changes to eligibility or other elements in the operating plan as needed to reach the goal of expending 90% of the funding dedicated to premium incentive payments and premium assistance payments during the current biennium;
- (j) limit the total amount of premium incentive payments and premium assistance payments paid to the amount of available state, federal, and private funding;
- (k) approve no more than six fully insured group health plans with different benefit levels that will be offered to employers participating in the purchasing pool;
- (l) prepare appropriate specifications and bid forms and solicit bids from health insurance issuers authorized to do business in this state;
- (m) contract with no more than three health insurance issuers to underwrite the group health plans that will be offered through the purchasing pool;
- (n) request that the department of public health and human services seek a federal waiver for medicaid matching funds for premium assistance payments based on the department's analysis, as provided in 53-2-216, if it is in the best interests of the purchasing pool;
 - (o) comply with the participation requirements provided for in 33-22-1811;
 - (p) meet at least four times annually; and
- (q) within 2 years after the purchasing pool is established and considered stable by the board, examine the possibility of offering an opportunity for individual sole proprietors without employees to purchase insurance from the purchasing pool without premium incentive payments, premium assistance payments, or tax credits.
 - (2) The board may:
 - (a) borrow money:
 - (b) enter into contracts with insurers, administrators, or other persons;
- (c) hire employees to perform the administrative tasks of the purchasing pool;
- (d) assess its members for costs associated with administration of the purchasing pool and request that the commissioner transfer funds or request that the department of public health and human services transfer funds from the special revenue account, as provided in 53-6-1201, for that purpose;
 - (e) set contribution levels for employers;
- (f) at least 30 days before the end of the current fiscal year, request that funds be transferred from the funds appropriated for premium incentive payments and premium assistance payments to the department of revenue for reimbursement of the general fund to offset tax credits if the number of eligible small employers seeking premium incentive payments and employees receiving premium assistance payments is insufficient to exhaust at least 90% of the appropriated funds for the premium incentive and assistance payments during a biennium fiscal year;

- (g) at least 90 days before the end of the current fiscal year, request that funds be transferred from the funds allocated for tax credits to the funds appropriated for premium incentive payments and premium assistance payments if the number of eligible small employers seeking tax credits is insufficient to exhaust at least 90% of the funds allocated for tax credits during a fiscal year;
 - (g)(h) seek other federal, state, and private funding sources;
- (h)(i) accept all small employer groups who apply for coverage under the small business health insurance pool group health plan even if they are not eligible for any tax credit or premium incentive payment and have not been registered by the commissioner pursuant to 33-22-2008;
- (i)(j) receive from the commissioner's office or the department of public health and human services premium incentive payments on behalf of eligible small employers and premium assistance payments on behalf of employees, collect the employer or employee premiums from the employer or employees, and make premium payments to insurers on behalf of the eligible small employers and employees;
- (j)(k) request the commissioner to direct more than 30% of the available funding for premium incentives and premium assistance payments to qualified association health plan coverage instead of purchasing pool coverage; and
- (k)(l) pay appropriate commissions to licensed insurance producers who market purchasing pool coverage."
 - **Section 3.** Section 33-22-2006, MCA, is amended to read:
- "33-22-2006. Premium incentive payments, premium assistance payments, and tax credits for small employer health insurance premiums paid—eligibility for small group coverage—amounts. (1) An employer is eligible to apply for premium incentive payments and premium assistance payments or a tax credit under this part if the employer and any related employers:
- (a) did not have more than the number of employees established for eligibility by the commissioner at the time of registering for premium incentive payments or premium assistance payments or a tax credit under 33-22-2008;
- (b) provide or will provide a group health plan that meets the requirements of creditable coverage for the employer's and any related employer's employees;
- (c) do not have delinquent state income tax liability owing to the department of revenue from previous years;
- (d) have been registered as eligible small employer participants by the commissioner as provided in 33-22-2008; and
- (e) do not have any employees, not including an owner, partner, or shareholder of the business, who received more than \$75,000 in gross compensation, including bonuses and commissions wages, as defined in 39-71-123, from the small employer or related employer in the prior tax year.
- (2) An owner, partner, or shareholder of a business who received more than \$75,000 in wages, as defined in 39-71-123, and those individuals' spouses who are employees are not eligible under this chapter for:
- (a) any premium assistance payment. However, a premium incentive payment may be made for the premium share paid by the business for group health insurance coverage for:
 - (i) the owner, partner, or shareholder;

- (ii) a spouse of those listed in subsection (2)(a)(i) who is also an employee of the business; or
 - (iii) dependents of those listed in subsection (2)(a)(i).
- (b) a tax credit for group health insurance premiums paid by the business or the owner, partner, or shareholder for group health insurance coverage for the individual or the individual's dependents.
- (3) An employee, including an owner, partner, or shareholder or any dependent of an employee, who is also eligible for the children's health insurance program provided for under Title 53, chapter 4, part 10, or medicaid under Title XIX of the Social Security Act may become ineligible to receive a premium assistance payment.
- (2)(4) The commissioner shall establish, by rule, the maximum number of employees that may be employed to qualify as a small employer under subsection (1). However, the number may not be less than two employees or more than nine employees. The maximum number may be different for employers seeking premium incentive payments and premium assistance payments than for employers seeking a tax credit. The number must be set to maximize the number of employees receiving coverage under this part. The commissioner may not change the maximum employee number more often than every 6 months. If the maximum number of allowable employees is changed, the change does not disqualify registered employers with respect to the tax year for which the employer has registered.
- (3)(5) Except as provided in subsection (4) (6), an eligible small employer may claim a tax credit in the following amounts:
- (a) (i) not more than \$100 each month for each employee and \$100 each month for each employee's spouse, if the employer covers the employee's spouse, if the average age of the group is under 45 years of age; or
- (ii) not more than \$125 each month for each employee and \$100 each month for each employee's spouse, if the employer covers the employee's spouse, if the average age of the group is 45 years of age or older; and
- (b) not more than \$40 each month for each dependent, other than the employee's spouse, if the employer is paying for coverage for the dependents, not to exceed two dependents of an employee in addition to the employee's spouse.
 - (4)(6) An employer may not claim a tax credit:
- (a) in excess of 50% of the total premiums paid by the employer for the qualifying small group;
- (b) for premiums paid from a medical care savings account provided for in Title 15, chapter 61; or
- (c) for premiums for which a deduction is claimed under 15-30-121 or 15-31-114.
- (5)(7) An employer may not claim a premium incentive payment in excess of 50% of the total premiums paid by the employer for the qualifying small group."
 - Section 4. Section 33-22-2007, MCA, is amended to read:
- "33-22-2007. Filing for tax credit filing for premium incentive payments and premium assistance payments. (1) An eligible small employer may:
- (a) apply the tax credit against taxes due for the current tax year on a return filed pursuant to Title 15, chapter 30 or 31; or

- (b) if the eligible small employer did not sponsor a group health plan that provides creditable coverage for employees during the 2 years prior to the first tax year of registration for the premium incentive payments or premium assistance payments or operates a new business that is less than 2 years old and has never sponsored a group health plan that provides creditable coverage, apply to receive monthly premium incentive payments and premium assistance payments to be applied to coverage obtained through the purchasing pool or qualified association health plan coverage approved by the commissioner.
- (2) An eligible small employer may not, in the same tax year, apply the tax credit against taxes due for the current tax year as provided for in subsection (1)(a) and receive premium incentive payments as provided for in subsection (1)(b).
- (3) The premium incentive payments and premium assistance payments provided for in subsection (1)(b) must be paid pursuant to a plan of operation implemented by the board and any applicable administrative rules.
- (4) (a) If an eligible small employer's tax credit as provided in subsection (1)(a) exceeds the employer's liability under 15-30-103 or 15-31-121, the amount of the excess must be refunded to the eligible small employer. The tax credit may be claimed even if the eligible small employer has no tax liability under 15-30-103 or 15-31-121.
- (b) A tax credit is not allowed under 15-30-129, 15-31-132, or any other provision of Title 15, chapter 30 or 31, with respect to any amount for which a tax credit is allowed under this part.
- (5) The department of revenue or the commissioner may grant a reasonable extension for filing a claim for premium incentive payments or premium assistance payments or a tax credit whenever, in the department's or the commissioner's judgment, good cause exists. The department of revenue and the commissioner shall keep a record of each extension and the reason for granting the extension.
- (6) (a) If an employer that would have a claim under this part ceases doing business before filing the claim, the representative of the employer who files the tax return or pays the premium may file the claim.
- (b) If a corporation that would have a claim under this part merges with or is acquired by another corporation and the merger or acquisition makes the previously eligible corporation ineligible for the premium incentive payments, premium assistance payments, or tax credit in the future, the surviving or acquired corporation may file for the premium incentive payments, premium assistance payments, or tax credit for any claim period during which the former eligible corporation remained eligible.
- (c) If an employer that would have a claim under this part files for bankruptcy protection, the receiver may file for the premium incentive payments, premium assistance payments, or tax credit for any claim period during which the employer was eligible."

Section 5. Section 33-22-2008, MCA, is amended to read:

"33-22-2008. Registration — funding limitations — transfers — maximum number — waiting list — information transfer for tax credits. (1) (a) Each eligible small employer that proposes to apply for premium incentive payments and premium assistance payments or a tax credit under this part must be registered each year with the commissioner. The commissioner shall begin taking new applications for 2006 on October 1, 2005.

- (b) An eligible small employer may submit a new application for the premium incentive payments and premium assistance payments or the tax credit anytime during the year, but in order to maintain the employer's registration for the next year, the registration application must be renewed each year.
- (c) The commissioner shall begin accepting renewal applications on October 1 of each year and stop accepting renewal applications on October 31 of each year.
- (d) The registration application must include the number of individuals covered, as of the date of the registration application, under the small group health plan for which the employer is seeking premium incentive payments and premium assistance payments or a tax credit. If, after the initial registration, the number of individuals increases, the employer may apply to register the additional individuals, but those additional individuals may be added only at the discretion of the commissioner, who shall limit enrollment based on available funds.
- (e) A small employer is not eligible to apply for premium incentive payments and premium assistance payments or a tax credit for a number of employees, or the employees' spouses or dependents, over the number that has been established in 33-22-2006 as the maximum number of employees an employer may have in order to qualify for registration for the time period in question.
- (f) An employer's decision to apply for premium incentive payments and premium assistance payments or a tax credit is irrevocable for 12 months or until the purchasing pool group health plan or qualified association health plan renews its registration, whichever time period is less. An employer may choose to discontinue receiving any premium incentive payments and premium assistance payments or tax credits at any time.
- (2) The commissioner shall register qualifying eligible small employers in the order in which applications are received and according to whether or not the application is for premium incentive payments and premium assistance payments or a tax credit. Initially, 60% of the available funding must be dedicated to provide and maintain premium incentive payments and premium assistance payments for eligible small employers who have not sponsored group health plans that provide creditable coverage in the previous 2 years and who chose to join the purchasing pool or a qualified association health plan and 40% of the available funding must be dedicated to tax credits for eligible small employers who currently sponsor a small group health plan that provides creditable coverage. Funding may be transferred from the allocated fund for premium incentive payments and premium assistance payments to the general fund for tax credits or from the funds allocated for tax credits to the allocated fund for premium incentive payments and premiums assistance payments if the board requests the transfer as provided in 33-22-2004 and the commissioner approves the request.
- (3) (a) The maximum number of eligible small employers is reached when the anticipated amount of claims for premium incentive payments and premium assistance payments and tax credits has reached 95% of the amount of money allocated for premium incentive payments and premium assistance payments and tax credits.
- (b) The commissioner may establish a waiting list for applicants that are otherwise qualified for registration but cannot be registered because of a lack of

money or because the maximum number of eligible small employers has been reached.

- (c) The commissioner shall mail to each employer registered under this section a notice of registration containing a unique registration number and indicating eligibility for either premium incentive payments and premium assistance payments or a tax credit. The commissioner shall also issue to each employer that is eligible for premium incentive payments and premium assistance payments or the tax credit a certificate, placard, sticker, or other evidence of participation that may be publicly posted.
- (d) The commissioner shall notify all persons who applied for registration and who were not accepted that they were not registered and the reason that they were not registered.
- (4) A prospective participant shall apply for registration on a form provided by the commissioner. The prospective participant shall:
- (a) provide the number of employees and whether the employer qualifies under 33-22-2006:
- (b) provide information that is necessary to estimate the amount of the premium incentive payments and premium assistance payments payable to the applicant or the amount of the tax credit available to the applicant, such as the ages of employees or dependents, relationships of employees' dependents, and information required by the department of public health and human services for determination of eligibility for premium assistance payments matched by federal funds;
- (c) indicate whether the prospective employer intends to pursue the claim as a tax credit through the income tax process or through premium incentive payments and premium assistance payments to be applied toward purchasing pool or eligible qualified association health plan coverage;
- (d) indicate whether or not the employer previously sponsored a group health plan that provided creditable coverage and, if so, when and for how long; and
- (e) provide any additional information determined by the commissioner to be necessary to support an application.
- (5) Each year, small employer participants shall reregister with the commissioner in order to determine the participant's continued eligibility.
- (6) The commissioner shall transmit to the department of revenue, at least annually, a list of eligible small employers that are taxpayers entitled to the tax credit and shall specify the taxpayer's name and tax identification number, the tax year to which the credit applies, the amount of the credit, and whether the credit is to be applied against taxes due on the taxpayer's return or paid as premium incentive payments or premium assistance payments. Unless there has been a finding of fraud or misrepresentation on the part of the taxpayer regarding issues relating to eligibility for the tax credit, the department of revenue may not redetermine or change the commissioner's determination regarding the taxpayer's entitlement to and amount of the tax credit.
- (7) If the department of public health and human services receives approval for a section 1115 waiver as provided in 53-2-216, the commissioner shall work with the department of public health and human services with regard to eligibility determinations as required by federal law or waiver conditions."

Section 6. Section 53-4-1004, MCA, is amended to read:

"53-4-1004. (*Temporary*) **Eligibility for program** — **rulemaking.** (1) To be considered eligible for the program, a child:

- (a) must be 18 years of age or younger;
- (b) must have a combined family income at or below 250% of the federal poverty level or at a lower level determined by the department of public health and human services as provided in subsection (4);
- (c) may not already be covered by private insurance that offers creditable coverage, as defined in 42 U.S.C. 300gg(c), for 3 months prior to enrollment in the program or since birth, whichever period is less, except that the break in coverage is waived for a covered dependent whose coverage moves from the purchasing pool provided under Title 33, chapter 22, part 20, to coverage under this part;
 - (d) may not be eligible for medicaid benefits; and
- (e) must be a United States citizen or qualified alien and a Montana resident.
- (2) The department of public health and human services shall adopt rules that establish the program's criteria for residency. The criteria must conform as nearly as practicable with the residency requirements for medicaid eligibility.
- (3) Subject to 53-4-1009(3), rules governing eligibility may also include financial standards and criteria for income and resources, treatment of resources, and nonfinancial criteria.
- (4) If the department determines that there is insufficient funding for the program, it may lower the percentage of the federal poverty level established in subsection (1)(b) in order to reduce the number of persons who may be eligible to participate or may limit the amount, scope, or duration of specific services provided. (Terminates on occurrence of contingency—sec. 15, Ch. 571, L. 1999; sec. 14, I.M. No. 155, approved November 4, 2008.)"
- Section 7. Contingent voidness. [Section 6] is void on the date that the centers for medicare and medicaid services notifies the department of public health and human services of disapproval of the state plan amendment. The department of public health and human services shall notify the code commissioner of the date of the notification if the state plan amendment is disapproved.

Section 8. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2009.

(2) [Section 3] is effective January 1, 2010.

Approved March 25, 2009

CHAPTER NO. 88

[SB 150]

AN ACT GENERALLY REVISING UNEMPLOYMENT INSURANCE LAWS; AUTHORIZING THE GOVERNOR TO APPOINT A SUBSTITUTE MEMBER TO THE BOARD OF LABOR APPEALS; PROVIDING FOR INELIGIBILITY FOR UNEMPLOYMENT BENEFITS DURING A LEAVE OF ABSENCE; ESTABLISHING THE INELIGIBILITY PERIOD FOR UNEMPLOYMENT BENEFITS FOR A PERSON SUSPENDED FROM EMPLOYMENT; CLARIFYING THE REQUISITIONING OF MONEY FROM THE UNEMPLOYMENT TRUST FUND; ALLOWING THE DEPARTMENT OF

LABOR AND INDUSTRY TO CHARGE FEES FOR PROVIDING INFORMATION; REVISING CONFIDENTIALITY REQUIREMENTS; GRANTING RULEMAKING AUTHORITY; REVISING GENERAL BENEFIT ELIGIBILITY REQUIREMENTS; REVISING AGENCY REQUIREMENTS FOR PERSONS ACTING ON BEHALF OF A CLAIMANT; REVISING COLLECTION PROCEDURES FOR OVERPAYMENTS; AMENDING SECTIONS 2-15-1704, 35-8-304, 39-51-403, 39-51-501, 39-51-603, 39-51-1105, 39-51-1216, 39-51-1301, 39-51-2101, 39-51-2104, 39-51-2307, 39-51-2402, 39-51-2403, 39-51-2405, 39-51-3201, 39-51-3202, 39-51-3206, AND 39-51-3207, MCA; REPEALING SECTION 39-51-3104, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1704, MCA, is amended to read:

- "2-15-1704. Board of labor appeals allocation composition function quasi-judicial. (1) There is a board of labor appeals.
- (2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.
- (3) The board is composed of three members of the public who are not employees of the state government, appointed by the governor as prescribed in 2-15-124.
- (4) The governor may appoint a substitute board member to the board who is subject to the same qualifications and confirmation requirements as the regular board members as prescribed in subsection (3) and in 2-15-124. The substitute board member may serve in place of any regular board member who is unable to attend a board meeting and participate in the proceedings and decisions of that board meeting. The substitute board member is entitled to the same compensation and per diem as the regular board members.
- (4)(5) The board is designated as a quasi-judicial board for purposes of 2-15-124."
- Section 2. Benefit ineligibility for leave of absence. (1) An individual is ineligible to receive benefits during an approved leave of absence.
- (2) An individual is eligible to receive benefits when the individual returns to and offers service to the individual's employer after returning from an approved leave of absence and the individual's regular or comparable suitable work is not available, as determined by the department, provided that the individual is otherwise eligible.
- **Section 3. Benefit ineligibility for suspension.** (1) An individual who files for benefits during a disciplinary suspension is ineligible to receive benefits for 2 weeks or until the suspension ends, whichever occurs first.
- (2) Ineligibility based upon a disciplinary suspension may not be imposed for any week beginning after the second week of the suspension. If the individual remains suspended, the individual must be considered discharged for purposes of unemployment insurance. The department shall determine whether the discharge constitutes misconduct under 39-51-2303.

Section 4. Section 35-8-304, MCA, is amended to read:

"35-8-304. Liability of members and managers to third parties. (1) Except as provided in 39-51-1105 and subsection (3) of this section, a person who is a member or manager, or both, of a limited liability company is not liable, solely by reason of being a member or manager, or both, under a judgment,

decree or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company.

- (2) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers of the limited liability company.
- (3) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:
 - (a) a provision to that effect is contained in the articles of organization; and
- (b) a member named as liable has consented in writing to the adoption of the provision or to be bound by the provision."

Section 5. Section 39-51-403, MCA, is amended to read:

- "39-51-403. Money to be requisitioned from unemployment trust fund solely for payment of benefits — exception. (1) Money may be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with section 904 of the Social Security Act, 42 U.S.C. 1104, and with regulations prescribed by the department, except that money credited to this state's account pursuant to sections 903 and 904 of the Social Security Act (42 U.S.C. 1103 and 1104), as amended, may also be withdrawn for the payment of expenses for the administration of this chapter and of public employment offices, as provided by this chapter. Money withheld by the department from a benefits payment at the request of an individual, or in accordance with the department's rules pertaining to deductions and withholding for federal income tax purposes pursuant to 39-51-2207, or money withheld for repayment of an overissuance of food stamp coupons pursuant to 39-51-2208, or for repayment of child support obligations pursuant to 39-51-3106 must be considered benefits for the purposes of this subsection.
- (2) The department shall from time to time requisition from the unemployment trust fund amounts, not exceeding the amounts in this state in the fund, as it considers necessary for the payment of benefits for a reasonable future period. Upon receipt of a requisition, the treasurer secretary of the treasury of the United States shall deposit the money in the benefit account. and Upon receipt of the deposit, the department shall issue warrants for the payment of benefits solely from the benefit account.
- (3) Expenditures of money in the benefit account and refunds from the clearing account are not subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.
- (4) Any balance of money requisitioned from the unemployment trust fund that remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned must be deducted from estimates for and may be used for the payment of benefits during succeeding periods or, in the discretion of the department, must be redeposited with the secretary of the treasury of the United States to the credit of this state's account in the unemployment trust fund, as provided in 39-51-402."

Section 6. Section 39-51-501, MCA, is amended to read:

- "39-51-501. State-federal cooperation. (1) (a) In the administration of this chapter, the department shall:
- (a) cooperate to the fullest extent consistent with the provisions of this chapter with the secretary of labor, pursuant to the provisions of the Social Security Act, as amended;
- (b) make reports in a form and containing the information that the secretary of labor may require and shall comply with the provisions that the secretary of labor may find necessary to ensure the correctness and verification of the reports; and
- (c) comply with the regulations prescribed by the secretary of labor governing the expenditures of the sums that are allotted and paid to this state under Title III of the Social Security Act (now Subchapter III), as amended, for the purpose of assisting in the administration of this chapter.
- (i) afford reasonable cooperation to every agency of the United States charged with the administration of any unemployment insurance law;
- (ii) disclose wage and other required information to authorized recipients as provided by 42 U.S.C. 503; and
- (iii) establish necessary safeguards to ensure that any information disclosed is used only for the purposes outlined in 42 U.S.C. 503.
- (b) The department may charge fees commensurate with the costs of providing any information pursuant to subsection (1)(a) and shall deposit the fees in the state special revenue fund.
- (2) The department shall cooperate with the secretary of labor in the administration of any act of congress establishing unemployment insurance benefits or similar benefits for federal employees and veterans or ex-service personnel of the armed forces of the United States and shall do so in a manner considered advisable and expedient in order to carry out the purpose of this chapter.
- (3) The department is authorized to perform any acts, including the execution of agreements and contracts that may be required under and pursuant to any act passed by the congress of the United States, authorizing the extension of unemployment insurance benefits by federal law if the department in its discretion considers it advisable to perform such acts.
- (4) Upon request, the department shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment the name, address, ordinary occupation, and employment status of each recipient of benefits and the recipient's rights to further benefits under this chapter."
 - Section 7. Section 39-51-603, MCA, is amended to read:
- "39-51-603. Employing unit to keep records and make reports confidentiality rules. (1) Each employing unit shall keep true and accurate work records containing the information that the department may prescribe. Those records must be open to inspection and audit and may be copied by the department or its authorized representative at any reasonable time and as often as may be necessary. An employing unit that maintains its records outside Montana shall furnish a copy of those records to the department at the employing unit's expense or shall pay the department for the costs associated with conducting the audit outside Montana.
- (2) The department and the presiding officer of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to

persons employed by it that the department considers necessary for the effective administration of this chapter.

- (3) Information obtained from any individual under this chapter must, except to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential and may not be published or be open to public inspection, except to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity, but any claimant or the claimant's legal representative at a hearing before the board or appeal tribunal must be supplied with information from the records to the extent necessary for the proper presentation of the claim.
- (4) In order to prevent the misuse of personal and other sensitive information collected by the department in the administration of the unemployment insurance laws, the department shall adopt rules providing for confidentiality of unemployment insurance information, including the circumstances and conditions under which information may be disclosed to appropriate persons and government agencies. The rules must be consistent with federal requirements regarding confidentiality and disclosure of unemployment insurance information.
- (4)(5) (a) Any employee or member of the department or other state or local government employee who violates any provision of this section shall be fined not less than \$20 or more than \$200 or shall be imprisoned for not longer than 90 days, or both.
- (b) Any person other than those described in subsection (5)(a) who receives information from the department may only use the disclosed information for purposes authorized by law. A person who violates the provisions of this subsection (5)(b) is subject to the penalties provided for in subsection (5)(a)."

Section 8. Section 39-51-1105, MCA, is amended to read:

- **"39-51-1105.** Liability for taxes, penalties, and interest owed. (1) The officer of a corporation whose responsibility it is to pay the taxes, penalties, and interest, as provided by *39-51-404*, 39-51-1103(1) and (2), and 39-51-1125(1) and (2), and *39-51-1301*, is liable for the taxes, penalties, and interest due.
- (2) (a) The department shall consider the officer of the corporation individually liable with the corporation for filing reports and unpaid taxes, penalties, and interest upon a determination that the corporate officer:
- (i) possessed the responsibility to file reports and pay taxes on behalf of the corporation; and $\,$
- (ii) possessed the responsibility on behalf of the corporation to direct the filing of reports or payment of other corporate obligations and exercised the responsibility that resulted in failure to file reports or pay taxes due.
- (b) The department is not limited to considering the elements set forth in subsection (2)(a) to establish individual liability and may consider any other available information.
- (3) The liability imposed upon an individual by this section remains unaffected by the bankruptcy of a business entity to which a discharge cannot be granted under 11 U.S.C. 727. The individual is liable for the unpaid amount of taxes, penalties, and interest.
- (4) In the case of a limited liability company treated as a partnership pursuant to 39-51-207, the liability for unemployment insurance taxes, penalties, and interest owed extends jointly and severally to each member and to each manager, if any.

(5) In the case of a limited liability company that is not treated as a partnership pursuant to 39-51-207, liability for unemployment insurance taxes, penalties, and interest owed extends jointly and severally to the managers *and members* of the limited liability company."

Section 9. Section 39-51-1216, MCA, is amended to read:

"39-51-1216. Experience rating record voided when account inactive. Whenever an An employer who has not had covered employment or whose coverage has been terminated because he the employer has ceased to do business for 5 consecutive years or because he has not covered employment for a period of 3 years becomes a covered employer, he is considered a new employer and he is not to may not be credited with his the employer's previous experience for the purpose of computing any future "experience factor"."

Section 10. Section 39-51-1301, MCA, is amended to read:

- "39-51-1301. Penalty and interest on past-due reports and taxes payments. (1) Failure to file reports and *make* payments in a timely manner, as required under *39-51-404*, *39-51-603*, *39-51-1103*, and *39-51-1125*, may subject an employer to penalty and interest, as provided in subsection (2).
- (2) The department may assess penalties and interest under this section as follows:
- (a) a penalty of \$25 for the failure to file reports or make payments in a timely manner;
- (b) in addition to the late penalty provided in subsection (2)(a), a penalty of \$50 if the department issues a subpoena or makes a summary or jeopardy assessment, as provided in 39-51-1302, as the result of an employer's refusal or failure to provide requested information;
- (c) in addition to the penalties in subsections (2)(a) and (2)(b), a penalty of \$100 for failure to comply with a subpoena; and
- (d) interest at the rate of 1.5% a month on any amounts owed to the department under this subsection (2) that are not paid in a timely manner.
- (3) The department may waive all or any portion of any penalties and interest assessed pursuant to under subsection (2).
- (4) There is an account in the federal special revenue fund. Penalties and interest collected for unemployment insurance obligations must be deposited in that account. Money deposited in that account and appropriated to the department may be used by the department only to administer this chapter, including the detection and collection of unpaid taxes and overpayments of benefits to the extent that federal grant revenue is less than amounts appropriated for this purpose. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.
- (5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due unemployment insurance taxes must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose."

Section 11. Section 39-51-2101, MCA, is amended to read:

- "39-51-2101. Total unemployment when. An individual is considered to be totally unemployed in any week during which the individual:
- (1) $\frac{1}{1}$ performed no $\frac{1}{1}$ did not perform any work in employment and $\frac{1}{1}$ earn any wages for employment; or

- (2) performed worked less than full-time work in employment with wages for employment of the customary hours that are normal for the individual's particular occupation due to a lack of work and provided that the wages payable to the individual are less than two times the individual's weekly benefit amount."
 - Section 12. Section 39-51-2104, MCA, is amended to read:
- "39-51-2104. General benefit eligibility conditions. (1) An unemployed individual, including an alien entitled to benefits under the provisions of 39-51-2110, is eligible to receive benefits for any week of total unemployment within the individual's benefit year only if the department finds that the individual:
- (a) has filed a claim and has filed continued claims in accordance with rules that the department may prescribe;
- (b) is able to work, is available for work, and is seeking work. An individual may not place limitations on the individual's availability that would constitute a withdrawal from the labor market. A claimant is not considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if the failure is because of:
- (i) an illness or disability that occurs after the claimant has filed or reopened a claim for unemployment insurance benefits and suitable work has not been offered to the claimant after the beginning of the illness or disability; or
 - (ii) enrollment as a student as provided in 39-51-2307.
- (c) prior to the first week for which the individual is paid benefits, has been totally unemployed for a waiting period of 1 week. A week is not counted as a week of total unemployment for the purposes of this subsection:
 - (i) if benefits have been paid for that week;
 - (ii) unless the individual was eligible for benefits during the week;
 - (iii) unless it occurs within the benefit year of the claimant;
- (iv) unless it occurs after benefits first could become payable to any individual under this chapter.
- (d) has registered for work with the individual's local job service office unless the individual is excused by department rule from registering for work.
- (2) (a) Except as provided in subsection (2)(b), if an individual is unavailable for work for less than 3 days within a week for which work is available, the individual must be paid the weekly benefit amount reduced by one-fifth of that amount for each day or part of a day that the individual is unavailable for work.
- (b) If the individual is unavailable for work for 3 days or more, or part of each of 3 days or more, within a week for which work is available, the individual must be considered unavailable for work for the entire week, and is not eligible to receive benefits for the week.
- (2)(3) (a) The department shall establish a profiling system to identify individuals who are likely to exhaust their regular benefits and who are in need of reemployment services.
- (b) In addition to the requirements listed in subsection (1), an individual identified pursuant to subsection (2)(a) (3)(a) may be required to participate in reemployment services in order to be eligible for unemployment benefits.
- (c) The requirement for participation in reemployment services may be waived if the department determines that:

- (i) the individual has completed reemployment services; or
- (ii) the individual's failure to participate in reemployment services is justifiable."

Section 13. Section 39-51-2307, MCA, is amended to read:

- "39-51-2307. Disqualification because of student status School attendance. (1) Except as provided in subsection (2) or (3), an individual is disqualified for benefits during the school year (within the autumn, winter, and spring seasons of the year) or the vacation periods within the school year or during any prescribed school term if the individual is a student regularly attending an established educational institution. An individual who is a student attending an established educational institution may qualify for benefits provided that the individual can demonstrate to the department's satisfaction that the individual meets the requirements of 39-51-2104.
- (2) An individual attending an adult basic education class 20 hours a week or less while laid off from a job is not disqualified from receiving benefits if the individual is willing to return to work when notified.
- (3) An otherwise eligible individual may not be denied benefits for any week because the individual is in training approved by the department, nor may the individual be denied benefits with respect to any week in which the individual is in training approved by the department by reason of the application of provisions in 39-51-2304 or the application of provisions in 39-51-2104(1)(b)."

Section 14. Section 39-51-2402, MCA, is amended to read:

- "39-51-2402. Initial determination Determination redetermination. (1) A representative designated by the department and referred to as a deputy The department shall promptly examine a claim for benefits, and on the basis of the deputy's department's findings of fact, the deputy department shall determine whether or not the claim is valid. If the claim is valid, the deputy department shall determine the week the benefits commence, the weekly benefit amount payable, and the maximum benefit amount. The deputy department may refer the claim or any question involved in the claim to an appeals referee who shall make the decision on the claim in accordance with the procedure prescribed in 39-51-2403. The deputy department shall promptly notify the claimant and any other interested party of the decision its determination and the reasons for reaching the decision determination.
- (2) The deputy department may for good cause reconsider the decision its determination and shall promptly notify the claimant and other interested parties of the amended decision redetermination and the reasons for the decision redetermination.
- (3) A determination or redetermination is final unless an interested party entitled to notice of the decision applies for reconsideration of the determination or appeals the decision within 10 days after the notification was mailed to the interested party's last-known address. The 10-day period may be extended for good cause.
- (4) Except as provided in subsection (5), a redetermination of a claim for benefits any issue of an original determination may not be made after 2 years from the date of the initial original determination of that issue.
- (5) A redetermination of any issue of an original determination may be made within 3 years from the date of the initial original determination of that issue of a claim if the initial original determination was based on a false claim,

misrepresentation, or failure to disclose a material fact by the claimant or the employer."

Section 15. Section 39-51-2403, MCA, is amended to read:

"39-51-2403. Hearing — decision of appeals referee. Upon appeal of a determination or redetermination under 39-51-2402, an appeals referee shall hold a hearing, which may be conducted by telephone or by videoconference. After the hearing, the appeals referee shall promptly make findings and conclusions and affirm, modify, or reverse the deputy's department's determination or redetermination. Each interested party must be promptly furnished a copy of the decision and the supporting findings and conclusions. This decision is final unless further review is initiated pursuant to 39-51-2404 within 10 days after notification was mailed to the interested party's last-known address. The 10-day period may be extended for good cause."

Section 16. Section 39-51-2405, MCA, is amended to read:

"39-51-2405. Prompt payment of claims. (1) Notwithstanding any provision in 39-51-2402 or 39-51-2404, benefits shall must be paid promptly in accordance with a determination or redetermination under 39-51-2402 or the decision of an appeals referee, the board, or a reviewing court under 39-51-2404 upon the issuance of such the determination, redetermination, or decision. The benefits must be paid regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review that is provided with respect to the application, filing, or petition thereto in 39-51-2404, as the case may be, or the pendency of any such the actual application, filing, or petition, unless and until such the determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event case the benefits shall must be paid or denied for the following weeks of unemployment thereafter in accordance with such the modifying or reversing redetermination or decision.

(2) If a deputy's the department's determination or redetermination allowing benefits is affirmed in any amount by an appeals referee or by the board or if a decision of an appeals referee allowing benefits is affirmed in any amount by the board, such the benefits shall must be paid promptly regardless of any further appeal or the disposition of such the appeal and no an injunction, supersedeas, stay, or other writ or process suspending the payment of such the benefits shall may not be issued by the board or any court. Benefits shall may not be paid for any weeks of unemployment involved in such any modification or reversal that begins after such the final decision."

Section 17. Section 39-51-3201, MCA, is amended to read:

"39-51-3201. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — administrative penalty and remedy. (1) (a) A person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter or under an employment security law of any other state or territory or the federal government, either for the individual or for any other person, is:

(a)(i) disqualified for benefits for a period of not more than 52 weeks, beginning with the first compensable week following the date of determination by the department, with the length of time of the disqualification to be determined by the department in accordance with the severity of each case; and

- (b)(ii) required to repay to the department, pursuant to the provisions of 39-51-3206, either directly or as authorized by the department, by offset of future benefits to which the individual may be entitled, or by a combination of both methods, a sum equal to the amount wrongfully received by the individual, plus the department may assess a penalty not to exceed 100% of the fraudulently obtained benefits.
- (b) Future benefits may not be used to offset the penalty due. However, the individual is not required to repay any amount wrongfully obtained more than 5 years prior to the date of the department's determination that the individual made false statements, willful nondisclosure, or misrepresentation.
- (2) (a) An individual, other than a person with a bona fide disability that prevents the individual from making or filing a claim for benefits on the individual's own behalf, who allows or authorizes another person to make or file a claim for benefits on the individual's behalf without designating that person as an authorized agent is subject to the penalties prescribed in subsection (1).
- (b) The designation of a person who is not an attorney as an individual's agent must be in writing and signed by the individual. The designation must specify:
 - (i) the period of time covered by the designation; and
 - (ii) any limits on the agent's authority.
- (c) Any action taken or information provided by an agent has the same effect as an action taken or information provided by the individual.
- (3) All money accruing from the penalty under subsection (1)(b) (1)(a) must be deposited in the federal special revenue account. Money deposited in that account may be appropriated to the department to be used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant revenues are inadequate for these purposes. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year."

Section 18. Section 39-51-3202, MCA, is amended to read:

- "39-51-3202. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits criminal penalty. (1) A person who, in order to obtain or increase for personal gain or for any other person benefits under this chapter or under an employment security law of any other state or territory or the federal government, knowingly makes a false statement or representation or knowingly fails to disclose a material fact is guilty of a crime under 45-7-203, and the department may cause criminal proceedings to be initiated against the person.
- (2) A person will be required to repay to the department an amount as determined by 39-51-3201(1)(θ)(α).
- (3) For purposes of this section, restitution awarded under this section must include a sum equal to the amount wrongfully received, plus the department may assess a penalty not to exceed 100% of the amount wrongfully received. All money accruing from the penalty must be deposited in the federal special revenue account. Money deposited in that account may be appropriated to the department to be used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant revenues are inadequate for these purposes. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year."

Section 19. Section 39-51-3206, MCA, is amended to read:

- "39-51-3206. Collection of benefit overpayments. (1) A person who receives benefits not authorized by this chapter shall repay to the department either directly or, as authorized by the department, by offset of future benefits to which the claimant may be entitled, or by a combination of both methods, a sum equal to the amount of the overpayment.
 - (2) The department may collect a benefit overpayment and any penalty:
- (a) by having the claimant pay the amount owed directly to the department by check, money order, credit card, debit card, or electronic funds transfer; or
- (b) by offsetting the amount of the overpaid benefits owed against future unemployment benefits to be received by the claimant.
 - (3) The claimant is responsible for any:
 - (a) penalty established in accordance with 39-51-3201; and
- (b) costs or processing fees associated with using the repayment methods set out in subsection (2)(a).
- (4) The department may enter into an agreement with a claimant for the repayment of any benefit overpayment and penalty provided that repayment in full is made within 5 years of the date that it was established that an overpayment occurred.
- (5) A benefit offset may not exceed 50% of the weekly benefits to which a claimant is entitled unless the claimant gives written consent, except in cases of theft or fraud, when benefits may be offset by as much as 100% of the weekly benefits to which a claimant is entitled. The sum is collectible in the manner provided in this chapter for the collection of past-due contributions.
- (6) (a) The department may collect any benefit overpayment and penalty by directing the offset of any funds due the claimant from the state, except future unemployment benefits as provided in subsection (1) and retirement benefits. The department, through the department of revenue, shall provide the claimant with notice of the right to request a hearing on the offset action. A request for hearing must be made within 30 days of the date of the notice.
- (b) The debt does not have to be determined to be uncollectible before being transferred for offset.
- (7) (a) The department may direct the offset of funds owed to a person under 26 U.S.C. 6402 if the person owes a covered unemployment compensation debt.
- (b) For the purposes of this subsection (7), "covered unemployment compensation debt" means:
- (i) a benefit overpayment and penalty owed because of the erroneous payment of unemployment compensation resulting from fraud, which has been adjudicated as a debt under Montana law and has remained uncollected for not more than 10 years; or
- (ii) employer contributions, penalty, and interest owed to the unemployment trust fund that the department determines are attributable to fraud and that have remained uncollected for not more than 10 years.
- (8) If, upon demand of the department, the claimant fails to make the payments provided for in this section, the unpaid benefit overpayment and associated penalty may be treated as a judgment against the claimant at the time the payments become due. The department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county

in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real property of the claimant. The department may enforce the judgment at any time within 10 years of creation of the lien.

- (9) The department may waive the benefit overpayment if the department finds that:
- (a) the claimant did not conceal or misrepresent material facts to obtain the overpaid benefits and that recovery of the benefit overpayment would cause a long-term financial hardship on the claimant; or
 - (b) the overpayment was the result of department error.
- (10) An action for collection of overpaid benefits must be brought within 5 years after the date of the overpayment.
- (11) Notwithstanding any other provision of this chapter, the department may recover an overpayment of benefits paid to any individual under the laws of this state or another state or under an unemployment benefit program of the United States."

Section 20. Section 39-51-3207, MCA, is amended to read:

- "39-51-3207. Authority to determine uncollectibility of debts transfer of debts for collection liability for payment of fees and costs of collection. (1) After making all reasonable efforts to collect unpaid contributions, assessments under 39-51-404, and penalties and interest, or overpaid benefits and penalties under 39-51-3206 and interest, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may transfer the debt to the department of revenue for collection as provided in 17-4-104.
- (2) Subject to approval by the department, reasonable fees or costs of collection incurred by the department of revenue may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the department of revenue. If less than the full amount of the debt is collected, the department of revenue shall retain only a proportionate share of the collection fees or costs."

Section 21. Repealer. Section 39-51-3104, MCA, is repealed.

Section 22. Codification instruction. [Sections 2 and 3] are intended to be codified as an integral part of Title 39, chapter 51, part 21, and the provisions of Title 39, chapter 51, part 21, apply to [sections 2 and 3].

Section 23. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval.

- (2) [Sections 5 through 7, 9, 13, and 18] are effective July 1, 2009.
- (3) [Sections 2 and 3, 11, 12, 17, and 19] are effective January 1, 2010.

Approved March 25, 2009

CHAPTER NO. 89

[SB 155]

AN ACT REQUIRING A RANDOM-SAMPLE AUDIT OF VOTE-COUNTING MACHINES AFTER A FEDERAL ELECTION; ESTABLISHING AUDIT

PROCEDURES; AUTHORIZING COUNTY AUDIT COMMITTEES; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 13-1-101, 13-1-303, 13-15-401, AND 13-15-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 9] may be cited as the "Postelection Audit Act".

Section 2. Definitions. As used in [sections 1 through 9], the following definitions apply:

- (1) "Computer software expert" means a person who has obtained a bachelor of science degree in computer science with expertise in software engineering and who is not affiliated with an election software vendor.
- (2) "County audit committee" means the committee that conducts a random-sample audit in a county.
- (3) "Vote-counting machine" means an individual piece of equipment used to automatically tabulate votes.
- Section 3. Random-sample audit of vote-counting machines required rulemaking authority. (1) After unofficial results are available to the public in a federal election, but before the official canvass by the county board of canvassers, the county audit committee shall conduct a random-sample audit of vote-counting machines.
- (2) The random-sample audit may not include a ballot that a vote-counting machine was unable to process and that was not resolved pursuant to 13-15-206 because the ballot:
 - (a) appeared to have at least one overvote;
 - (b) appeared to be blank;
- (c) was in a condition that prevented its processing by a vote-counting machine; or
- (d) contained a mark, error, or omission that prevented its processing by a vote-counting machine.
- (3) Except as provided in subsections (4) and (5), the random-sample audit must include:
- (a) at least 5% of the precincts in each county or a minimum of one precinct in each county, whichever is greater; and
 - (b) an election for:
 - (i) one statewide office race, if any;
 - (ii) one federal office race:
 - (iii) one legislative office race; and
 - (iv) one statewide ballot issue if a statewide ballot issue was on the ballot.
 - (4) The audit may not include:
 - (a) a retention election for a judicial candidate; or
 - (b) a race in which a candidate was unopposed.
- (5) A county is exempt from the postelection random-sample audit requirements if:
 - (a) the county does not use a vote-counting machine; or

- (b) the county's unofficial final vote totals for any race or ballot issue involving more than one precinct show a tie vote or a vote within the margins allowed by Title 13, chapter 16, part 2, for a recount without a court order. A county meeting the requirements of this subsection (5)(b) shall notify the secretary of state as soon as practicable.
- (6) The secretary of state shall adopt rules to implement the provisions of [sections 1 through 9], including but not limited to rules for:
- (a) the process to be used for selecting precincts, races, and ballot issues for the random-sample audit; and
- (b) the manner in which the random-sample audit of vote-counting machines will be conducted pursuant to the procedures established in [sections 1 through 9].

Section 4. County audit committee — membership — oath required. (1) Prior to each federal election, the county governing body shall appoint at least three individuals to serve on the county audit committee from a list of county employees and county residents who have offered to serve on the committee.

- (2) The county audit committee may not include:
- (a) a person who served as an election judge in the election;
- (b) a person employed by the vendor who supplied the vote-counting machines subject to the audit; or
- (c) a person who has performed maintenance on the vote-counting machines subject to the audit.
- (3) Before beginning service, the audit committee members shall take and subscribe the official oath prescribed by the Montana constitution. The audit committee members may administer the oath to each other.
- (4) The county election administrator shall serve as the secretary to the county audit committee.
- **Section 5. Selection process for random-sample audit.** (1) No sooner than 7 days after the election and no later than 9 days after the election, the state board of canvassers, pursuant to [section 3] and as established by rule, shall randomly select:
 - (a) the races and ballot issue to be audited;
 - (b) the precincts to be audited in each county; and
- (c) three additional precincts in each county that would be audited if a discrepancy in vote tallies occurs and results in the need to audit additional precincts pursuant to [section 7].
 - (2) The selection process must be open to the public.
- (3) After selecting the precincts, races, and ballot issue for the random-sample audit, the state board of canvassers shall direct the secretary of state to:
 - (a) notify each county election administrator of the selections; and
 - (b) make a list of the selections available electronically.

Section 6. Conduct of random-sample audit. (1) The random-sample audit must be completed at least 1 day before the official canvass by the county board of canvassers.

- (2) The county audit committee shall manually count the votes for the random-sample audit as follows:
- (a) One member shall read the ballot while the remaining members shall each record on an official tally sheet the number of valid votes cast for each of the selected offices and ballot issue.
- (b) (i) After the vote is complete, the tally sheets of the members recording the votes must be compared.
- (ii) If the tallies match, the county audit committee shall compare the manual count for the selected offices and the ballot issue to the vote-counting machine count for the selected offices and the ballot issue.
- (iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the tallies match.
- (c) (i) If the manual count and the vote-counting machine totals match, the county audit committee shall certify the results to the county election administrator and the secretary of state.
- (ii) If the manual count and the vote-counting machine totals do not match, the county audit committee shall follow the procedures established in [section 7].
 - (3) The audit process must be public.
- Section 7. Discrepancies substitution of results examination of machines. (1) If a discrepancy exists between the vote-counting machine totals and the manual count totals, the random-sample audit results must serve as the definitive record for purposes of the canvass.
- (2) If the random-sample audit results in a discrepancy of more than 0.5% of total ballots cast or five ballots, whichever is greater, and if the discrepancy is determined to be due to the vote-counting machine and not to administrative or user error:
- (a) the vote-counting machine involved in the discrepancy in that county may not be used in another election until it has been examined and tested by a computer software expert in consultation with a voting system vendor and approved by the secretary of state; and
- (b) at least three additional precincts within the county must be audited for the office or ballot issue in question. If the county has fewer than three additional precincts, all remaining precincts must be audited.
- (3) If the audit of the additional precincts results in a discrepancy for those precincts of more than 0.5% of total ballots cast or five ballots, whichever is greater, and if the discrepancy is determined to be due to the vote-counting machine and not to administrative or user error, the vote-counting machine involved in the discrepancy in that county may not be used in another election until it has been examined and tested by a computer software expert in consultation with a voting system vendor and approved by the secretary of state.
 - (4) The results of the random-sample audit must be public.
- **Section 8. Reimbursement of county costs.** (1) Except as provided in subsection (2), the secretary of state shall reimburse each county for any costs incurred in implementing the provisions of [sections 1 through 9].
- (2) A vendor who supplies a vote-counting machine that was purchased after October 1, 2009, and that fails an audit due to software or machine defects or vendor employee error shall pay the costs incurred for the audit of vote-counting

machines in the affected county. The provisions of this subsection must be reflected in the contract for the purchase of vote-counting machines.

- Section 9. Vote-counting machine maintenance examination. (1) Upgrades, patches, fixes, or alterations may not be applied to any vote-counting machine during the 30 days following a federal election.
- (2) If a vote-counting machine fails an audit pursuant to [section 7], the vote-counting machine is subject to examination by a computer software expert in consultation with a voting system vendor.

Section 10. Section 13-1-101, MCA, is amended to read:

- "13-1-101. **Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:
- (1) "Active elector" means an elector who voted in the previous federal general election and whose name is on the active list.
- (2) "Active list" means a list of active electors maintained pursuant to 13-2-220.
- (3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.
- (4) "Application for voter registration" means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, submitted to the election administrator, and contains voter registration information subject to verification as provided by law.
- (5) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots.
 - (6) "Candidate" means:
- (a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;
- (b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:
 - (i) solicitation is made;
 - (ii) contribution is received and retained; or
 - (iii) expenditure is made; and
 - (c) an officeholder who is the subject of a recall election.
 - (7) (a) "Contribution" means:
- (i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;
 - (ii) a transfer of funds between political committees;
- (iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.
 - (b) "Contribution" does not mean:

- (i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual;
- (ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;
- (iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; or
 - (iv) filing fees paid by the candidate.
- (8) "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.
- (9) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.
 - (10) "Elector" means an individual qualified to vote under state law.
- (11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.
 - (b) "Expenditure" does not mean:
- (i) services, food, or lodging provided in a manner that they are not contributions under subsection (7);
- (ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family:
- (iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or
- (iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.
- (12) "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.
- (13) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).
- (14) "Inactive elector" means an individual who failed to vote in the preceding federal general election and whose name was placed on an inactive list pursuant to 13-2-220.

- (15) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220.
 - (16) "Individual" means a human being.
- (17) (a) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question.
- (b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue.
- (18) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.
- (19) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (6).
- (20) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:
- (a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or
- (b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or
 - (c) as an earmarked contribution.
- (21) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.
- (22) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.
- (23) "Provisional ballot" means a ballot cast by an elector whose identity and eligibility to vote have not been verified as provided by law.
- (24) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose eligibility has not yet been verified as provided by law.
- (25) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.
- (26) "Random- sample audit" means an audit involving a manual count of ballots from designated races and ballot issues in precincts selected through a random process as provided in [section 3].
- (26)(27) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.
- (27)(28) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

- (28)(29) "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.
- (29)(30) "Transfer form" means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector's registration when the elector's residence address has changed within the county.
- (30)(31) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.
- (31)(32) "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ballot."

Section 11. Section 13-1-303, MCA, is amended to read:

- "13-1-303. Disposition of ballots and other election materials. (1) (a) The Except for a federal election, the voted ballots, detached stubs, unvoted ballots, and unused ballots from an election must be kept in the unopened packages received from the election judges for a period of 12 months. The packages may be opened only when an order for opening is given by the proper official for a recount procedure. After 12 months, if there is no contest begun, recount pending, or appeal of a decision relating to a contest or recount, an election administrator may dispose of the ballots as provided in subsection (2).
- (b) The voted ballots, detached stubs, unvoted ballots, and unused ballots from a federal election must be retained in the unopened packages received from the election judges for a period of 22 months. The packages may be opened only as provided in subsection (1)(a) or for a postelection random-sample audit of vote-counting machines.
- (c) An election administrator may dispose of the ballots as provided in subsection (2) if after the time periods provided for in this subsection (1), there is no:
 - (i) contest begun;
 - (ii) recount pending; or
- (iii) appeal of a decision relating to a contest, a recount, or a postelection random-sample audit.
- (2) Each election administrator shall prepare a plan for retention and destruction of election records in the county according to the retention schedules established by the local government records committee provided for in 2-6-402."

Section 12. Section 13-15-401, MCA, is amended to read:

- **"13-15-401. Governing body as board of county canvassers.** (1) The governing body of a county or consolidated local government is ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual *meeting* place of meeting of the governing body within 3 to 7 14 days after each election, at a time determined by the board, to canvass the returns.
- (2) If one or more of the members of the governing body cannot attend the meeting, the member's place must be filled by one or more county officers chosen by the remaining members of the governing body so that the board of county canvassers' membership equals the membership of the governing body.
- (3) The governing body of any political subdivision in the county that participated in the election may join with the governing body of the county or consolidated local government in canvassing the votes cast at the election.

(4) The election administrator is secretary of the board of county canvassers and shall keep minutes of the meeting of the board and file them in the official records of the administrator's office."

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

"13-15-502. Composition and meeting of board of state canvassers. Within 20 27 days after the election, or sooner if the returns are all received, the state auditor, superintendent of public instruction, and attorney general shall meet as a board of state canvassers in the office of the secretary of state and determine the vote. The secretary of state shall serve as secretary of the board, keep minutes of the meeting of the board, and file them in the official records of his the secretary of state's office."

Section 14. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 13, chapter 17, and the provisions of Title 13, chapter 17, apply to [sections 1 through 9].

Approved March 25, 2009

CHAPTER NO. 90

[SB 160]

AN ACT CLARIFYING DISCIPLINARY PROCEDURES FOR HIGHWAY PATROL OFFICERS, INCLUDING THOSE COVERED BY A COLLECTIVE BARGAINING AGREEMENT; CLARIFYING THAT DISCIPLINARY PROCEDURES FALL WITHIN THE EXEMPTION PROVISIONS OF THE WRONGFUL DISCHARGE FROM EMPLOYMENT ACT; AMENDING SECTIONS 44-1-806 AND 44-1-902, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Exemption. A member of the highway patrol covered by a collective bargaining agreement is subject to the disciplinary procedures contained in the collective bargaining agreement and is not subject to Title 44, chapter 1, parts 7 and 8.

Section 2. Section 44-1-806, MCA, is amended to read:

- **"44-1-806. Disciplinary action.** (1) If after a hearing, the department of justice finds that any charge or charges made against the patrol officer are true, it may punish the offending party patrol officer by suspension without pay, demotion, or discharge.
- (2) A discharge after a hearing is exempt from the Wrongful Discharge From Employment Act as provided in 39-2-912."
 - Section 3. Section 44-1-902, MCA, is amended to read:
- **"44-1-902. Action by court.** The district court shall review a decision or determination appealed pursuant to 44-1-901(1)(a) in a summary manner under the standard of review provided in 2-4-704 and render its decision within 90 days from the filing of the appeal."
- **Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 44, chapter 1, part 9, and the provisions of Title 44, chapter 1, part 9, apply to [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 91

[SB 170]

AN ACT CLARIFYING REIMBURSEMENT RATES FOR MEALS AND LODGING FOR FOREIGN TRAVEL; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO DESIGNATE THE LOCATIONS AND CIRCUMSTANCES FOR REIMBURSING FOREIGN TRAVEL EXPENSES AT RATES HIGHER THAN THE MAXIMUM RATE; AMENDING SECTION 2-18-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-501, MCA, is amended to read:

- "2-18-501. Meals, lodging, and transportation of persons in state service. All elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees must be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:
- (1) Except as provided under subsection (3), for travel within the state of Montana, lodging must be authorized at the actual cost of lodging, not exceeding \$35 per day, and taxes on the allowable cost of lodging, except as provided in subsection (3), plus \$5 for the morning meal, \$6 for the midday meal, and \$12 for the evening meal. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.
- (2) Except as provided in subsection (3), for travel outside the state of Montana and within the United States, the following provisions apply:
- (a) Lodging must be reimbursed at actual cost, not to exceed the prescribed maximum standard federal rate per day for the location involved plus taxes on the allowable cost.
- (b) Meal reimbursement may not exceed the prescribed maximum standard federal rate per meal. $\,$
- (3) The department shall designate the locations and circumstances under which the governor, other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees may be authorized the actual cost of *the following*:
- (a) meals, not including alcoholic beverages, when the actual cost exceeds the maximum established in subsection (4)(a); and
- (b) lodging when the actual cost exceeds the maximum established in subsection (1), or (2)(a), or (4)(a).
- (4) For Except as provided in subsection (3), for travel to a foreign country, the following provisions apply:
- (a) All elected state officials, *all* appointed members of boards, commissions, *and* councils, *all* department directors, and all other state employees must be reimbursed for the cost of meals and lodging within the rates established by the department of administration when traveling in the normal course of their duties to designated areas. The department shall use the United States department of state maximum travel per diem allowances for foreign areas in establishing the rates as follows:
- (i) \$7 for the morning meal, \$11 for the midday meal, and \$18 for the evening meal; and

- (ii) \$155 per night for lodging.
- (b) All claims for *meal and* lodging reimbursement allowed under this subsection (4) must be documented by an appropriate receipt.
- (5) When other than commercial, nonreceiptable lodging facilities are used by a state official or employee while conducting official state business in a travel status, the amount of \$12 is authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1)(a) or (2)(a). However, when overnight accommodations are provided at the expense of a government entity, reimbursement may not be claimed for lodging.
- (6) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status is subject to reimbursement.
- (7) The provisions of this section may not be construed as affecting the validity of 5-2-301.
- (8) The department of administration shall establish policies necessary to effectively administer this section for state government.
- (9) All commercial air travel must be by the least expensive class service available."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 92

[SB 182]

AN ACT CLARIFYING THE STANDARD TO BE USED BY A COURT TO DETERMINE PARENTAL FITNESS IN GRANDPARENT-GRANDCHILD CONTACT CASES; AMENDING SECTION 40-9-102, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-9-102, MCA, is amended to read:

- "40-9-102. Grandparent-grandchild contact. (1) Except as provided in subsection (5) (7), the district court may grant to a grandparent of a child reasonable rights to contact with the child, including but not limited to rights regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title. The department of public health and human services must be given notice of a petition for grandparent-grandchild contact regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title.
- (2) Before a court may grant a petition brought pursuant to this section for grandparent-grandchild contact over the objection of a parent whose parental rights have not been terminated, the court shall make a determination as to whether the objecting parent is a fit parent. A determination of fitness and granting of the petition may be made only after a hearing, upon notice as determined by the court. Fitness must be determined on the basis of whether the parent adequately cares for the parent's child.
- (3) A determination of unfitness may be made only if the court, based upon clear and convincing evidence, makes one or more of the determinations

provided in 42-2-608(1) or finds that one or more of the events provided for in that subsection have occurred.

- (4)(3) Grandparent-grandchild contact may be granted over the objection of a parent determined by the court pursuant to subsection (2) to be unfit only if the court also determines by clear and convincing evidence that the contact is in the best interest of the child.
- (5)(4) Grandparent-grandchild contact granted under this section over the objections of a fit parent may be granted only upon a finding by the court, based upon clear and convincing evidence, that the contact with the grandparent would be in the best interest of the child and that the presumption in favor of the parent's wishes has been rebutted.
- (6)(5) A person may not petition the court under this section more often than once every 2 years unless there has been a significant change in the circumstances of:
 - (a) the child;
 - (b) the child's parent, guardian, or custodian; or
 - (c) the child's grandparent.
- (7)(6) The court may appoint an attorney to represent the interests of a child with respect to grandparent-grandchild contact when the interests are not adequately represented by the parties to the proceeding.
- (8)(7) This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Grandparent-grandchild contact granted under this section terminates upon the adoption of the child by a person other than a stepparent or a grandparent.
- (9)(8) A determination pursuant to subsection (2) that a parent is unfit has no effect upon the rights of a parent, other than with regard to grandparent-grandchild contact if a petition pursuant to this section is granted, unless otherwise ordered by the court."
- **Section 2. Applicability.** [This act] applies to petitions for grandparent-grandchild contact filed in accordance with Title 40, chapter 9, part 1, on or after October 1, 2009.

Approved March 25, 2009

CHAPTER NO. 93

[SB 196]

AN ACT DESIGNATING THE LAST FRIDAY OF SEPTEMBER AS A DAY TO CELEBRATE AMERICAN INDIAN HERITAGE.

WHEREAS, Article IX, section 4, of the Montana Constitution requires the Legislature to provide for, among other things, the enhancement and preservation of scenic, historic, archeologic, scientific, and cultural areas, sites, records, and objects and for their use and enjoyment by the people; and

WHEREAS, Article X, section 1, of the Montana Constitution recognizes the distinct and unique cultural heritage of the American Indians and commits, through educational goals, to the preservation of their cultural integrity; and

WHEREAS, section 2-1-305, MCA, specifically protects Indian culture; and

WHEREAS, all Montanans respect American Indian culture and recognize the educational and cultural value of designating one day each year on which American Indians should celebrate their heritage and on which American Indians' heritage should be celebrated by all Montanans.

Be it enacted by the Legislature of the State of Montana:

- Section 1. American Indian heritage day. There is established an American Indian heritage day for the state of Montana. American Indian heritage day is the last Friday in September of each year and is recognized as a day of observance to commemorate this state's American Indians and their valued heritage and culture. On this day, all Montanans are urged to:
 - (1) reflect on American Indian culture and heritage; and
- (2) celebrate American Indians and their culture and heritage in all lawful ways.
- **Section 2. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.
- **Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 2, and the provisions of Title 1, chapter 1, part 2, apply to [section 1].

Approved March 25, 2009

CHAPTER NO. 94

[SB 219]

AN ACT CHANGING THE MONTH USED IN CALCULATING THE INFLATION ADJUSTMENT APPLIED TO LIMITS ON AGGREGATE CAMPAIGN CONTRIBUTIONS BY POLITICAL COMMITTEES OR INDIVIDUALS; AND AMENDING SECTION 13-37-216, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-216, MCA, is amended to read:

- **"13-37-216.** Limitations on contributions adjustment. (1) (a) Subject to adjustment as provided for in subsection (4), aggregate contributions for each election in a campaign by a political committee or by an individual, other than the candidate, to a candidate are limited as follows:
- (i) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed \$500;
- (ii) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed \$250;
 - (iii) for a candidate for any other public office, not to exceed \$130.
- (b) A contribution to a candidate includes contributions made to the candidate's committee and to any political committee organized on the candidate's behalf.
- (2) (a) A political committee that is not independent of the candidate is considered to be organized on the candidate's behalf. For the purposes of this section, an independent committee means a committee that is not specifically organized on behalf of a particular candidate or that is not controlled either directly or indirectly by a candidate or candidate's committee and that does not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions.
- (b) A leadership political committee maintained by a political officeholder is considered to be organized on the political officeholder's behalf.

- (3) All political committees except those of political party organizations are subject to the provisions of subsections (1) and (2). For purposes of this subsection, "political party organization" means any political organization that was represented on the official ballot at the most recent gubernatorial election. Political party organizations may form political committees that are subject to the following aggregate limitations, adjusted as provided for in subsection (4), from all political party committees:
- (a) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed \$18,000;
- (b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed \$6,500;
 - (c) for a candidate for public service commissioner, not to exceed \$2,600;
 - (d) for a candidate for the state senate, not to exceed \$1,050;
 - (e) for a candidate for any other public office, not to exceed \$650.
- (4) (a) The commissioner shall adjust the limitations in subsections (1) and (3) by multiplying each limit by an inflation factor, which is determined by dividing the consumer price index for January June of the year in which an prior to the year in which a general election is held by the consumer price index for January June 2003 2002.
 - (b) The resulting figure must be rounded up or down to the nearest:
 - (i) \$10 increment for the limits established in subsection (1); and
 - (ii) \$50 increment for the limits established in subsection (3).
 - (c) The commissioner shall publish the revised limitations as a rule.
- (5) A candidate may not accept any contributions, including in-kind contributions, in excess of the limits in this section.
- (6) For purposes of this section, "election" means the general election or a primary election that involves two or more candidates for the same nomination. If there is not a contested primary, there is only one election to which the contribution limits apply. If there is a contested primary, then there are two elections to which the contribution limits apply."

Approved March 25, 2009

CHAPTER NO. 95

[SB 255]

AN ACT REVISING RESPONSIBILITY FOR DEBT LIABILITY WHEN RURAL FIRE DISTRICT PROPERTY IS ANNEXED BY A MUNICIPALITY; AND AMENDING SECTION 7-33-2129, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2129, MCA, is amended to read:

"7-33-2129. Annexation of rural fire district property by municipality — responsibility for bonded indebtedness debt. (1) If a municipality annexes property from a rural fire district, the annexed property is liable for any bonded indebtedness debt of the rural fire district or for secured debt incurred by the district for the purchase of real or personal property existing as of the date of annexation the annexation proceeding was commenced to the same extent as it would have been liable if not withdrawn.

- (2) A municipality may shall:
- (a) offset the municipal mills levied on the annexed property by the mills levied on the property for bonded indebtedness or secured debt; or
- (b) annually appropriate funds to the rural fire district in an amount equal to the mills levied on the annexed property for bonded indebtedness or secured debt."

Approved March 25, 2009

CHAPTER NO. 96

[SB 262]

AN ACT ALLOWING COUNTY WATER AND SEWER DISTRICTS TO ASSESS THE COST OF SERVICES AND IMPROVEMENTS BY DWELLING UNIT; AMENDING SECTION 7-13-2303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-2303, MCA, is amended to read:

- **"7-13-2303. Method of assessment.** (1) When the amount of money required for any purpose enumerated in 7-13-2302 has been determined, the county commissioners or board of directors may use one of the following methods of assessment:
- (a) each lot or parcel of land to be assessed shall *must* be assessed with that part of the amount of money required which *that* its area bears to the total area of all of the lands to be assessed; or
- (b) said the assessment may, at the option of the board or boards of county commissioners, be based upon the taxable valuation as stated in the last-completed county assessment roll of the lots or parcels of land, exclusive of improvements thereon, within said the district; and in which In that case, each lot or parcel of land to be assessed shall must be assessed with that part of the amount of money required which that its taxable valuation bears to the total taxable valuation of all of the lands to be assessed.
- (c) each dwelling unit may be assessed a flat fee. For purposes of this subsection (1)(c), "dwelling unit" has the meaning provided for in 70-24-103.
- (2) However, where If the district lies in more than one county, the same method of assessment shall must be used by each board of county commissioners."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 97

[SB 296]

AN ACT REVISING THE REQUIREMENTS FOR THE NEWSPAPERS IN WHICH MUNICIPALITIES PROVIDE PUBLIC NOTICE WHEN PUBLICATION OF NOTICE IS REQUIRED; REQUIRING THE NEWSPAPERS TO SUBMIT CERTAIN INFORMATION TO THE CITY CLERK; AMENDING SECTION 7-1-4127, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-4127, MCA, is amended to read:

- **"7-1-4127. Publication of notice content proof.** (1) When a municipality is required to publish notice, publication must be in a newspaper, except that in a municipality with a population of 500 or less or in which no a newspaper is *not* published, publication may be made by posting in three public places in the municipality which that have been designated by ordinance.
 - (2) The newspaper must be:
 - (a) be of general paid circulation with a periodicals mailing permit;
 - (b) be published at least once a week; and
 - (c) be published in the county where the municipality is located; and
- (d) have, prior to July 1 of each year, submitted to the city clerk a sworn statement that includes:
 - (i) circulation for the prior 12 months;
 - (ii) a statement of net distribution;
 - (iii) itemization of paid circulation and circulation that is free; and
 - (iv) the method of distribution.
- (3) A newspaper of general circulation does not include a newsletter or other document produced or published by the municipality.
- (3)(4) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.
- (4)(5) In a county where no a newspaper meets these does not meet the qualifications in subsection (2), publication must be made in a qualified newspaper in an adjacent county.
- (5)(6) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.
- (6)(7) The notice must be published twice, with at least 6 days separating each publication.
 - (7)(8) The published notice must contain:
 - (a) the date, time, and place of the hearing or other action;
 - (b) a brief statement of the action to be taken;
- (c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and
- (d) any other information required by the specific section requiring notice by publication.
- (8)(9) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.
- (9)(10) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2009

CHAPTER NO. 98

[SB 331]

AN ACT REVISING THE LAW RELATING TO CRIMINAL USE OF OFFICIAL POSITION; AND AMENDING SECTION 45-7-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-7-103, MCA, is amended to read:

"45-7-103. Compensation for past official behavior Criminal use of office or position. (1) A person An elected official or other public servant commits an the offense under this section of criminal use of office or position if he the person knowingly solicits, accepts, or agrees to accept any pecuniary benefit as compensation accruing to the person, the person's political campaign, or the person's political party for having, as a public servant, given giving or offering to give a decision, opinion, recommendation, or vote favorable to another, for having otherwise exercised exercising or offering to exercise a discretion in another's favor, or for having violated his violating or offering to violate the person's duty. A person commits an offense under this section if he the person knowingly offers, confers, or agrees to confer compensation which that is prohibited by this section.

(2) A person convicted under this section shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for any a term not to exceed 6 months, or both."

Approved March 25, 2009

CHAPTER NO. 99

[SB 376]

AN ACT EXEMPTING UTILITIES' AFFILIATES FROM A CUSTOMER FISCAL IMPACT ANALYSIS; AND AMENDING SECTION 69-2-217, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-2-217, MCA, is amended to read:

"69-2-217. Exemptions — definition. (1) Projects proposed by utilities, as defined in 69-8-103, or their affiliates are exempt from the analysis required by 69-2-216 if the utility or affiliate files the necessary tariffs, rate schedules, and other requisite information with the commission or the federal energy regulatory commission.

(2) For the purposes of this section, "affiliate" means an entity wholly or partially owned by, closely connected to, or associated with a utility."

Approved March 25, 2009

CHAPTER NO. 100

[SB 390]

AN ACT AUTHORIZING CITIES AND TOWNS TO ENTER INTO LOAN AGREEMENTS WITH THE STATE OF MONTANA TO FUND IMPROVEMENTS WITHIN STREET MAINTENANCE DISTRICTS AND USE THE DISTRICT ASSESSMENTS TO SERVICE THE LOAN; AND AMENDING SECTION 7-12-4429, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-4429, MCA, is amended to read:

"7-12-4429. Financial assistance from the United States and state of *Montana*. Cities and towns are authorized to:

- (1) enter into suitable agreements with the United States of America or the state of Montana for loans of money and for receiving financial assistance to do the work and improvements contemplated by 7-12-4405; and
- (2) provide for the repayment thereof of the loans by yearly payments from funds derived from districts created under 7-12-4402, apportioned over a period of time not exceeding 20 years."

Approved March 25, 2009

CHAPTER NO. 101

[SB 438]

AN ACT REVISING THE DEFINITION OF "LIQUOR" TO INCLUDE CAFFEINATED OR STIMULANT-ENHANCED MALT BEVERAGES; DEFINING "CAFFEINATED OR STIMULANT-ENHANCED MALT BEVERAGE"; AND AMENDING SECTION 16-1-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-106, MCA, is amended to read:

- **"16-1-106. Definitions.** As used in this code, the following definitions apply:
- (1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.
- (2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises consumption.
- (3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.
- (4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.
- (5) (a) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.
- (b) The term does not include a caffeinated or stimulant-enhanced malt beverage.
- (6) "Beer importer" means a person other than a brewer who imports malt beverages.
 - (7) "Brewer" means a person who produces malt beverages.
 - (8) "Caffeinated or stimulant-enhanced malt beverage" means:
 - (a) a beverage:
- (i) that is fermented in a manner similar to beer, from which some or all of the fermented alcohol has been removed and replaced with distilled ethyl alcohol;
 - (ii) that contains at least 1/2 of 1% alcohol by volume:

- (iii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and
- (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine; or
 - (b) a beverage:
 - (i) that contains at least 1/2 of 1% alcohol by volume;
- (ii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55;
- (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;
- (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine;
- (v) for which the producer is required to file a formula for approval with the United States alcohol and tobacco tax and trade bureau pursuant to 27 CFR 25.55; and
 - (vi) that is not exempt pursuant to 27 CFR 25.55(f).
 - (8)(9) "Community" means:
- (a) in an incorporated city or town, the area within the incorporated city or town boundaries:
- (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and
- (c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.
- (9)(10) "Department" means the department of revenue, unless otherwise specified, and includes the department of justice with respect to receiving and processing, but not granting or denying, an application under a contract entered into under 16-1-302.
- (10)(11) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% alcohol by volume and not more than 6.9% alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.
- (11)(12) "Immediate family" means a spouse, dependent children, or dependent parents.
- (12)(13) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.
- (13)(14) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a caffeinated or stimulant-enhanced malt beverage.
- (14)(15) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

(15)(16) "Package" means a container or receptacle used for holding an alcoholic beverage.

(16)(17) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code.

(17)(18) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(18)(19) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(19)(20) "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

(20)(21) "Rules" means rules adopted by the department or the department of justice pursuant to this code.

(21)(22) "Special event", as it relates to an application for a beer and wine special permit, means a short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

(22)(23) "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

(23)(24) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(24)(25) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(25)(26) "Table wine" means wine that contains not more than 16% alcohol by volume and includes cider.

(26)(27) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

(27)(28) "Warehouse" means a building or structure located in Montana that is owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(28)(29) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner

of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Approved March 25, 2009

CHAPTER NO. 102

[HB 192]

AN ACT REVISING THE METHOD OF VOTING ON WHETHER TO OVERRIDE THE GOVERNOR'S VETO OF A BILL APPROVED BY TWO-THIRDS OF THE MEMBERS VOTING ON THE FINAL VOTE ON THE BILL WHEN THE LEGISLATURE IS NOT IN SESSION; AMENDING SECTION 5-4-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-4-306, MCA, is amended to read:

- **"5-4-306. Return when legislature not in session.** (1) If, on the day the governor desires to return a bill without approval and with objections to the bill to the house in which it originated, that house has adjourned for the day, but not for the session, the governor may deliver the bill with the message to the presiding officer, secretary, clerk, or any member of that house. The delivery is as effectual as though returned in open session if the governor, on the first day the house is again in session, by message, notifies it of the delivery and of the time when and the person to whom the delivery was made.
- (2) If the legislature is not in session when the governor vetoes a bill, the governor shall return the bill with the reasons for the veto to the secretary of state. If the bill was not approved by two-thirds of the members voting on the final vote on the bill, the secretary of state shall within 5 working days of receipt of the bill and veto message mail a copy of the title of the bill and the veto message to each member of the legislature. If the bill was approved by two-thirds of the members voting on the final vote on the bill, the secretary of state shall poll the members of the legislature. The secretary of state shall within 5 working days of receipt of the bill and veto message send by certified mail to each legislator, at an address provided by the legislator, a copy of the bill and the veto message, a ballot, a return envelope, instructions for casting a vote, and notice of the date by which each legislator shall return a vote. The date for return must be within 30 days after the date on which the bill, veto message, and voting instructions are sent. A legislator may cast and return a vote by delivering it the ballot and return envelope in person, or by mailing it, or sending a facsimile transmission of it the ballot in the return envelope by regular mail, postage paid, or by sending the ballot by facsimile transmission to the office of the secretary of state. A legislator may not change the legislator's vote after the ballot is received by the secretary of state. The secretary of state shall tally the votes within 1 working day after the date for return of the votes. If two-thirds or more of the members of each house vote to override the veto, the bill becomes law
- (3) The legislature may reconvene to reconsider any bill vetoed by the governor when the legislature is not in session by using the statutory procedure provided for convening in special session."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 28, 2009

CHAPTER NO. 103

[HB 39]

AN ACT GENERALLY REVISING WATER RIGHT ENFORCEMENT LAWS; ALLOWING FOR THE LIMITED APPOINTMENT OF WATER MASTERS AS SPECIAL MASTERS IN DISTRICT COURT PROCEEDINGS; REQUIRING THAT PROTECTION OF PRIOR APPROPRIATORS BE GIVEN PRIORITY IN JUDICIAL ENFORCEMENT CONSIDERATIONS; MAKING THE PURSUIT OF VOLUNTARY COMPLIANCE OPTIONAL; ELIMINATING CERTAIN CRIMINAL PENALTIES; ESTABLISHING A WATER RIGHT ENFORCEMENT PROGRAM AND A WATER RIGHT ENFORCEMENT ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 3-7-311, 17-7-502, 85-2-114, AND 85-2-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-7-311, MCA, is amended to read:

- "3-7-311. Duties of water masters. (1) The water master has the general powers given to a master by Rule 53(c), M.R.Civ.P.
- (2) Within a reasonable time after June 30, 1983, the water master shall issue a report to the water judge meeting the requirements for the preliminary decree as specified in 85-2-231.
- (3) After a water judge issues a preliminary decree, the water master shall assist the water judge in the performance of the water division's further duties as ordered by the water judge.
- (4) A water master may be appointed by a district court to serve as a special master to a district court for actions brought pursuant to 85-2-114(1) or (3) or 85-5-301 if the appointment is approved by the chief water judge."
 - Section 2. Section 17-7-502, MCA, is amended to read:
- "17-7-502. Statutory appropriations definition requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.
- (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:
- (a) The law containing the statutory authority must be listed in subsection (3).
- (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.
- (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105;

44-1-504; [section 5]; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)

Section 3. Section 85-2-114, MCA, is amended to read:

- "85-2-114. Judicial enforcement. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of this chapter, it may, after reasonable attempts have failed to obtain voluntary compliance as provided in subsection (4), petition the district court supervising the distribution of water among appropriators from the source to:
- (a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;
- (b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take steps that may be necessary to remedy the waste, unlawful use, or interference; or
- (c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.
- (2) Upon the issuance of an order or injunction, the department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it. The notice constitutes legal notice to all persons interested in the appropriation or distribution of the water.
- (3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin the waste, unlawful use, interference, or violation.

- (4) The county attorney or the attorney general may prosecute under 85-2-122(1) bring suit to enjoin the waste, unlawful use, interference, or violation or bring an action under 85-2-122(2) 85-2-122(1) without being requested to do so by the department. The attorney general and a county attorney are subject to the voluntary compliance provisions of subsection (4).
- (5) A county attorney who takes action pursuant to subsection (3) or (4) may request assistance from the attorney general.
- (6) When enforcing the provisions of this section, the department, the county attorney, and the attorney general shall give priority to protecting the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation.
- (4)(7) The After considering the provisions of subsection (6), the department shall may attempt to obtain voluntary compliance through warning, conference, or any other appropriate means before petitioning the district court under subsection (1). The attempts An attempt to obtain voluntary compliance under this subsection must extend over a period of at least 7 days and may not exceed 30 working days."
 - Section 4. Section 85-2-122, MCA, is amended to read:
- "85-2-122. Penalties. (1) A person who violates or refuses or neglects to comply with the provisions of this chapter, any order of the department, or any rule of the department is guilty of a misdemeanor.
- (2)(1) Except as provided in 85-2-410(6), a person who violates or refuses or neglects to comply with the provisions of 85-2-114, any order of the department, or any rule of the department is subject to a civil penalty not to exceed \$1,000 per violation. Each day of violation constitutes a separate violation.
- (3) (a)(2) Except as provided in subsection (3)(b) (3), fines collected by the department or a district court under subsection (2) (1) must be deposited in the account established in 85-2-318 for use by the department in the enforcement of 85-2-114.
 - (b)(3) If a fine is collected by an independent action brought by:
- (a) the county attorney, the fine must be deposited in the general fund of the county-; or
- (b) the county attorney with assistance from the attorney general or by the attorney general, the fine must be deposited in the water right enforcement account created in [section 5] and must be used to enforce the provisions of 85-2-114."
- Section 5. Water right enforcement account statutory appropriation. (1) There is a water right enforcement account in the state special revenue fund.
- (2) Fines collected pursuant to 85-2-122(3)(b) must be deposited in the water right enforcement account.
- (3) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of justice to enforce the provisions of 85-2-114.
- Section 6. Water right enforcement program. There is a water right enforcement program in the department of justice. The program staff may enforce the provisions of 85-2-114. The program is under the supervision and control of the attorney general.

Section 7. Codification instruction. [Sections 5 and 6] are intended to be codified as an integral part of Title 44, chapter 4, and the provisions of Title 44, chapter 4, apply to [sections 5 and 6].

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 104

[HB 41]

AN ACT REQUIRING THAT A DISCHARGE PERMIT MUST BE OBTAINED, IF NECESSARY, FOR AN AQUIFER RECHARGE PLAN OR A MITIGATION PLAN IN A CLOSED BASIN; AMENDING SECTIONS 75-5-410, 85-2-362, AND 85-2-364, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-410, MCA, is amended to read:

- "75-5-410. Water quality of return flows and discharges associated with requirements aquifer recharge plan or certain mitigation plans minimum requirements. (1) (a) Except as provided in subsection (1)(b), a A person who proposes to use sewage from a system requiring a water quality permit for the purposes of aquifer recharge pursuant to 85-2-362 or plans to use sewage from a system requiring a water quality permit as a return flow to minimize the amount of water necessary to offset adverse effects resulting from net depletion of surface water through an aquifer recharge or mitigation plan pursuant to 85-2-362 shall obtain apply for, if necessary, a current permit pursuant to this chapter.
- (b) The requirements of this section do not apply to the portion of a mitigation plan that consists of a change in appropriation rights for instream flow filed pursuant to 85-2-402.
- (2) The minimum treatment requirements for sewage systems subject to this section are the federal requirements provided for in 40 CFR 133, and the system must meet, at a minimum, the requirements of level two treatment for the removal of nitrogen in the effluent.
- (3) In addition to the minimum treatment requirements of subsection (2), sewage systems subject to this section that are used for aquifer injection must meet the more stringent of either primary drinking water standards pursuant to Title 75, chapter 6, or the nondegradation requirements pursuant to 75-5-303 at the point of discharge.
- (4) In addition to the minimum treatment requirements of subsection (2), sewage systems subject to this section that are used for aquifer recharge must meet either primary drinking water standards pursuant to Title 75, chapter 6, or the nondegradation requirements pursuant to 75-5-303 at the point of discharge.
- (4) The appropriate interim legislative committee shall review drinking water standards and effluent treatment standards in other jurisdictions and recommend appropriate treatment standards for purposes of aquifer recharge and mitigation.
- (5) For the purposes of this section, "aquifer injection" means the use of a well to inject water directly into an aquifer system without filtration through the geologic materials overlying the aquifer system for the purpose of aquifer

recharge or for an aquifer storage and recovery project and "aquifer recharge" and "mitigation" have the meanings provided in 85-2-102."

Section 2. Section 85-2-362. MCA, is amended to read:

- "85-2-362. Aquifer recharge or mitigation plans in closed basins minimum requirements. (1) An applicant whose hydrogeologic assessment conducted pursuant to 85-2-361 predicts that there will be a net depletion of surface water shall offset the net depletion that results in the adverse effect through a mitigation plan or an aquifer recharge plan.
 - (2) A mitigation plan must include:
 - (a) where and how the water in the plan will be put to beneficial use;
- (b) when and where, generally, water reallocated through exchange or substitution will be required;
- (c) the amount of water reallocated through exchange or substitution that is required;
- (d) how the proposed project or beneficial use for which the mitigation plan is required will be operated;
- (e) evidence that an application for a change in appropriation right, if necessary, has been submitted;
 - (f) evidence of water availability; and
- (g) evidence of how the mitigation plan will offset the required amount of net depletion of surface water in a manner that will offset an adverse effect on a prior appropriator; and
- (h) evidence that the appropriate water quality permits have been granted pursuant to Title 75, chapter 5, as required by 75-5-410 and 85-2-364.
 - (3) An aquifer recharge plan must include:
- (a) evidence that the appropriate water quality related permits have been granted pursuant to Title 75, chapter 5, and pursuant to as required by 75-5-410 and 85-2-364;
 - (b) where and how the water in the plan will be put to beneficial use;
- (c) when and where, generally, water reallocated through exchange or substitution will be required;
- (d) the amount of water reallocated through exchange or substitution that is required;
- (e) how the proposed project or beneficial use for which the aquifer recharge plan is required will be operated;
- (f) evidence that an application for a change in appropriation right, if necessary, has been submitted;
- (g) a description of the process by which water will be reintroduced to the aquifer;
 - (h) evidence of water availability; and
- (i) evidence of how the aquifer recharge plan will offset the required amount of net depletion of surface water in a manner that will offset any adverse effect on a prior appropriator.
- (4) The department may not require an applicant, through a mitigation plan or an aquifer recharge plan, to provide more water than the quantity needed to offset the adverse effects on a prior appropriator caused by the net depletion.

- (5) An appropriation right that relies on a mitigation plan or aquifer recharge plan to offset net depletion of surface water that results in an adverse effect on a prior appropriator must be issued as a conditional permit that requires that the mitigation plan or aquifer recharge plan must be exercised when the appropriation right is exercised."
 - Section 3. Section 85-2-364, MCA, is amended to read:
- "85-2-364. Department permit coordination requirements for aquifer recharge or mitigation plans. To ensure that the department and the department of environmental quality are coordinating their respective permitting activities:
- (1) an applicant for a new appropriation right pursuant to 85-2-360 that involves aquifer recharge *or mitigation* shall provide the department with a copy of a relevant discharge permit if necessary; and
- (2) the department may not grant a new appropriation right pursuant to 85-2-360 that involves aquifer recharge *or mitigation* until the discharge permit, if necessary, has been obtained and presented to the department."
- **Section 4. Coordination instruction.** If both Senate Bill No. 94 and [this act] are passed and approved, then the amendments to 85-2-362 in both Senate Bill No. 94 and [this act] are void and 85-2-362 must read as follows:
- "85-2-362. Aquifer recharge or mitigation plans in closed basins minimum requirements. (1) An applicant whose hydrogeologic assessment conducted pursuant to 85-2-361 predicts that there will be a net depletion of surface water shall offset the net depletion that results in the adverse effect through a mitigation plan or an aquifer recharge plan. A mitigation plan or an aquifer recharge plan, or both, must provide evidence of how the plan will offset the net depletion of surface water from an appropriation of water that results in an adverse effect, including, at a minimum, evidence:
 - (2) A mitigation plan must include:
 - (a) where and how the water in the plan will be put to beneficial use;
- (b) when and where, generally, water reallocated through exchange or substitution will be required;
- (c) the amount of water reallocated through exchange or substitution that is required;
- (d) how the proposed project or beneficial use for which the mitigation plan is required will be operated;
 - (e) evidence
 - (a) of the amount of water reallocated through exchange or substitution;
- (b) of the general timing and location of the water reallocated through exchange or substitution;
 - (c) that the mitigation water will be available;
- (d) of how the mitigation water in the plan will be protected and how it will be measured or accounted for;
- (e) that the appropriate water quality permits have been applied for pursuant to Title 75, chapter 5, as required by 75-5-410 and 85-2-364; and
- (f) that an application for a change in appropriation right, if necessary, has been submitted;.
 - (f) evidence of water availability; and

- (g) evidence of how the mitigation plan will offset the required amount of net depletion of surface water in a manner that will offset an adverse effect on a prior appropriator.
 - (3) An aquifer recharge plan must include:
- (a) evidence that the appropriate water quality related permits have been granted pursuant to Title 75, chapter 5, and pursuant to 75-5-410 and 85-2-364;
 - (b) where and how the water in the plan will be put to beneficial use;
- (e) when and where, generally, water reallocated through exchange or substitution will be required;
- (d) the amount of water reallocated through exchange or substitution that is required;
- (e) how the proposed project or beneficial use for which the aquifer recharge plan is required will be operated;
- (f) evidence that an application for a change in appropriation right, if necessary, has been submitted;
- (g)(2) In addition to the requirements in subsection (1), an aquifer recharge plan must also include a description of the process by which water will be reintroduced to the aquifer;
 - (h) evidence of water availability; and
- (i) evidence of how the aquifer recharge plan will offset the required amount of net depletion of surface water in a manner that will offset any adverse effect on a prior appropriator.
- (3) A mitigation plan or aquifer recharge plan may not include the proposed elimination of vegetation for which there is not an associated water right.
- (4) A mitigation plan or aquifer recharge plan may not include the use of tributary water collected from land surfaces that have been made impermeable, thereby increasing the runoff but not adding to the existing supply of tributary water. This subsection does not apply to actions that increase the efficiency of existing conveyance structures.
- (4)(5) The department may not require an applicant, through a mitigation plan or an aquifer recharge plan, to provide more water than the quantity needed to offset the adverse effects on a prior appropriator caused by the net depletion.
- (5)(6) An appropriation right that relies on a mitigation plan or aquifer recharge plan to offset net depletion of surface water that results in an adverse effect on a prior appropriator must be issued as a conditional permit that requires that the mitigation plan or aquifer recharge plan must be exercised when the appropriation right is exercised."
- **Section 5. Coordination instruction.** If both Senate Bill No. 94 and [this act] are passed and approved, then the amendments to 85-2-364 in both Senate Bill No. 94 and [this act] are void and 85-2-364 must read as follows:
- "85-2-364. Department permit coordination requirements for aquifer recharge plans. To ensure that the department and the department of environmental quality are coordinating their respective permitting activities:
- (1) an applicant for a new appropriation right pursuant to 85-2-360 that involves aquifer recharge or mitigation and requires a discharge permit pursuant to Title 75, chapter 5, shall provide to the department with a copy of a relevant discharge permit if necessary evidence that an application for the

discharge permit has been submitted to the department of environmental quality; and

(2) the department may not grant a new appropriation right pursuant to 85-2-360 that involves aquifer recharge *or mitigation* until the discharge permit, if necessary, has been obtained and presented to the department."

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Applicability. [This act] applies to applications received by the department of natural resources and conservation on or after [the effective date of this act].

Approved April 1, 2009

CHAPTER NO. 105

[HB 45]

AN ACT REVISING THE LAWS GOVERNING THE DISTRIBUTION OF FEDERAL FOREST RESERVE FUNDS TO COMPLY WITH FEDERAL LAW; AMENDING SECTIONS 17-3-211, 17-3-212, AND 17-3-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-3-211, MCA, is amended to read:

- "17-3-211. Forest reserve money and other federal funds. (1) The state treasurer, for the purpose of carrying out the provisions of 16 U.S.C. 500, Public Law 106-393, *Public Law 110-343*, and all acts subsequent to them, shall divide and distribute all forest reserve, and Public Law 106-393, and Public Law 110-343 funds received by the state, plus interest earned, to and among the several counties entitled to the funds and pay the amounts to the several county treasurers of the counties within 30 days after receiving full payment, as directed by the department.
- (2) The forest reserve money, and the Public Law 106-393 money, and Public Law 110-343 money must be invested and all investment earnings credited to the forest reserve account or the Public Law 106-393 and Public Law 110-343 account, as appropriate."

Section 2. Section 17-3-212, MCA, is amended to read:

- "17-3-212. Apportionment of forest reserve funds and other federal funds among counties. (1) The forest reserve funds, all Public Law 106-393 funds, all Public Law 110-343 funds, and earned interest are statutorily appropriated, as provided in 17-7-502, from the federal special revenue fund to the department. The department shall apportion all forest reserve funds, all Public Law 106-393 funds, all Public Law 110-343 funds, and earned interest for allocation among the counties in which the forest reserve is situated based upon federal law and this section.
- (2) The state treasurer shall pay the apportioned amounts plus interest, as provided in 17-3-211, to the respective counties."

Section 3. Section 17-3-213, MCA, is amended to read:

"17-3-213. Allocation of forest reserve funds and other federal funds — options provided in federal law. (1) The board of county commissioners in each county shall decide among payment options provided in subsections (2) through (4) (6), as provided in Public Law 106-393 and Public Law 110-343, to

determine how the forest reserve funds, and Public Law 106-393 funds, and Public Law 110-343 funds apportioned to each county must be distributed by the county treasurer pursuant to this section.

- (2) If a board of county commissioners chooses to receive a payment that is 25% of the revenue derived from national forest system lands, as provided in 16 U.S.C. 500, all funds received must be distributed as provided in subsection (5).
- (3) (a) Except as provided in subsection (4), if a county elects to receive the county's full payment under Public Law 106-393, a minimum of 80% up to a maximum of 85% of the county's full payment must be designated by the county for distribution as provided in subsection (5).
- (b) The balance not distributed pursuant to subsection (3)(a) may be allocated by the county in accordance with Public Law 106-393.
- (4) If a county's full payment *under Public Law 106-393* is less than \$100,000, the county may elect to distribute up to 100% of the payment as provided in subsection (5).
- (5) The total amount designated by a county in accordance with subsection (3)(a) or (4) must be distributed as follows:
 - (a) to the general road fund, 66 2/3% of the amount designated;
- (b) to the following countywide school levies, $33\ 1/3\%$ of the amount designated:
 - (i) county equalization for elementary schools provided for in 20-9-331;
 - (ii) county equalization for high schools provided for in 20-9-333;
 - (iii) the county transportation fund provided for in 20-10-146; and
- (iv) the elementary and high school district retirement fund obligations provided for in 20-9-501.
- (6) The apportionment of money to the funds provided for under subsection (5)(b) must be made by the county superintendent based on the proportion that the mill levy of each fund bears to the total number of mills for all the funds. Whenever the total amount of money available for apportionment under subsection (5)(b) is greater than the total requirements of a levy, the excess money and any interest income must be retained in a separate reserve fund, to be reapportioned in the ensuing school fiscal year to the levies designated in subsection (5)(b).
- (7) In counties in which special road districts have been created according to law, the board of county commissioners shall distribute a proportionate share of the 66 2/3% distributed under subsection (5)(b) (5)(a) for the general road fund to the special road districts within the county based upon the percentage that the total area of the road district bears to the total area of the entire county.
- (8) Except as provided in subsection (9), if a county elects to receive the county's full payment under Public Law 110-343, not less than 80% but not more than 85% of the funds must be expended in the same manner as provided in subsection (5). A county may reserve not more than 7% of the county's full payment for projects in accordance with Title III of section 601 of Public Law 110-343. The balance of the funds may be:
- (a) reserved for projects in accordance with Title II of section 601 of Public Law 110-343; or
 - (b) returned to the United States.

- (9) (a) If a county's full payment is more than \$100,000 but less than or equal to \$350,000, the county may use all of the funds as provided in Title II or Title III of section 601 of Public Law 110-343 or return the funds to the United States.
- (b) If a county's full payment is less than or equal to \$100,000, the county may elect to distribute up to 100% of the payment as provided in subsection (5)."

 ${\bf Section\,4.\,\,Effective\,date.\,} [This\,act]\, is\, effective\, on\, passage\, and\, approval.$

Approved April 1, 2009

CHAPTER NO. 106

[HB 48]

AN ACT REVISING LAWS RELATING TO THE GROWTH THROUGH AGRICULTURE ACT; REVISING ELIGIBILITY AND DISBURSEMENT GUIDELINES; ALLOWING THE USE OF GRANTS; GRANTING RULEMAKING AUTHORITY; AMENDING SECTIONS 90-9-102, 90-9-103, 90-9-202, 90-9-203, 90-9-301, 90-9-306, 90-9-307, 90-9-311, 90-9-401, AND 90-9-402, MCA; REPEALING SECTIONS 90-9-303, 90-9-312, 90-9-313, 90-9-314, 90-9-315, 90-9-316, AND 90-9-317, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-9-102, MCA, is amended to read:

"90-9-102. Purpose. It is the purpose of this chapter to strengthen and diversify Montana's agricultural industry by establishing a public-private sector partnership through loans and grants to assist the development of innovative agricultural business organizational improvements and the commercialization and marketing of new agricultural products in order to keep pace with a transforming agricultural industry and to create new jobs and expand small business opportunities."

Section 2. Section 90-9-103, MCA, is amended to read:

"90-9-103. Definitions. As used in this chapter, the following definitions apply:

- (1) "Act" means the Montana Growth Through Agriculture Act.
- (2) "Agricultural business" means an enterprise engaged in the production, processing, marketing, distribution, or exporting of agricultural products. The term includes any related business the primary function of which is providing goods or services to an agricultural enterprise.
- (3) "Agricultural development project" means a marketing, agribusiness development, seed capital, or research and development project designed to discover, develop, transfer, market, use, or commercialize existing or new agricultural products or processes in order to strengthen and enhance agricultural economic development in the state.
- (4) "Agricultural development project loan agreement" or "loan" means an agreement entered into between the council and the loan recipient of a seed capital project loan or a research and development project loan that:
 - (a) creates a debt relationship between the parties;
 - (b) provides for a financial return to the council;
 - (c) provides economic development potential to the state; and

- (d) contains various provisions and terms as required by the act.
- (5)(3) "Company" means a natural person, firm, partnership, corporation, association, or other entity authorized to conduct business in the state.
- (6) "Convertible debenture" means a debenture convertible into stock under certain conditions by an individual or company, but not by the council.
- (7)(4) "Council" means the Montana agriculture development council established in 2-15-3015.
- (8) "Debenture" or "note" means a writing or certificate issued as evidence of debt.
- (9)(5) "Department" means the department of agriculture established in 2-15-3001.
- (10) "Innovative agricultural technology" means the involvement of an agricultural product or process that embodies the use of implements, machinery, equipment, chemical formulations, resources, materials, methods, or other items in a manner that departs from previous commercial developments, practices, or applications.
- (11) "Investment" means an award of money, with or without repayment requirements, for the purposes provided for in this chapter.
- (12)(6) (a) "Matching funds" means the funds received by the agricultural development project loan or investment grant recipient from private, federal, state, or commodity checkoff funds and contributed by the loan or investment recipient to the project in support of a loan or grant application in an amount that is at least equal to the funds disbursed to the recipient by the council for use in the agricultural development project.
 - (b) Matching funds may not include other state grants.
- (13) "Portfolio company" means a startup or expansion stage company that has received a seed capital project loan from the council.
- (14) "Private sector" means any entity or individual, not principally a part of or associated with a governmental unit.
- (15) "Research and development project" means an agricultural development project that falls into the category of applied technology research or agricultural technology transfer and assistance.
- (16) "Research and development project loan" means an agricultural development project loan agreement entered into between the council and a loan recipient for a research and development project.
- (17) (a) "Seed capital project" means an agricultural development project loan entered into between the council and a loan recipient for the purposes of providing the recipient with startup or expansion capital.
 - (b) The term does not include an investment.
 - (18)(7) "State" means the state of Montana.
- (19) "Warrant" means an instrument issued by a corporation giving a holder other than the council the right to purchase stock of a corporation at a fixed price, either for a limited time or perpetually."
 - **Section 3.** Section 90-9-202, MCA, is amended to read:
 - **"90-9-202. Powers and duties of council.** (1) The council shall:
- (1)(a) establish policies and priorities to enhance the future development of agriculture in Montana, including the Indian reservations in the state;

- (2)(b) make investments or loans or grants, pursuant to the provisions of Title 90, chapter 9, part 3, in agricultural development projects that have a short-short-term or long-term ability to stimulate agriculture development and diversification in rural, urban, and tribal settings in Montana, including but not limited to:
- (a) seed capital projects for development and commercialization of new products and processes;
 - (b) foreign and domestic market development activities;
 - (c) applied technological research;
 - (d) agricultural development projects; and
 - (e) agricultural technology assistance and transfer; and
- (3)(c) accept grants or receive devises of money or property for use in making the investments or loans or grants authorized by this chapter.
 - (2) The council may:
 - (a) defer or forgive any loan in whole or in part; and
 - (b) forgive any accrued interest in whole or in part."
 - Section 4. Section 90-9-203, MCA, is amended to read:
- "90-9-203. Rulemaking. The council shall adopt rules necessary to implement the provisions of this chapter, including but not limited to rules:
 - (1) governing the conduct of council business;
- (2) establishing application procedures that, at a minimum, require the submittal of an executive summary for an agricultural development project loan or investment, a business plan for a seed capital project, a research and development project proposal for a research and development project loan, and other documents necessary to meet the criteria established in the act for loans and grants authorized in 90-9-202;
- (3) establishing procedures to be followed by the council in its review process prior to making an agricultural development project a loan or investment grant;
- (4) establishing postdisbursement activities that describe the ongoing involvement or follow-along management of the council that may be required in an agricultural development project loan to monitor the use of a loan or investment agreement grant by its recipient, including:
 - (a) any reporting requirements; and
- (b) procedures for repayment of a loan or grant upon failure of a recipient to meet the terms and conditions of that loan or grant;
- (5) establishing interest rates for loans in accordance with market factors and the purposes of this chapter;
- (6) limiting the amount of loans or grants that any company may receive or apply for over a given period of time;
- (7) governing the deferral or forgiveness of loans and any accrued interest; and
- (8) establishing other terms and conditions of loans and grants, as necessary, within the requirements and purposes of this chapter."
 - Section 5. Section 90-9-301, MCA, is amended to read:
- "90-9-301. Agriculture seed capital account matching funds. (1) There is an agriculture seed capital account administered by the council. *Money received by the council under 90-9-306 must be deposited in this account.*

- (2) The council may loan or invest grant money from the agriculture seed capital account, pursuant to the provisions of 90-9-311 and [sections 11 through 13] to support agricultural development projects and research relating to innovative organizational improvements in agricultural businesses and to the commercialization and marketing of new agricultural products or agricultural products or processes.
- (3) The council may not make a loan or investment to an agricultural development project unless the recipient provides matching funds. Matching funds are required prior to any expenditure of state funds. The council may accept as matching funds those funds received by the loan recipient within 1 year prior to the execution of the loan agreement."
 - Section 6. Section 90-9-306, MCA, is amended to read:
- "90-9-306. Appropriation authority and funding prohibited investments prohibitions. (1) The council may accept and expend all the funds received by that it as receives from grants, donations, or other private or public income, including amounts repaid as principal and interest on investments loans made by the council. These funds are statutorily appropriated to the council, as provided in 17-7-502, for the purposes of this chapter, except that expenditures for actual and necessary expenses required for the efficient administration of this chapter must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.
- (2) Council members may not personally apply for or receive council funds. If an organization with which a member is affiliated applies for council funds, the member shall disclose the nature of the affiliation and, if the council member is a board member or officer of the organization, may not participate in the decision of the council regarding the application."
 - **Section 7.** Section 90-9-307, MCA, is amended to read:
- **"90-9-307.** Accountability. The council shall develop independent review and audit procedures to ensure that investments and loans and grants made by it are used for the purposes identified in its investment and loan agreements specified purposes."
 - Section 8. Section 90-9-311, MCA, is amended to read:
- "90-9-311. General criteria underlying agricultural development project loans and investments grants. The council may make an agricultural development project a loan or investment grant only upon a favorable determination that the proposed agricultural development project if the council determines that:
- (1) the loan or grant is consistent with the findings and purposes of the aet this chapter because it primarily adds value to Montana's agricultural products. Priority must be given to projects that incorporate innovative agricultural technology.
- (2) has prospects for collaboration between the public and private sectors of the state's economy;
- (3)(2) the project for which the loan or grant is made has prospects for achieving commercial success given the current personnel, experience, and resources of the applicant;
- (3) and for creating the project for which the loan or grant is made is anticipated to create new jobs or retain existing jobs in the state;

- (4) has potential for commercial success related to the specific product, process, or business development methodology proposed;
 - (5) can provide matching funds;
 - (6) has potential to benefit existing agricultural business;
- (7) can be reasonably expected to provide an economic return within a reasonable period of time;
- (8)(4) the loan or grant is primarily intended to be used for involves processing or adding value to agricultural products produced or potentially produced in the state; and
- (9)(5) the applicant has a management structure that allows the council to reasonably conclude that the applicant will comply with ongoing reporting requirements and postdisbursement involvement monitoring activities established by the council."
 - Section 9. Section 90-9-401, MCA, is amended to read:
- **"90-9-401. Agricultural marketing enhancement.** The *As directed by the* council, *the department* shall assist in identification and development of new domestic and foreign markets for Montana agricultural products. The council shall This includes:
- (1) assist assisting in placing one full-time professional marketing person in Japan or another Pacific Rim country to develop export marketing opportunities in the Pacific region:
- (2) provide providing assistance for appropriate trade missions of Montana producers, processors, or distributors of agricultural products on a cost-share basis; and
- (3) assist assisting in other appropriate means of enhancing domestic markets for Montana agricultural products."
 - Section 10. Section 90-9-402, MCA, is amended to read:
- "90-9-402. Export finance assistance. The $As\ directed\ by\ the\ council$, the department shall provide professional assistance to persons who apply for financial assistance for the purpose of developing export sales of Montana agricultural products."
- Section 11. Application for loans and grants additional criteria. (1) All applicants shall complete an application and provide financial information as established by rule.
- (2) The council may not make a loan or grant unless the recipient provides matching funds prior to the expenditure of any state funds. The council may accept as matching funds those funds expended by the recipient within 1 year prior to the execution of the loan or grant.
- (3) The department may provide assistance to applicants during the application process.
- Section 12. Terms and conditions of loans. (1) The term of any loan may not exceed 8 years.
 - (2) The amount of any loan may not exceed \$100,000 in any 9-month period.
- (3) Repayment of a loan is due in full upon dissolution or liquidation of the recipient company.

- (4) The council may make a low-interest loan, at a rate established by rule, only if it determines that the applicant meets the criteria set forth in 90-9-311 and [section 11] and the applicant:
 - (a) has unencumbered collateral to secure the full amount of the loan; or
 - (b) meets other requirements established by rule.
- (5) The council may make a high-interest loan, at a rate established by rule, only if it determines that the applicant meets the criteria set forth in 90-9-311 and [section 11].
 - (6) The council may establish other terms and conditions by rule.

Section 13. Terms and conditions of grants. (1) A grant does not accrue interest, but is contingent on the funds being used for the specified purpose.

- (2) The council may make a grant of up to \$50,000 if an application meets all of the criteria set forth in 90-9-311 and [section 11] and one of the following applies:
- (a) the proposal will benefit agricultural companies in addition to the applicant;
- (b) the proposal will accomplish research that benefits agriculture as a whole; or
 - (c) the applicant is a nonprofit entity.
- (3) The council may award a grant of up to \$2,500 for educational, promotional, marketing, travel, or other business expenses related to agricultural development. These grants are not subject to the criteria set forth in 90-9-311 or [section 11].
- **Section 14. Repealer.** Sections 90-9-303, 90-9-312, 90-9-313, 90-9-314, 90-9-315, 90-9-316, and 90-9-317, MCA, are repealed.
- **Section 15. Codification instruction.** [Sections 11 through 13] are intended to be codified as an integral part of Title 90, chapter 9, part 3, and the provisions of Title 90, chapter 9, part 3, apply to [sections 11 through 13].
- Section 16. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 17. Effective date. [This act] is effective July 1, 2009.

Approved April 1, 2009

CHAPTER NO. 107

[HB 75]

AN ACT REVISING THE PROVISIONS OF THE ENVIRONMENTAL REHABILITATION AND RESPONSE ACCOUNT; AUTHORIZING THE EXPENDITURE OF FUNDS FROM THE ENVIRONMENTAL REHABILITATION AND RESPONSE ACCOUNT FOR THE CLEANUP OF SOLID WASTE SITES; AMENDING SECTION 75-1-110, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-1-110, MCA, is amended to read:

- **"75-1-110. Environmental rehabilitation and response account.** (1) There is an environmental rehabilitation and response account in the state special revenue fund provided for in 17-2-102.
 - (2) There must be deposited in the account:
- (a) fine and penalty money received pursuant to 75-10-1223, 82-4-311, and 82-4-424 and other funds or contributions designated for deposit to the account;
- (b) unclaimed or excess reclamation bond money received pursuant to 82-4-241, 82-4-311, 82-4-424, and 82-4-426; and

and

- (e)(c) interest earned on the account.
- (3) Money in the account is available to the department of environmental quality by appropriation and must be used to pay for:
- (a) reclamation and revegetation of land affected by mining activities, research pertaining to the reclamation and revegetation of land, and the rehabilitation of water affected by mining activities;
- (b) reclamation and revegetation of unreclaimed mine lands for which the department may not require reclamation by, or obtain costs of reclamation from, a legally responsible party;
- (c) remediation of sites containing hazardous wastes as defined in 75-10-403, or hazardous or deleterious substances as defined in 75-10-701, or solid waste as defined in 75-10-203; for which the department may not recover costs from a legally responsible party; or
- (d) response to an imminent threat of substantial harm to the environment, to public health, or to public safety for which no funding or insufficient funding is available pursuant to 75-1-1101.
- (4)(4) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account until spent or appropriated by the legislature."

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved April 1, 2009

CHAPTER NO. 108

[HB 78]

AN ACT INCREASING THE BOARD FEET OF SALVAGE TIMBER THAT MAY BE SOLD WITHOUT ADVERTISEMENT; AMENDING SECTION 77-5-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-5-212, MCA, is amended to read:

- **"77-5-212. Commercial permits for timber sale.** (1) Permits may be issued to citizens of the state for commercial purposes, at commercial rates, without advertising, and under restrictions and rules that the board may approve for the sale of timber:
 - (a) in quantities of less than 100,000 board feet; and
- (b) in cases of emergency due to fire, insect, fungus, parasite, or blowdown and no other, in quantities of less than 200,000 500,000 board feet.

- (2) To apply for a permit under this section, an individual shall:
- (a) complete a permit application on a form provided by the department and submit the completed application to the department office that is responsible for management of the state land where the proposed sale is located;
 - (b) using ribbon, mark the area of the proposed sale; and
- (c) designate on a U.S. geological survey map or other approved map the area proposed for sale and existing roads that would be used to remove timber from the site.
- (3) For sales of less than 30,000 board feet, an individual shall provide proof of vehicle liability insurance and \$1 million in commercial general liability insurance, naming the state of Montana as additionally insured, and shall provide a performance bond in an amount not to exceed \$1,000.
- (4) For sales of 30,000 board feet or more, an individual shall provide proof of vehicle liability insurance and \$1 million in commercial general liability insurance, naming the state of Montana as additionally insured, and shall provide a performance bond in accordance with 77-5-202.
- (5) Unless the timber proposed for sale is already sold or is part of another proposed sale being reviewed by the department, the department shall review completed permit applications within 30 days of the application's submittal. If the proposed sale complies with existing state and federal laws and regulations, the department shall perform an appraisal within 60 days of the application's submittal.
- (6) The department shall issue a permit within 5 working days of the date that the applicant agrees to the terms of the proposed sale, unless the parties mutually agree upon a time extension.
- (7) Repeated permits of this kind may not be issued to avoid advertising and the consequent competition secured by advertising.
- (8) Permit applications pursuant to subsection (1)(b) are categorical exclusions as defined by rule, and the department is not required to comply with the provisions of 75-1-201(1) in reviewing those applications.
- (9) Proposed timber sales under subsection (1)(b) do not take precedence over the timely sale and harvest of green timber pursuant to 77-5-207.
- (10) Permit applications made pursuant to this section may be subject to further environmental review, and the number of permits may be limited if the department determines that sales may have a cumulative effect on geographic area."
- **Section 2.** Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 109

[HB 80]

AN ACT REVISING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS; REVISING AND CLARIFYING CERTAIN BOARD MEMBER REQUIREMENTS, BOARD TERMS, AND BOARD COMPOSITION;

REQUIRING SENATE CONFIRMATION OF APPOINTMENTS TO THE BOARD OF RESPIRATORY CARE PRACTITIONERS AND THE BOARD OF SOCIAL WORK EXAMINERS AND PROFESSIONAL COUNSELORS; REVISING CERTAIN REGULATORY AND LICENSURE REQUIREMENTS; REVISING CERTAIN BOARD DUTIES; REVISING PROVISIONS RELATING TO UNPROFESSIONAL CONDUCT; REVISING HEARING AID DISPENSER TRAINEE AND BOARD DUTIES; CREATING A TEMPORARY PRACTICE PERMIT IN ADDICTION COUNSELING; REVISING CERTAIN LICENSING REQUIREMENTS FOR PUBLIC ACCOUNTANTS AND FIRMS: REMOVING AUTHORIZATION FOR LAETRILE MANUFACTURE, SALE, POSSESSION, AND DISTRIBUTION; AMENDING SECTIONS 2-15-1738, 2-15-1740, 2-15-1741, 2-15-1744, 2-15-1748, 2-15-1750, 2-15-1753, 2-15-1756, 23-3-501, 30-11-515, 37-1-316, 37-1-410, 37-3-102, 37-3-305, 37-3-306, 37-3-308,37-3-311, 37-3-323, 37-3-342, 37-4-501, 37-8-202, 37-9-203, 37-9-301, 37-9-302, 37-9-305, 37-9-312, 37-10-302, 37-16-202, 37-16-405, 37-16-411, 37-16-413, 37-18-302, 37-25-303, 37-29-201, 37-35-201, 37-35-202, 37-36-202, 37-47-302, 37-47-404, 37-50-101, 37-50-102, 37-50-203, 37-50-301, 37-50-314, 37-50-330, 37-50-335, 37-50-341, 37-50-401, AND 37-50-402, MCA; AND REPEALING SECTIONS 37-21-101, 37-21-201, 37-21-301, 37-21-302, 37-21-405, 37-21-406, 37-50-323, 37-50-324, 50-41-101, 50-41-102, 50-41-103, 50-41-104, 50-41-105, 50-41-106, AND 50-41-107, MCA.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Practice privilege for nonresident certified public accountant—rules. (1) (a) A person whose principal place of business is not in this state and who holds a valid license as a certified public accountant from any state that the national association of state boards of accountancy national qualification appraisal service or successor organization has verified to be in substantial equivalence with the certified public accountant licensure requirements of the Uniform Accountancy Act or subsequent act of the American institute of certified public accountants/national association of state boards of accountancy has qualifications substantially equivalent to this state's requirements and has all the privileges of persons holding a certificate and a permit of this state without the need to obtain a certificate under 37-50-302 or a permit under 37-50-314.
- (b) A person who offers or renders professional services under this section, whether in person, by mail, by telephone, or by electronic means, is granted practice privileges in this state and no notice, fee, or other submission is required. The person is subject to the requirements of subsections (3) and (4) and this subsection (1).
- (2) (a) A person whose principal place of business is not in this state and who holds a valid license as a certified public accountant from any state that the national association of state boards of accountancy national qualification appraisal service or successor organization has not verified to be in substantial equivalence with the certified public accountant licensure requirements of the Uniform Accountancy Act or subsequent act of the American institute of certified public accountants/national association of state boards of accountancy has qualifications substantially equivalent to this state's requirements and has all the privileges of persons holding a certificate and a permit of this state without the need to obtain a certificate under 37-50-302 or a permit under 37-50-314 if the person obtains verification from the national association of state boards of accountancy national qualification appraisal service that the person's CPA qualifications are substantially equivalent to the CPA licensure

requirements of the Uniform Accountancy Act of the American institute of certified public accountants/national association of state boards of accountancy.

- (b) A person who has passed the uniform certified public accountant examination and holds a valid license issued by any other state prior to January 1, 2012, is exempt from the education requirements in the Uniform Accountancy Act or subsequent act for purposes of this subsection (2).
- (c) A person who offers or renders professional services under this subsection (2), whether in person, by mail, by telephone, or by electronic means, is granted practice privileges in this state and no notice, fee, or other submission is required. The person is subject to the requirements of subsections (3) and (4) and this subsection (2).
- (3) A licensee of another state exercising the privilege under this section and the firm that employs that person, as a condition of the grant of this privilege:
- (a) are subject to the personal and subject matter jurisdiction and disciplinary authority of the board;
 - (b) shall comply with this chapter and the board's rules;
- (c) shall cease offering or rendering professional services in this state individually or on behalf of a firm if the license from the state of the person's principal place of business is no longer valid; and
- (d) shall accept the appointment of the state board that issued the license as the agent upon whom process may be served in any action or proceeding by the board of public accountants against the licensee.
- (4) A person who has been granted practice privileges under this section and who, for any client with its home office in this state, performs any attest services or compilations may do so only through a firm registered under 37-50-335.

Section 2. Section 2-15-1738, MCA, is amended to read:

- "2-15-1738. Board of radiologic technologists. (1) There is a board of radiologic technologists.
- (2) The board consists of seven members appointed by the governor with the consent of the senate, *including*:
- (a) one member shall be a radiologist licensed to practice medicine in Montana:
- (b) one member shall be a physician licensed to practice medicine in Montana who employs at least one person granted a permit issued by the board pursuant to 37-14-306:
- (e)(b) one member shall be a person granted a permit issued by the board pursuant to 37-14-306;
 - (d)(c) one member shall be a public member; and
- (e)(d) three members shall be four licensed radiologic technologists registered with the American registry of radiologic technologists (ARRT) who, with the exception of the first appointed members, are licensed radiologic technologists, including one radiologist assistant or radiology practitioner assistant licensed under 37-14-313.
- (3) Vacancies in unexpired terms $\frac{1}{2}$ shall must be filled for the remainder of the term.
 - (4) Each member shall serve for a term of 3 years 3-year terms.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 3. Section 2-15-1740, MCA, is amended to read:

- **"2-15-1740. Board of hearing aid dispensers.** (1) There is a board of hearing aid dispensers.
- (2) The board consists of seven five members appointed by the governor with the consent of the senate. The members are:, including:
- (a) one member who shall hold or be eligible for a certificate of qualification from the American board of otolaryngology;
- (b)(a) two members, each of whom has been a licensed hearing aid dispenser for at least 5 years, possesses national certification in audiology a current audiologist license issued under Title 37, chapter 15, and has a master's level college degree;
- (e)(b) two members, each of whom does not hold a master's level college degree in audiology but has been a licensed dispenser and fitter of hearing aids for at least 5 years before being appointed to the board; and
- (d)(c) two one public members member, each of whom is not in the hearing health field and one of whom who is either an otolaryngologist or a person who is not a licensed hearing aid dispenser or a licensed audiologist and who regularly uses a hearing aid because the person has of a demonstrated hearing impairment.
- (3) Each member shall serve for a term of 3 years 3-year terms. A member may not be reappointed within 1 year after the expiration of the member's second consecutive full term.
- (4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 2-15-1741, MCA, is amended to read:

- **"2-15-1741. Board of psychologists.** (1) There is a board of psychologists.
- (2) The board consists of six members appointed by the governor with the consent of the senate. Two members must be licensed psychologists in private practice, one member must be a licensed psychologist in public health, one member must be a licensed psychologist engaged in the teaching of psychology, and two members must be from the general public. A member may not serve more than two consecutive 5-year terms but may be reappointed after 5 years following the termination of the previous appointment.
 - (3) Members shall serve staggered 5-year terms.
- (4) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121."

Section 5. Section 2-15-1744, MCA, is amended to read:

- **"2-15-1744. Board of social work examiners and professional counselors.** (1) (a) The governor shall appoint, *with the consent of the senate*, a board of social work examiners and professional counselors consisting of seven members.
- (b) Three members must be licensed social workers, and three must be licensed professional counselors.
- (c) One member must be appointed from and represent the general public and may not be engaged in social work.

- (2) The board is allocated to the department for administrative purposes only as provided in 2-15-121.
- (3) Members are appointed, serve, and are subject to removal in accordance with 2-15-124 Members shall serve staggered 4-year terms."

Section 6. Section 2-15-1748, MCA, is amended to read:

- **"2-15-1748. Board of physical therapy examiners.** (1) There is a board of physical therapy examiners.
- (2) The board consists of five members appointed by the governor with the consent of the senate for terms of 3 years. The members are:
- (a) three four physical therapists licensed under Title 37, chapter 11, who have been actively engaged in the practice of physical therapy for the 3 years preceding appointment to the board; and
- (b) one physician licensed under Title 37, chapter 3, who has been actively engaged in the practice of medicine for the 3 years preceding appointment to the board; and
- (e)(b) one member of the general public who is not a physician or a physical therapist.
- (3) Each member must have been a resident of Montana for the 3 years preceding appointment to the board.
- (4) The Montana medical association may submit names of nominees under subsection (2)(b) to the governor as provided in 37-1-132.
- (5)(4) A vacancy on the board must be filled in the same manner as the original appointment. These appointments may be made only for the unexpired portions of the term.
 - (6)(5) A member may not be appointed for more than two consecutive terms.
- (7)(6) The governor may remove any board member for negligence in performance of any duty required by law and for incompetence or unprofessional or dishonorable conduct.
- (8)(7) A board member is not liable to civil action for any act performed in good faith in the execution of the duties required by Title 37, chapter 11.
- (9)(8) The board shall provide for its organizational structure by rule, which must include a presiding officer, vice presiding officer, and secretary-treasurer.
- (10)(9) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 7. Section 2-15-1750, MCA, is amended to read:

- **"2-15-1750. Board of respiratory care practitioners.** (1) There is a board of respiratory care practitioners. The board consists of five members appointed by the governor *with the consent of the senate*. Each member must be a citizen of the United States and a resident of this state. The governor may request advice from the Montana society for respiratory care in making appointments to the board.
 - (2) The board consists of:
- (a) subject to subsection (3), three respiratory care practitioners, each of whom has engaged in the practice of respiratory care for a period of at least 3 years immediately preceding appointment to the board; At least one of these members must have passed the registry examination for respiratory therapists administered by the national board for respiratory care, and at least one of these

members must have passed the entry-level examination for respiratory therapy technicians administered by the national board for respiratory care.

- (b) one physician licensed in Montana who has a special interest in the treatment of cardiopulmonary diseases respiratory care practitioner who has engaged in the practice of respiratory care for at least 3 years immediately prior to appointment and who specializes in pulmonary functions or sleep studies; and
 - (c) one member of the public who is not a member of a health care profession.
- (3) At least one of the members appointed under subsection (2)(a) must have passed the registry examination for respiratory therapists administered by the national board for respiratory care, and at least one of the members must have passed the entry-level examination for certified respiratory therapists administered by the national board for respiratory care.
- (3)(4) Members are appointed, serve, are compensated, and are subject to removal as provided in 2-15-124 shall serve staggered 4-year terms.
- (4)(5) The board is allocated to the department of labor and industry for administrative purposes only as provided in 2-15-121."

Section 8. Section 2-15-1753, MCA, is amended to read:

- **"2-15-1753. Board of clinical laboratory science practitioners.** (1) There is a board of clinical laboratory science practitioners.
- (2) The board is composed of five members who have been residents of this state for at least 2 years prior to appointment and who are actively engaged in their respective practices.
- (3) Members are appointed by the governor, with consent of the senate. The members are:
- (a) one physician who is qualified to direct a high complexity laboratory as provided for in the federal clinical laboratory regulations set forth in 42 CFR part 493;
- (b)(a) three four clinical laboratory science practitioners who, except for the initial appointments, hold active licenses as clinical laboratory science practitioners in Montana; and
- (e)(b) one public member who is not associated with or financially interested in the practice of clinical laboratory science.
- (4) Following the initial appointments of members to the board, all members Members shall serve staggered 4-year terms. The terms of the initial appointments must be staggered, with three members serving 4-year terms and two members serving 2-year terms. A member may not serve more than two consecutive terms.
- (5) Whenever a vacancy occurs on the board during a term of office, the governor shall appoint a successor with similar qualifications for the remainder of the unexpired term.
- (6) The board is allocated to the department for administrative purposes only, as provided in 2-15-121.
- (7) Members of the board are entitled to compensation and travel expenses as provided by law for in 2-18-501 through 2-18-503."

Section 9. Section 2-15-1756, MCA, is amended to read:

"2-15-1756. Board of public accountants. (1) There is a board of public accountants.

- (2) The board consists of seven members appointed by the governor. The members are:
- (a) four except as provided in subsection (3), five certified public accountants certified under Title 37, chapter 50, who are certified and actively engaged in the practice of public accounting and who have held a valid certificate for at least 5 years before being appointed; and. The Montana society of certified public accountants shall submit to the governor annually a list of names of two candidates from which the appointments of these members may be made. However, the governor is not restricted to the names on this list. These members may not be residents of the same county.
- (b) one licensed public accountant licensed under Title 37, chapter 50, who is actively engaged in the practice of public accounting and who has held a valid license for at least 5 years before being appointed. When an appointment in this category is necessary, the Montana society of public accountants shall submit to the governor a list of names of two candidates from which the appointment may be made. However, the governor is not restricted to the names on this list. If there is no licensed public accountant known by the governor to be qualified and willing to serve in this position, the governor may appoint a certified public accountant meeting the qualifications provided in subsection (2)(a).
- (e)(b) two members of the general public who are not engaged in the practice of public accounting.
- (3) The board may include four certified public accountants pursuant to subsection (2)(a) and one licensed public accountant licensed under Title 37, chapter 50, who is actively engaged in the practice of public accounting and who has held a valid license for at least 5 years prior to appointment.
- (4) Professional associations of public accountants may submit to the governor a list of names of two candidates for each position from which the appointment pursuant to subsection (2)(a) may be made. However, the governor is not restricted to the names on the list. The list may include recommendations for a certified public accountant or a licensed public accountant.
- (3)(5) Each appointment is subject to confirmation by the senate and must be submitted for consideration at the next regular session following appointment.
- (4)(6) The members shall serve staggered 5-year 4-year terms. A member may not serve consecutive 5-year terms on the board. A member is eligible for reappointment to the board after 1 year or more has elapsed. The governor may remove a member for neglect of duty or other just cause.
- (5)(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."
 - **Section 10.** Section 23-3-501, MCA, is amended to read:
- "23-3-501. Licenses fees. (1) The department may issue a license to a professional or semiprofessional promoter of combative events, whether an individual or organization, promoter's license to an individual for the sole purpose of conducting professional or semiprofessional combative events.
- (2) The department may issue licenses to qualified referees, managers, contestants, seconds, trainers, and judges.
- (3) A license issued in accordance with subsections (1) and (2) expires on the date set by department rule.

- (4) Each application for a license under this section must be accompanied by a fee, as provided in 37-1-134, set by the department."
 - Section 11. Section 30-11-515, MCA, is amended to read:
- "30-11-515. Enforcement. The provisions of this part must be enforced by the department of labor and industry and the county attorney of the county in which the violation occurred."
 - Section 12. Section 37-1-316, MCA, is amended to read:
- "37-1-316. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this ehapter part:
- (1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;
- (2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;
- (3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;
- (4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;
- (5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;
- (6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;
- (7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied.
- (8) failure to comply with a term, condition, or limitation of a license by final order of a board;
- (9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;
- (10) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, chapter 32, as a result of illegal use of the drug or controlled substance;
- (11)(10) use of alcohol, a habit-forming drug, or a controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally in the performance of licensed professional duties;
- (12)(11) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;
- (12)(12) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or

without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;

(14)(13) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

(15)(14) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(16)(15) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

(17)(16) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

- (a) peer review committee;
- (b) professional association; or
- (c) local, state, federal, territorial, provincial, or Indian tribal government;

(18)(17) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards."

Section 13. Section 37-1-410, MCA, is amended to read:

"37-1-410. Unprofessional conduct. (1) The following is unprofessional conduct for a licensee or license applicant in a profession or occupation governed by this ehapter part:

(a)(1) being convicted, including a conviction following a plea of nolo contendere and regardless of a pending appeal, of a crime relating to or committed during the course of practicing the person's profession or occupation or involving violence, the use or sale of drugs, fraud, deceit, or theft;

(b)(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(e)(3) committing fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(d)(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(e)(5) making a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(f)(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the

employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

- (g)(7) receiving a denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal or under judicial review or has been satisfied;
- (h)(8) failing to comply with a term, condition, or limitation of a license by final order of the department;
- (i)(9) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;
- (i)(10) misappropriating property or funds from a client or workplace or failing to comply with the department's rule regarding the accounting and distribution of a client's property or funds;
- (k)(11) interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts, failure to respond to department inquiries regarding a complaint against the licensee or license applicant, or the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action or use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;
- (1)(12) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice the profession or occupation by use of the licensee's license.;
- (2) For the purposes of Title 37, chapters 72 and 73, and Title 50, chapters 74 and 76, the following additional practices are considered unprofessional conduct:
- (a) addiction to or dependency on alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32;
- (b)(13) use of using alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally in the performance of licensed professional duties; or
- (e)(14) exhibiting conduct that does not meet generally accepted standards of practice. A certified copy of a judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring within the scope of practice and the course of the practice is considered conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards."
 - Section 14. Section 37-3-102, MCA, is amended to read:
- "37-3-102. **Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:
- (1) "Approved internship" means an internship training program of at least 1 year in a hospital that is either approved for intern training by the American osteopathic association or conforms to the minimum standards for intern training established by the council on medical education of the American medical association or successors. However, the board may, upon investigation, approve any other internship.

- (2) "Approved medical school" means a school that either is accredited by the American osteopathic association or conforms to the minimum education standards established by the council on medical education of the American medical association or successors for medical schools or is equivalent in the sound discretion of the board. The board may, on investigation of the education standards and facilities, approve any medical school, including foreign medical schools.
- (3) "Approved residency" means a residency training program in a hospital conforming to the minimum standards for residency training established by the council on medical education of the American medical association or successors or approved for residency training by the American osteopathic association. However, the board may upon investigation approve any other residency.
- (4) "Board" means the Montana state board of medical examiners provided for in 2-15-1731.
- (5) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
- (6) "Medical assistant" means an unlicensed allied health care worker who functions under the supervision of a physician or podiatrist in a physician's or podiatrist's office and who performs administrative and clinical tasks.
- (7) "Physician" means a person who holds a degree as a doctor of medicine or doctor of osteopathy and who has a valid license to practice medicine or osteopathic medicine in this state.
- (8) "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities. If a person who does not possess a license to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, the person is practicing medicine in violation of this chapter."

Section 15. Section 37-3-305, MCA, is amended to read:

- "37-3-305. Qualifications for licensure. (1) Except as provided in subsections (4) and (5), a person may not be granted a physician's license to practice medicine in this state unless the person:
 - (a) is of good moral character as determined by the board;
 - (b) is a graduate of an approved medical school as defined in 37-3-102;
- (c) has successfully completed an approved postgraduate residency program of at least 2 years or, in the opinion of the board, for an applicant who graduated from medical school prior to 2000, has had experience or training that in the opinion of the board that is at least the equivalent of a 2-year postgraduate approved residency program;
 - (d) has submitted a completed application; and
- (e) is able to communicate, in the opinion of the board, in the English language.
- (2) The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified.

- (3) A person may not be granted a temporary license to practice medicine in this state unless the person:
 - (a) is of good moral character as determined by the board;
 - (b) is a graduate of an approved medical school as defined in 37-3-102;
- (c) has successfully completed an approved postgraduate residency program of at least 2 years or, in the opinion of the board, for an applicant who graduated from medical school prior to 2000, has had experience or training that in the opinion of the board that is at least the equivalent of a 2-year postgraduate approved residency program; and
- (d) is able, in the opinion of the board, to communicate in the English language.
- (4) The 2-year minimum requirements in subsections (1)(c) and (3)(c) do not apply to a person who:
- (a) has completed an approved internship of at least 1 year or in the opinion of the board has had experience or training that is at least the equivalent of a 1-year internship;
- (b) is a resident in good standing with the Montana family practice residency program; and
- (c) is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state.
- (5) The 2-year minimum requirements in subsections (1)(c) and (3)(c) do not apply to a person who:
- (a) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training that is at least the equivalent of a 1-year internship;
- (b) is a resident in good standing with a program accredited by the accreditation council for graduate medical education or the American osteopathic association;
- (c) in the course of an approved rotation of the person's residency program, is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state;
 - (d) makes application to the department on an approved form; and
 - (e) pays a fee set by the board, as provided in 37-3-308."

Section 16. Section 37-3-306, MCA, is amended to read:

"37-3-306. Physician's license — examination — reciprocity and endorsement. (1) The board may authorize the department to issue to an applicant a physician's license, license by reciprocity, or license by endorsement only on the basis of:

(a) passing an approved examination, subject to 37-1-101;

(b)(a) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, by the national board of examiners for osteopathic physicians and surgeons, incorporated, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school that has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by this board; or

- (e)(b) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were, in the judgment of the board, essentially equivalent to those of this state for granting a license to practice medicine, if under the scope of the license or certificate the applicant was authorized to practice medicine in the other state, territory, or country.
- (2) An applicant who applies for a license on the basis of an examination and fails the examination may not be granted a license based on credentials from another state, territory, or foreign country or on a certificate issued by the national board of medical examiners or successors, by the federation licensing examination committee or successors, or by the medical council of Canada or successors.
- (3) The board may adopt reciprocity or endorsement requirements current with changes in standards in the practice of medicine.
- (4) The board may, in the case of an applicant for admission by reciprocity or endorsement, require a written or oral examination of the applicant.
- (5) The board may require that graduates of foreign medical schools pass an examination given by the education council for foreign medical graduates or successors.
- (6) A holder of the degree of doctor of osteopathy granted in 1955 or before may not be licensed without taking and passing the examination given by the department, subject to 37-1-101. A holder of the degree of doctor of osteopathy granted after 1955 must be licensed in the same manner as provided in this section for physicians."
 - Section 17. Section 37-3-308, MCA, is amended to read:
- "37-3-308. Examination and application fees Application fee further tax forbidden. (1) An applicant for a license to practice medicine to be issued on the basis of an examination by the board shall pay an examination fee as set by the board. The board shall set the fee, and it shall be reasonable and commensurate with the costs of the examination and related costs. Such examination fee shall be in addition to the application fee.
- (2) All applicants, including applicants for a temporary license, shall pay an initial application fee as prescribed by the board.
- (3)(2) No A license tax shall may not be imposed upon physicians by a municipality or any other subdivision of the state."
 - **Section 18.** Section 37-3-311, MCA, is amended to read:
- "37-3-311. Examination Foreign medical graduate examination. (1) An applicant who is a graduate of a foreign medical school is required to have passed an examination given by the education council for foreign medical graduates or its successor and attained a minimum grade as set by the board.
- (2) The board may in its discretion require the department to give, subject to 37-1-101, an oral or practical examination to test the applicant's qualifications for licensure and grant appropriate credit for the examination.
- (3) The board may use other Montana physicians to assist in preparing the examination.
- (4) A person may not be granted a license to practice medicine if the person fails to attain a passing grade as set by the board.

(2) If an applicant fails to meet the minimum grade requirements on the first examination, the applicant may be reexamined not more than two additional times on each of the component parts of the examination. If an applicant is prevented through no fault of the applicant's from taking a scheduled examination, the applicant may, within 2 years, be examined without submitting a new application."

Section 19. Section 37-3-323, MCA, is amended to read:

- "37-3-323. Revocation or suspension of license Suspension of license investigation. (1) The department may investigate whenever the department learns of a reason to suspect that a license applicant or a person having a license to practice medicine in this state:
- (a) is mentally or physically unable to safely engage in the practice of medicine, has procured a license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and has not later been lawfully declared competent, or has a condition that impairs the person's intellect or judgment to the extent that the condition incapacitates the person for the safe performance of professional duties;
 - (b) has been guilty of unprofessional conduct;
 - (c) has practiced medicine with a suspended or revoked license;
- (d) has had a license to practice medicine suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or
 - (e) while under probation has violated the terms of probation.
- (2) The investigation must be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may, upon order of the board, include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine and scrutinize the hospital records and reports of a licensee *or license applicant* as part of the examination, and copies must be released to the board on written request.
- (3) If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally incompetent, to be addicted to the use of addictive substances, or to have been committed pursuant to 53-21-127, the person's license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until the person is discharged as restored to reason or cured and the person's professional competence has been proved to the satisfaction of the board."

Section 20. Section 37-3-342, MCA, is amended to read:

- "37-3-342. Definition scope of practice allowed by telemedicine license. (1) As used in 37-3-301, 37-3-341 through 37-3-345, and 37-3-347 through 37-3-349, "telemedicine" means the practice of medicine, as defined in 37-3-102, by a physician located outside the state who performs an evaluative or therapeutic act relating to the treatment or correction of a patient's physical or mental condition, ailment, disease, injury, or infirmity and who transmits that evaluative or therapeutic act into Montana through any means, method, device, or instrumentality under the following conditions:
- (a) The information or opinion is provided *directly to a patient in Montana* for compensation or with the expectation of compensation.

- (b) The physician does not limit the physician's services to an occasional case.
- (c) The physician has an established or regularly used connection with the state, including but not limited to:
- (i) an office or another place for the reception of a transmission from the physician;
- (ii) a contractual relationship with a person or entity in Montana related to the physician's practice of medicine; or
- (iii) privileges in a Montana hospital or another Montana health care facility, as defined in 50-5-101.
- (2) As used in 37-3-301, 37-3-341 through 37-3-345, and 37-3-347 through 37-3-349, telemedicine does not mean:
 - (a) an act or practice that is exempt from licensure under 37-3-103;
- (b) an informal consultation, made without compensation or expectation of compensation, between an out-of-state physician and a physician or other health care provider located in Montana;
- (c) the transfer of patient records, independent of any other medical service and without compensation;
- (d) communication about a Montana patient with the patient's physician or other health care provider who practices in Montana, in lieu of direct communication with the Montana patient or the patient's legal representative; or
- (e) diagnosis of a medical condition by a physician located outside the state, based upon an x-ray, cardiogram, pap smear, or other specimen sent for evaluation to the physician outside the state by a health care provider in Montana; or
- (f)(e) a communication from a physician located outside Montana to a patient in Montana in eollaboration consultation with a physician or other health care provider licensed to practice medicine in Montana."
 - **Section 21.** Section 37-4-501, MCA, is amended to read:
- "37-4-501. Work order for construction or repair of appliances. (1) A licensed dentist who employs or engages the services of a person, firm, or corporation to construct, reproduce, make, alter, or repair bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances shall furnish the person, firm, or corporation with a written work authorization on forms prescribed by the board which shall that must contain:
- (a) the name and address of the person, firm, or corporation to which the work authorization is directed;
- (b) the patient's name or identification number, but if only a number is used, the patient's name $\frac{1}{2}$ shall $\frac{1}{2}$ with $\frac{1}{2}$ work authorization retained by the dentist;
 - (c) the date on which the work authorization was written;
 - (d) a description of the work to be done, including diagrams if necessary;
 - (e) a specification of the type and quality of the materials to be used; and
- (f) the signature of the dentist and the number of his the dentist's license to practice dentistry.

(2) The person, firm, or corporation receiving a work authorization from a licensed dentist shall retain the original work authorization, and the dentist shall retain the duplicate copy for inspection at a reasonable time by the board for a period of 2 years from date of issuance."

Section 22. Section 37-8-202, MCA, is amended to read:

"37-8-202. Organization — meetings — powers and duties. (1) The board shall:

- (a) meet annually and elect from among the members a president and a secretary;
 - (b) hold other meetings when necessary to transact its business;
- (c) prescribe standards for schools preparing persons for registration and licensure under this chapter;
 - (d) provide for surveys of schools at times the board considers necessary;
- (e) approve programs that meet the requirements of this chapter and of the board;
- (f) conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list;
- (g) cause the prosecution of persons violating this chapter. The board may incur necessary expenses for prosecutions.
- (h) adopt rules regarding authorization for prescriptive authority of advanced practice registered nurses. If considered appropriate for an advanced practice registered nurse who applies to the board for authorization, prescriptive authority must be granted.
- (i) establish a program to assist licensed nurses who are found to be physically or mentally impaired by mental illness, habitual intemperance, or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide for assistance to licensees in seeking treatment for mental illness or substance abuse and monitor their efforts toward rehabilitation. For purposes of funding this program, the board shall adjust the renewal fee to be commensurate with the cost of the program.
 - (2) The board may:
- (a) participate in and pay fees to a national organization of state boards of nursing to ensure interstate endorsement of licenses;
- (b) define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses. Advanced practice registered nurses are nurses who must have additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or the equivalent. The applicant must be certified or in the process of being certified by a certifying body for advanced practice registered nurses. Advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse anesthetists, and clinical nurse specialists.
- (c) establish qualifications for licensure of medication aides, including but not limited to educational requirements. The board may define levels of licensure of medication aides consistent with educational qualifications, responsibilities, and the level of acuity of the medication aides' patients. The board may limit the type of drugs that are allowed to be administered and the method of administration.

- (d) adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons;
 - (e) adopt rules necessary to administer this chapter; and
- (f) fund additional staff, hired by the department, to administer the provisions of this chapter."

Section 23. Section 37-9-203, MCA, is amended to read:

"37-9-203. Duties of board. The board shall:

- (1) develop, impose, and enforce standards that must be met by individuals in order to register and receive a license as a nursing home administrator, designed to ensure that nursing home administrators are individuals of good character and otherwise suitable and, by *education*, training, or experience in the field of institutional administration, are qualified to serve as nursing home administrators:
- (2) develop and apply appropriate techniques, including examination and investigation, for determining whether individuals meet the standards;
- (3) authorize the department to register and issue licenses to individuals, after application of the techniques, determined to meet the standards;
- (4) establish and implement procedures designed to ensure that individuals registered and licensed as nursing home administrators will, during the period that they serve, comply with the requirements of the standards; and
- (5) conduct a continuing study and investigation of nursing home administrators within the state with a view to the improvement of the standards imposed for the licensing of administrators and of procedures and methods for the enforcement of the standards with respect to nursing home administrators."

Section 24. Section 37-9-301, MCA, is amended to read:

- "37-9-301. Qualifications for licensure examination. (1) The department shall register and issue licenses to qualified persons as nursing home administrators, and the board shall establish qualification criteria for nursing home administrators. No registration or license shall be issued to a person as a nursing home administrator unless he:
- (a)(1) A person may not be granted a nursing home administrator license unless the person:
- (a) is of good moral character, as determined by the board, and of sound physical and mental health, has received a high school diploma or its equivalent; and
- (b) (i) has satisfactorily completed a course of instruction and training prescribed by the board, which shall must be designed and administered to present sufficient knowledge of the needs properly served by long-term care facilities, laws governing the operation of long-term care facilities and the protection of the interests of patients, and the elements of good nursing home administration; or
- (ii) has presented evidence satisfactory to the board of sufficient education, training, or experience, or a combination of education, training, and experience, in the fields referred to in subsection (1)(b)(i) to administer, supervise, and manage a long-term care facility; and
- (c) has passed an examination designed to test for competence in the subject matters referred to in subsection (1)(b)(i).

(2) The minimum standards for qualification shall must comply with the requirements, if any, set forth in Title XIX of the Social Security Act, Public Law 90-248, as amended 42 U.S.C. 1396g."

Section 25. Section 37-9-302, MCA, is amended to read:

- "37-9-302. Department to license pursuant to board rules nontransferability. (1) The department shall register and license nursing home administrators under the rules adopted by the board.
- (2) A nursing home administrator's registration and license is not transferable and is valid until surrendered for cancellation, suspended, or revoked for violation of this chapter or any other laws or rules relating to the proper administration and management of a long-term care facility."

Section 26. Section 37-9-305, MCA, is amended to read:

"37-9-305. License — grounds for discipline. A license must be granted as a matter of course. However, if the board finds, after notice and hearing, that the applicant has acted or failed to act in accordance with this chapter, the board may find grounds for discipline if the applicant meets the qualifications pursuant to 37-9-301 and, if the applicant holds another professional, temporary, or restricted license, there is no finding of unprofessional conduct. If an applicant for a license is denied, the applicant is entitled to notice and a hearing as provided in Title 2, chapter 4, part 6."

Section 27. Section 37-9-312, MCA, is amended to read:

"37-9-312. Violation. It shall be is unlawful for any person to act or serve in the capacity of a nursing home administrator unless he the person is the holder of a registration and license as a nursing home administrator, issued in accordance with the provisions of this chapter. A person who violates the provisions of this chapter shall be is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$500, or by imprisonment for not more than 6 months, or by both such fine and imprisonment."

Section 28. Section 37-10-302, MCA, is amended to read:

- "37-10-302. Qualifications application. (1) The board shall adopt rules relative to and governing the qualifications of applicants for licensure as optometrists.
- (2) A person is not eligible to receive a license unless that person is of good moral character.
- (3) A person is not eligible to receive a license unless that person has graduated from an accredited school of optometry in which the practice and science of optometry is taught in a course of study that is accredited by the international association of boards of examiners in optometry association of regulatory boards of optometry.
- (4) An applicant for a license shall file a completed application on a form provided by the department and pay a fee prescribed by the board."

Section 29. Section 37-16-202, MCA, is amended to read:

- "37-16-202. Powers and duties. (1) The powers and duties of the board are to:
- (1)(a) license persons who apply and are qualified to practice the fitting of hearing aids;
- (2)(b) establish a procedure to act as a grievance board to initiate or receive, investigate, and mediate process complaints from any source concerning the

activities of persons licensed under this chapter or their agents, whether licensed or not;

- $\frac{3}{c}$ adopt rules necessary to carry out this chapter;
- (4)(d) require the periodic inspection and calibration of audiometric testing equipment and carry out periodic inspections of facilities of persons who practice or engage in the business of fitting or selling hearing aids;
- (5)(e) initiate legal action to enjoin from operation a person engaged in the sale, dispensing, or fitting of hearing aids in this state that is not licensed under this chapter;
- (6)(f) adopt rules consistent with the provisions of 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-405, 37-16-408, and 37-16-411. Rules adopted by the board may include but are not limited to rules defining the term "related devices" and other rules necessary to implement 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-405, 37-16-408, and 37-16-411.; and
- (7)(g) establish and adopt minimum requirements for the form of bills of sale and receipts.
- (2) Rules adopted by the board pursuant to subsection (1)(f) may include but are not limited to rules defining the term "related devices" and other rules necessary to implement 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-405, 37-16-408, and 37-16-411."

Section 30. Section 37-16-405, MCA, is amended to read:

- **"37-16-405. Trainee license.** (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take a practical examination may apply to the board for a trainee license.
- (2) On receiving an application under subsection (1), accompanied by a fee fixed by the board and verification that the applicant has passed the written portion of the examination with a passing score as determined by board rule, the board shall issue a trainee license that entitles the applicant to engage in a 180-day training period during which the applicant:
- (a) is required to pass the practical examination administered by the board before being issued a hearing aid dispenser's license; and
- (b) shall work under the direct supervision of the sponsoring licensed hearing aid dispenser. During this time the applicant may do the testing necessary for proper selection and fitting of hearing aids and related devices and make necessary impressions. However, the delivery and final fitting of the hearing aid and related devices must be made by the trainee and the supervisor.
- (3) The training period must consist of a continuous 180-day term. Any break in training requires application for another trainee license under rules that the board may prescribe.
- (4)(3) A trainee license may not be issued unless the board has on file an unrevoked statement from a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing aid dispenser supervising a trainee license holder shall submit a report every 90 days of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate any responsibilities to the trainee by mailing by certified mail a written notice by certified mail to the board and the trainee.
- (5) If a person who holds a trainee license takes and fails to pass the practical examination, the trainee license expires, and the person may not practice as a trainee.

- (6)(4) A person licensed as an audiologist under the provisions of Title 37, chapter 15, or a person practicing pursuant to 37-1-305 is exempt from the 180-day training period but is required to pass the examinations prescribed in this chapter.
- (5) The trainee license terminates 1 year after issuance or after the trainee passes the practical examination, whichever occurs first.
- (6) Upon completion of 1,000 hours of supervised training, the trainee is eligible to take the practical examination.
- (7) A trainee who does not complete 1,000 hours of supervised training before the trainee license terminates may be issued a second trainee license upon making application and paying the appropriate fee. The hours of training obtained under the first trainee license must be carried forward.
- (8) A trainee who fails the practical examination may continue to practice under direct supervision until the trainee license terminates. A second trainee license may not be issued. Termination of the trainee license and cessation of the authority to practice do not preclude a person from retaking the practical examination upon payment of the appropriate fees.
- (9) Upon passing the practical examination, a trainee may submit an application for a hearing aid dispenser license with the appropriate fee and a hearing aid dispenser license must be issued.
- (7)(10) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the licensee's own.
- (8)(11) For the purposes of this section, "direct supervision" means the direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available at the same location for prompt consultation and treatment."

Section 31. Section 37-16-411, MCA, is amended to read:

- "37-16-411. Revocation or suspension of license investigations fines. (1) The board may, at its discretion or upon written complaint of an aggrieved person, investigate an alleged violation of this chapter by a licensee or applicant for licensure. If the investigation discloses a probable violation of this chapter or board rules, the board may, institute a proceeding pursuant to the provisions of 37-1-136 and 37-1-137, suspend or revoke the accused person's license or suspend or deny the person's application for a fixed period to be determined by the board.
- (2) A person licensed under this chapter may have the license revoked or suspended for a fixed period to be determined by the board or be fined not to exceed \$500 per incident licensee or license applicant may be sanctioned as provided in 37-1-312 for any of the following causes:
- (a) being convicted of a felony, subject to chapter 1, part 2, of this title. The record of the conviction or a certified copy from the clerk of the court for the district where the conviction occurred or certification by the judge of the court is conclusive evidence of the conviction, except that if the person has been pardoned by a governor or the president of the United States, the conviction does not constitute grounds for revocation or suspension imposing sanctions.
- (b) securing a license under this chapter through fraud, deceit, or false statements;
 - (c) the personal use of a false name or alias in professional practice;

- (d) violating any of the provisions of this chapter;
- (e) obtaining a fee or making any sale by fraud or misrepresentation;
- (f) knowingly employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter;
- (g) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, that is improbable, misleading, deceptive, or untruthful;
- (h) representing that the services or advice of a person licensed to practice medicine or possessing certification as an audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids and related devices if that is not true or using the terms "doctor", "clinic", "hearing clinic", "state registered", or other similar words, abbreviations, or symbols that tend to connote the medical profession when that use is not accurate;
 - (i) permitting another to use the a license or certificate;
- (j) defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, or questionable credit standing or by other false representations or falsely disparaging the products of competitors in any respect or their business methods, selling prices, values, credit terms, policies, or services;
- (k)(j) using any method of advertising prohibited by trade practice rules 1 through 17 of the federal trade commission;
- (l) obtaining information concerning the business of a competitor by bribery of an employee or agent of that competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unlawful means;
- $\frac{\text{(m)}(k)}{(k)}$ directly or indirectly giving or offering to give or permitting or causing to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or influencing persons to refrain from dealing in the products of competitors;
- $\frac{(n)(l)}{(n)}$ unethical conduct or gross incompetence or negligence in the performance of professional duties, including repeated failure to make indicated medical referrals of customers;
- (e)(m) selling a hearing aid or related device to a person who has not been given tests using appropriate established procedures and instrumentation in fitting hearing aids or related devices, except for the sale of a replacement hearing aid or a related device of the same make and model within 1 year of the original sale;
- (p)(n) falsifying hearing test or evaluation results or any associated client records:
 - (q)(o) refusing to cooperate with an investigation by the board by:
 - (i) failing to furnish requested records or documents;
- (ii) failing to furnish a complete explanation of matters referred to in the complaint;
 - (iii) failing to respond to a subpoena issued by the board;

- (iv) willfully misrepresenting any relevant fact to a board investigator; or
- (v) attempting to discourage a potential witness from cooperating with a board investigator or from testifying by using threats, harassment, extortion, or bribery."

Section 32. Section 37-16-413, MCA, is amended to read:

- "37-16-413. Penalty for unlawful practice injunction. (1) Any person who practices the selling, fitting, or dispensing of hearing aids without a valid license shall be is guilty of a misdemeanor and upon conviction shall be fined not more than \$500 less than \$250 or more than \$1,000, or be imprisoned for not more than 90 days, in the county jail for not less than 90 days or more than 1 year, or both.
- (2) The board may enforce any provision of this chapter by injunction or by any other appropriate proceeding."

Section 33. Section 37-18-302, MCA, is amended to read:

"37-18-302. Application — qualification — fee. A person desiring to begin the practice of veterinary medicine or veterinary surgery in this state or who desires to hold out to the public that the person is a practitioner of veterinary medicine or veterinary surgery, except as provided in 37-18-104, shall apply to the department for a license to do so. The application must be on a form furnished by the department, must be accompanied by satisfactory evidence of the good moral character of the applicant, and must contain evidence of the applicant's having received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a certified transcript of the applicant must be submitted to the department for inspection and verification. The certified transcript remains the property of the department. A person applying for a license to practice shall pay to the department a nonrefundable fee commensurate with the costs of the examinations and set by the board."

Section 34. Section 37-25-303, MCA, is amended to read:

- **"37-25-303. Issuance of license effective date.** (1) Upon successful completion of the requirements in 37-25-302, an applicant must be issued a license attesting to the date and fact of licensure.
- (2) The license is effective on the date of issuance and expires 1 year after that date."

Section 35. Section 37-29-201, MCA, is amended to read:

- "37-29-201. Board powers and duties. The board has the following powers and duties:
- (1) determination of the qualifications of applicants for licensure under this chapter;
 - (2) administration of examinations for licensure under this chapter;
 - (3) collection of fees and charges prescribed in this chapter;
- (4) issuance, suspension, and revocation of licenses for the practice of denturitry under the conditions prescribed in this chapter; and
- (5) to adopt, amend, and repeal rules necessary for the implementation, continuation, and enforcement of this chapter, including but not limited to form and display of licenses, license examination format, criteria and grading of

examinations, and disciplinary standards for licensees, and inspection of denturitry premises and facilities."

Section 36. Section 37-35-201, MCA, is amended to read:

- "37-35-201. License required exceptions. (1) Except as otherwise provided in this chapter, a person may not practice addiction counseling or represent to the public that the person is a licensed addiction counselor unless the person is licensed under the provisions of this chapter.
 - (2) This chapter does not prohibit an activity or service:
- (a) performed by a qualified member of a profession, such as a physician, lawyer, licensed professional counselor, licensed social worker, licensed psychiatrist, licensed psychologist, nurse, probation officer, court employee, pastoral counselor, or school counselor, consistent with the person's licensure or certification and the code of ethics of the person's profession, as long as the person does not represent by title that the person is a licensed addiction counselor. If a person is a qualified member of a profession that is not licensed or certified or for which there is no applicable code of ethics, this section does not prohibit an activity or service of the profession as long as the person does not represent by title that the person is a licensed addiction counselor.
- (b) of, or use of an official title by, a person employed or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution if that activity or service or use of that title is a part of the duties of the office or position;
- (c) of an employee of a business establishment performed solely for the benefit of the establishment's employees;
- (d) of a student, intern, or resident in addiction counseling who is pursuing a course of study at an accredited college or university or who is working in a generally recognized training center if the activity or service constitutes part of the course of study;
- (d) of a student in addiction counseling who is pursuing a course of study at an accredited college or university or who is working in a generally recognized training center if the activity or service constitutes part of the course of study; or
- (e)(e) of a person who is not a resident of this state if the activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year and if the person is authorized under the laws of the state or country of residence to perform the activity or service. However, the person shall report to the department the nature and extent of the activity or service if it exceeds 10 days in a calendar year.
- (f) of a person who is working to satisfactorily complete supervised addiction counseling experience required for licensure.
- (3) This chapter is not intended to limit, preclude, or interfere with the practice of other persons and health care providers licensed by the appropriate agencies of the state of Montana."

Section 37. Section 37-35-202, MCA, is amended to read:

"37-35-202. Licensure requirements — examination — fees — temporary practice permit. (1) To be eligible for licensure as a licensed addiction counselor, the applicant shall submit an application fee in an amount established by the department by rule and a written application on a form provided by the department that demonstrates that the applicant has completed

the eligibility requirements and competency standards as defined by department rule.

- (2) A person may apply for licensure as a licensed addiction counselor if the person has:
- (a) received a baccalaureate or advanced degree in alcohol and drug studies, psychology, sociology, social work, or counseling, or a comparable degree from an accredited college or university; or
- (b) received an associate of arts degree in alcohol and drug studies, addiction, or substance abuse from an accredited institution.
- (3) Prior to becoming eligible to begin the examination process, each person shall complete supervised work experience in an addiction treatment program as defined by the department, in an internship a program approved by the department, or in a similar program recognized under the laws of another state.
- (4) Each applicant shall successfully complete a competency examination, in writing only, as defined by rules adopted by the department.
- (5) (a) Except as provided in subsections (5)(d) and (6), an applicant who has completed all licensure requirements except the required supervised work experience may apply for a temporary practice permit that authorizes the applicant to complete the required supervised work experience.
 - (b) Temporary practice permits must be issued if it is determined that:
 - (i) a complete application approved by the department has been submitted;
- (ii) initial screening by program staff shows no current disciplinary action against the applicant in this or any other state;
- (iii) the applicant for a temporary practice permit may only function under the supervision of a supervisor who is trained in addiction counseling or a related field as defined by rule and who has an active license in good standing in Montana or any other state; and
- (iv) the applicant has completed all educational requirements as prescribed in subsection (2)(a) or (2)(b).
- (c) A person may practice licensed addiction counseling under a temporary practice permit until the person either fails the first license examination for which the person is eligible following issuance of the temporary practice permit or passes the examination and is granted a license.
 - (d) A student is not required to obtain a temporary practice permit.
- (6) The provisions of subsection (5) do not apply until the department has adopted rules implementing this section. The rules must provide for a waiver of the provisions of subsection (5) for a person who is engaged in a supervised work experience prior to the adoption of the rules.
- (5)(7) A person holding a license to practice as a licensed addiction counselor in this state may use the title "licensed addiction counselor".
- (6)(8) For the purposes of this section, "comparable degree" means a degree with accredited college course work, of which 6 credit hours must be in human behavior, sociology, psychology, or a similar emphasis, 3 credit hours must be in psychopathology or course work exploring patterns and courses of abnormal or deviant behavior, and 9 credit hours must be in counseling. For the 9 credit hours in counseling, 6 credit hours must be in group counseling and 3 credit hours must be in the theory of counseling. The credit hours specified in this subsection may be obtained in an associate or master's degree program if the applicant does not have a qualifying baccalaureate degree."

Section 38. Section 37-36-202, MCA, is amended to read:

"37-36-202. License — **revocation.** (1) Except as provided in subsection (2), a license issued under this chapter is valid for $\frac{3}{2}$ years 1 year.

- (2) The board may revoke a license if a licensee knowingly:
- (a) provided fraudulent information on the application or documentation required in 37-36-201;
 - (b) violated standards of conduct as prescribed by the board; or
- (c) engaged in practices beyond the scope and limitation of the person's training and education as determined by the board."

Section 39. Section 37-47-302, MCA, is amended to read:

- "37-47-302. Outfitter's qualifications. An applicant for an outfitter's license or renewal of a license must meet the following qualifications:
- (1) be 18 years of age or older, be physically capable and mentally competent to perform the duties of an outfitter, and meet experience, training, and testing requirements as prescribed by board rule;
- (2) own or hold under written lease or represent a company, corporation, or partnership who owns or holds under written lease the equipment and facilities that are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and the outfitter's clients (all equipment and facilities are subject to inspection at all reasonable times and places by the board or its designated agent); and
- (3) have demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated under those laws related to fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution of the ecosystem;
- (4) have not, at any time, practiced fraud, deception, or material misrepresentation in procuring any previous outfitter's, guide's, professional guide's, or conservation license from the state of Montana;
- (5) have not, at any time, promulgated any false or misleading advertising relating to the business of outlitting."

Section 40. Section 37-47-404, MCA, is amended to read:

- "37-47-404. Responsibility for violations of law. (1) A person accompanying a hunting or fishing party as an outfitter, or guide, or professional guide, or other employee of the outfitter is equally responsible with any person or party employing engaging the person as an outfitter for any violation of fish and game laws unless the violation is reported to a peace officer by the outfitter, guide, or professional guide, or employee and the outfitter, guide, or professional guide, or employee was not an active participant. An outfitter, or guide, or professional guide, or other employee of an outfitter who willfully fails or refuses to report any violation of fish and game laws is liable to for the penalties provided in this section chapter. If any a guide or professional guide violates the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual or implied knowledge of an outfitter employing engaging the guide or professional guide, the outfitter is legally responsible for the violation for all purposes under the laws or regulations if the outfitter fails to report the violation to the proper authority.
- (2) An outfitter, guide, or professional guide shall report any violation or suspected violation of fish and game laws that the outfitter, guide, or professional guide knows or reasonably should have known has been committed

by the employees, agents, representatives, clients, or participants in the outfitting or guiding activity. The violation or suspected violation must be reported to a peace officer at the earliest possible opportunity.

- (3) A person may not hire or retain an outfitter unless the outfitter is currently licensed in accordance with the laws of the state of Montana. A person may not use the services of a guide or professional guide and a guide or professional guide may not offer services unless the services are obtained through an endorsing outfitter."
 - **Section 41.** Section 37-50-101, MCA, is amended to read:
- "37-50-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:
- (1) "Affiliated entity" means an entity owned, leased, or controlled by a firm through common employment or any other service arrangement, including but not limited to financial or investment services, insurance, real estate, and employee benefits services.
- (2) "Agreed-upon procedures engagement" means an engagement performed in accordance with applicable attestation standards and in which a firm or person is engaged to issue a written finding that:
- (a) is based on specific procedures that the specified parties agree are sufficient for their purposes;
 - (b) is restricted to the specified parties; and
 - (c) does not provide an opinion or negative assurance.
 - (3) "Attest" means providing the following services:
- (a) an audit or other engagement to be performed in accordance with the statements on auditing standards;
- (b) a review of a financial statement to be performed in accordance with the statements on standards for accounting and review services;
- (c) an examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements;
- (d) an engagement to be performed in accordance with the auditing standards of the public company oversight board; and
- (e) an agreed-upon procedures engagement to be performed in accordance with the statements on standards for attestation engagements.
- (1)(4) "Board" means the board of public accountants provided for in 2-15-1756.
- (5) "Compilation" means providing a service to be performed in accordance with statements on standards for accounting and review services that presents, in the form of financial statements, information that is the representation of owners without undertaking to express any assurance on the statements.
- (2)(6) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
- (7) "Firm" means a sole proprietorship, partnership, professional corporation, or limited liability company engaged in the practice of public accounting.
- (8) "Home office" is the location specified by the client as the address where a service described in [section 1(4)] is directed.

- (9) "Peer review" means a board-approved study, appraisal, or review of one or more aspects of the attest or compilation work of a permitee or licensee of a registered firm in the practice of public accounting, by a person or persons who hold licenses in this or another jurisdiction and who are not affiliated with the person or firm being reviewed.
- (3)(10) "Practice of public accounting" means performing or offering to perform, by a person certified under 37-50-302, or licensed under 37-50-303, or holding a practice privilege under [section 1], for a client or potential client, one or more types of services involving the use of accounting or auditing skills, including:
- (a) the issuance of reports or financial statements on which the public may rely;
 - (b) one or more types of management advisory or consulting services;
 - (c) the preparation of tax returns; or
 - (d) furnishing advice on tax matters.
- (11) "Principal place of business" means the office location designated by the licensee for the purposes of substantial equivalency.
- (12) "Substantial equivalency" or "substantially equivalent" means a determination by the board or its designee that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to or exceed the education, examination, and experience requirements contained in the Uniform Accountancy Act or subsequent acts or that an individual certified public accountant's education, examination, and experience qualifications are comparable to or exceed the education, examination, and experience requirements contained in the Uniform Accountancy Act. In ascertaining substantial equivalency, the board shall take into account the qualifications without regard to the sequence in which the experience, education, and examination requirements were attained."

Section 42. Section 37-50-102, MCA, is amended to read:

"37-50-102. Exemptions. This chapter does not prohibit any person who is not a certified public accountant or licensed public accountant from serving as an employee of or an assistant to a certified public accountant or a licensed public accountant holding a permit to practice under 37-50-314, a partnership or corporation firm composed of certified public accountants or licensed public accountants registered under this chapter, or a foreign accountant whose credentials have been recognized under 37-50-313. However, the employee or assistant may not issue any accounting or financial statement in the employee's or assistant's name."

Section 43. Section 37-50-203, MCA, is amended to read:

"37-50-203. Rules of the board. (1) The board may adopt rules, consistent with the purposes of this chapter, as that it considers necessary.

- (2) The board shall adopt:
- (a) rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accounting, including competency in specific fields of public accounting;
 - (b) rules of procedure governing the conduct of matters before the board;
- (c) rules governing education requirements, as provided in 37-50-305, for issuance of the certificate of a certified public accountant and the license for licensed public accountant:

- (d) rules defining requirements for accounting experience, not exceeding 2 years, for issuance of the initial permit; and
- (e) rules to enforce the provisions of this chapter. The purpose of the rules must be to provide for the monitoring of the profession of public accounting and to maintain the quality of the accounting profession.
 - (3) The board may adopt rules:
- (a) governing partnerships, corporations, firms and other types of entities practicing public accounting, including but not limited to rules concerning style, name, title, and affiliation with other organizations;
- (b) (i) establishing reasonable standards with respect to professional liability insurance and unimpaired capital; and
- (ii) prescribing joint and several liability for torts relating to professional services for shareholders of a corporation firm or owners of other types of entities that fail to comply with standards established pursuant to subsection (3)(b)(i); and
- (c) establishing education and experience qualifications for out-of-state and foreign accountants seeking authorization permits, certificates, or licenses to practice in Montana."

Section 44. Section 37-50-301, MCA, is amended to read:

- "37-50-301. Illegal use of title. (1) It is not a violation of this chapter for a firm that is not registered under 37-50-335 and that does not have an office in this state to provide its professional services and to practice public accounting in this state and use the title "CPA" or "CPA firm" so long as it complies with the exemption requirements of 37-50-335(2).
- (2) A person may not assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the person is a certified public accountant unless the person holds a current certificate as a certified public accountant under this chapter or qualifies for the practice privilege under [section 1]. However, a foreign accountant whose credentials are recognized under the provisions of 37-50-313 shall use the title under which the foreign accountant is generally known in the foreign country, followed by the name of the country from which the foreign accountant's certificate, license, or degree was received.
- (2)(3) A partnership or corporation firm may not assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the partnership or corporation firm is composed of certified public accountants pursuant to the requirements of 37-50-330 unless it is registered as required under 37-50-335 or meets the conditions to be exempt from such registration set forth in 37-50-335(2).
- (3)(4) A person may not assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the person is a public accountant unless the person holds a current license as a licensed public accountant under this chapter.
- (4)(5) A partnership or corporation firm may not assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that

the partnership or corporation firm is composed of public accountants unless it is registered as required under 37-50-335.

(5)(6) A person, corporation, or partnership or firm may not assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", or any other title or designation likely to be confused with "certified public accountant", "licensed public accountant", "public accountant" or any of the abbreviations "CA", "EA", "LA", or "RA" or similar abbreviations likely to be confused with "CPA". However, a foreign accountant whose credentials are recognized under 37-50-313 shall use the title under which the foreign accountant is generally known in the foreign country, followed by the name of the country from which the foreign accountant's certificate, license, or degree was received, and a person who is licensed as an enrolled agent by the internal revenue service may use the title "enrolled agent" or the abbreviation "EA".

(6)(7) A person may not sign or affix the person's name or any trade or assumed name used by the person in the person's profession or business with any wording indicating that the person has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless the person holds a current permit issued under 37-50-314 and all of the person's offices in this state for the practice of public accounting are maintained and registered under 37-50-335. However, the provisions of this subsection do not prohibit any officer, employee, partner, or principal of any organization from affixing a signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title, or office that the person holds in that organization, nor do the provisions of this subsection prohibit any act of a public official or public employee in the performance of the official's or employee's public duties.

(7)(8) A person may not sign or affix a partnership or corporation firm name with any wording indicating that it is a partnership or corporation firm composed of persons having expert knowledge in accounting or auditing to any accounting or financial statement or to any report on or certificate to any accounting or financial statement unless the partnership or corporation firm conforms to the requirements of 37-50-330 and is registered as required under 37-50-335.

(8)(9) A person may not assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or corporation firm or in conjunction with the designation "and company" or "and co." or a similar designation if there is in fact no bona fide partnership or corporation firm that has been formed subject to the provisions of 37-50-330 and registered under 37-50-335. However, it is lawful for a sole proprietor to continue the use of a deceased's name in connection with the sole proprietor's business for a reasonable period of time after the death of a former partner or co-owner."

Section 45. Section 37-50-314, MCA, is amended to read:

"37-50-314. Permit required — display. (1) A person may not engage in the practice of public accounting in this state without a current permit issued by the department. A permit to engage in the practice of public accounting in this state must be issued by the department to a person who holds a current certificate as a certified public accountant or license as a licensed public accountant and complies with the requirements of this chapter.

- (2) The current permit to engage in the practice of public accounting must be prominently displayed for public inspection.
- (3) A person qualifying for a practice privilege under [section 1(1) or (2)] is exempt from this requirement."

Section 46. Section 37-50-330, MCA, is amended to read:

- "37-50-330. Corporations and partnerships registration—empliance Compliance with ownership requirements firm registration. (1) A corporation or partnership firm composed of certified public accountants or a corporation or partnership firm composed of public accountants that is or plans to become engaged in the practice of public accounting may include individuals persons who are not licensed as public accountants or certified as certified public accountants if:
- (a) the corporation or partnership firm designates an accountant who is licensed or certified in this state or, in the case of a firm that must be registered pursuant to 37-50-335, a licensee of another state who meets the requirements set out in [section 1(1) or (2)] to be responsible for the proper registration of the corporation or partnership firm;
- (b) a simple majority of ownership in the eorporation or partnership firm, in terms of equity and voting rights, is held by accountants who are licensed or certified accountants in this state or in another substantially equivalent jurisdiction or meet the requirements of [section 1(2)];
- (c) all persons with an ownership interest in the partnership or corporation firm are individuals actively participating in the business of the partnership or corporation firm or its affiliated entities; and
- (d) any person with an ownership interest in the partnership or corporation firm who is not licensed or certified as an accountant and who holds a professional license, registration, or certification issued by this state or another jurisdiction is in compliance with the requirements for that license, registration, or certification.
- (2) An accountant licensed or certified in this state or a person qualifying for practice privileges under [section 1] who holds an ownership interest in a partnership or corporation organized pursuant to this section is ultimately responsible for all services provided by the partnership or corporation including any unit, branch, or division of the partnership or corporation providing attestation services firm, who is responsible for supervising attest or compilation services, and who signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm is responsible for all attest or compilation services.
- (3) A person licensed or certified in this state and a person qualifying for practice privileges under [section 1] who signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm must meet the competency requirements of 37-50-203(2)(a).
- (3)(4) (a) A partnership or corporation firm that is no longer in compliance with the ownership requirements of subsection (1)(b) shall give notice to the board within 90 days of the noncompliance.
- (b) The board shall grant the partnership or corporation firm a reasonable amount of time to reestablish compliance with the ownership requirements of subsection (1)(b). The time granted by the board to a partnership or corporation firm to reestablish compliance may not be less than 90 days from the date the board receives the partnership's or corporation's firm's notice of noncompliance.

- (c) The failure of a partnership or corporation firm to reestablish compliance with the ownership requirements of subsection (1)(b) is grounds for the board to suspend or revoke the partnership's or corporation's firm's registration required by 37-50-335."
 - **Section 47.** Section 37-50-335, MCA, is amended to read:
- "37-50-335. Registration of offices firms exemptions. (1) The following firms must register annually with the department:
- (a) those with an office in this state performing attest services and compilations;
- (b) those with an office in this state that use the title "CPA" or "CPA firm"; and
- (c) those that do not have an office in this state but perform attest services and compilations for a client having its home office in this state.
- (d) A fee may not be charged for the annual registration required in subsection (1)(c).
- (2) A firm that undergoes a board-sanctioned compliance or peer review process and receives an acceptable, a pass, or a pass with deficiencies rating for these services and completes all remediation in its principal place of business is exempt from registration.
- (3) A firm that is not subject to the requirements of subsection (1) may perform other professional services while using the title "CPA" or "CPA firm" in this state without registering with the department only if:
- (a) it performs the services through a person with practice privileges under [section 1]; and
- (b) it can lawfully perform the services in the state where persons with practice privileges have their principal place of business.
- (4) Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant, by a partnership or corporation firm of certified public accountants, by a licensed public accountant, by a partnership or corporation firm of licensed public accountants, or by a foreign accountant recognized under 37-50-313 must be registered register annually with the department. A fee may not be charged for this registration. In addition, each individual engaged in this state in the practice of public accounting must have annually received a permit under 37-50-314."
 - **Section 48.** Section 37-50-341, MCA, is amended to read:
- "37-50-341. Initiation of proceedings hearings and rulemaking.
 (1) The board may initiate proceedings under this chapter either on its own motion, *upon a complaint made by the board of accountancy of another state*, or on the complaint of a person.
- (2) A person licensed or certified in this state offering or rendering services or using a "CPA" title in another state is subject to disciplinary action in this state for an act committed in another state where the licensee would be subject to discipline for the act committed in the other state.
- (3) A person licensed or certified in another state offering or rendering services or using a "CPA" title in this state is subject to disciplinary action in this state for an act committed in this state for which a licensee in this state would be subject to discipline.

(2)(4) Hearings and rulemaking proceedings shall be are governed in all respects by the Montana Administrative Procedure Act."

Section 49. Section 37-50-401, MCA, is amended to read:

"37-50-401. False statements by accountants — misdemeanor — penalty. Any person practicing as an accountant, public accountant, auditor, or certified public accountant in this state who, because of negligence, gross inefficiency, or willfulness, shall issue or permit issues or permits the issuance of any false statement of the financial transactions, standing, or condition of any corporation, partnership, firm or individual business undertaking shall be deemed is guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$500 or more than \$2,000, or be imprisoned for a period of not less than 90 days or more than 1 year, or subjected to both said fine and imprisonment, in the discretion of the court."

Section 50. Section 37-50-402, MCA, is amended to read:

- "37-50-402. Privileged communications exceptions. (1) Except by permission of the client, person, or firm, or corporation engaging a certified or licensed public accountant or an employee of the accountant or by permission of the heirs, successors, or personal representatives of the client, person, or firm, or corporation and except for the expression of opinions on financial statements, a certified public accountant, licensed public accountant, or employee thereof may not be required to disclose or divulge or voluntarily disclose or divulge information that the certified or licensed accountant or an employee may have relative to and in connection with any professional services as a public accountant. The information derived from or as a result of professional services is considered confidential and privileged.
- (2) The provisions of this section do not apply to the testimony or documents of a public accountant furnished pursuant to a subpoena in a court of competent jurisdiction, pursuant to a board proceeding, or in the process of any board-approved practice review program."
- **Section 51. Repealer.** Sections 37-21-101, 37-21-201, 37-21-301, 37-21-302, 37-21-405, 37-21-406, 37-50-323, 37-50-324, 50-41-101, 50-41-102, 50-41-103, 50-41-104, 50-41-105, 50-41-106, and 50-41-107, MCA, are repealed.
- **Section 52. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 37, chapter 50, part 3, and the provisions of Title 37, chapter 50, part 3, apply to [section 1].
- **Section 53. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].
- **Section 54. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 1, 2009

CHAPTER NO. 110

[HB 82]

AN ACT REVISING THE ALLOCATION OF FUNDS FOR 9-1-1 PURPOSES; REDUCING THE ALLOCATION OF FUNDS FOR ADMINISTRATION OF

9-1-1 LAWS; AMENDING SECTION 10-4-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-4-301, MCA, is amended to read:

- "10-4-301. Establishment of emergency telecommunications accounts. (1) There are established in the state special revenue fund in the state treasury:
- (a) an account for all fees collected for basic 9-1-1 services pursuant to 10-4-201(1)(a);
- (b) an account for all fees collected for enhanced 9-1-1 services pursuant to 10-4-201(1)(b); and
- (c) an account for all fees collected for wireless enhanced 9-1-1 services pursuant to 10-4-201(1)(c). The money is allocated as follows:
- (i) 50% of the account must be deposited in an account for distribution to the 9-1-1 jurisdictions; and
- (ii) 50% of the account must be deposited in an account for distribution to wireless providers.
- (2) All money received by the department of revenue pursuant to 10-4-201 must be paid to the state treasurer for deposit in the appropriate account. An amount equal to 3.74% 2.74% of the money received pursuant to 10-4-201 must be deposited in an account in the state general special revenue fund to be used for the administration of this chapter. Any remaining funds at the end of a fiscal year must be equally distributed to each of the four accounts provided for in subsection (1).
- (3) The accounts established in subsection (1) retain interest earned from the investment of money in the accounts.
- (4) After payment of refunds pursuant to 10-4-205, the balance of the respective accounts must be used for the purposes described in part 1 of this chapter.
- (5) The distribution of funds in the 9-1-1 emergency telecommunications accounts described in subsection (1), as required by 10-4-302, 10-4-311, and 10-4-313, is statutorily appropriated, as provided in 17-7-502, to the department.
- (6) Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from appropriations made for that purpose."

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved April 1, 2009

CHAPTER NO. 111

[HB 118]

AN ACT REVISING THE DISTRIBUTION OF WIRELESS 9-1-1 FUNDS AMONG COUNTIES; REQUIRING LOCAL 9-1-1 JURISDICTIONS TO PROVIDE PROGRAM INFORMATION TO THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 10-4-102, 10-4-302, AND 10-4-313, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-4-102, MCA, is amended to read:

- **"10-4-102. Department of administration duties and powers.** (1) The department shall assist in the development of basic and enhanced 9-1-1 systems in the state. The department shall:
- (a) establish procedures for determining and evaluating requests for variations from basic or enhanced 9-1-1 service;
- (b) upon request of a 9-1-1 jurisdiction, assist in planning a basic or enhanced 9-1-1 system;
 - (c) establish criteria for evaluating basic and enhanced 9-1-1 system plans;
- (d) monitor implementation of approved basic and enhanced 9-1-1 system plans for compliance with the plan and use of funding; and
- (e) as it finds necessary, report to the legislature the progress made in implementing statewide basic and enhanced 9-1-1 systems and in implementing wireless enhanced 9-1-1 services.
- (2) The department shall obtain input from all 9-1-1 jurisdictions by creating an advisory council to participate in development and implementation of the 9-1-1 program in the state. The council must be established pursuant to 2-15-122. The highway patrol, emergency medical services organizations, telephone companies, the associated public safety communicators, the department of emergency services, police departments, sheriff's offices, local citizens, organizations, and other public safety organizations may submit recommendations for membership on the advisory council.
- (3) The department may request information from a specific 9-1-1 jurisdiction as determined necessary for the department to fulfill its duties under this chapter. If a 9-1-1 jurisdiction does not comply with the request, the department may suspend distributions to the 9-1-1 jurisdiction as provided in 10-4-302(4)."

Section 2. Section 10-4-302, MCA, is amended to read:

- **"10-4-302. Distribution of basic 9-1-1 account by department.** (1) The department shall make quarterly distributions of the entire basic 9-1-1 account. The distributions must be made for the costs incurred during the preceding calendar quarter by each provider of telephone service in the state for:
 - (a) collection of the fees imposed by 10-4-201;
- (b) modification of central office switching and trunking equipment for emergency telephone service only; and
 - (c) conversion of pay station telephones required by 10-4-121.
- (2) Payments under subsection (1) may be made only after application by the provider to the department for costs incurred in subsection (1). The department shall review all applications relevant to subsection (1) for appropriateness of costs claimed by the provider. If the provider contests the review, payment may not be made until the amount owed the provider is made certain.
- (3) After all amounts under subsections (1) and (2) have been paid, the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account. A 9-1-1 jurisdiction whose 9-1-1 service area includes more than one city or county is eligible to receive operating funds from the allocation for each city or county involved. The department shall

distribute to the accounting entity designated by a 9-1-1 jurisdiction with an approved final plan the proportional amount for each city or county served by the 9-1-1 jurisdiction. The department shall provide a report indicating the proportional share derived from the individual city's or county's allocation with each distribution to a 9-1-1 jurisdiction.

- (4) If the department through its monitoring process determines that a 9-1-1 jurisdiction is not adhering to an approved plan, Θ is not using funds in the manner prescribed in 10-4-303, or has failed to provide information as provided in 10-4-102(3), the department may, after notice and hearing, suspend payment to the 9-1-1 jurisdiction. The jurisdiction is not eligible to receive funds until the department determines that the jurisdiction is complying with the approved plan and fund usage limitations or has provided the requested information.
- (5) The department shall distribute any balance in the basic 9-1-1 account on July 1, 1998, on a per capita basis to those 9-1-1 jurisdictions that have approved final plans filed with the department as required by 10-4-112."
 - Section 3. Section 10-4-313, MCA, is amended to read:
- **"10-4-313. Distribution of wireless enhanced 9-1-1 account by department.** (1) The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account for allowable costs described in 10-4-301(1)(c)(ii) incurred by each wireless provider in each 9-1-1 jurisdiction as follows:
 - (a) For each fiscal year through the fiscal year ending June 30, 2011:
- (i) 84% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. The wireless provider in each county must be allocated a minimum of 1% of the balance of the counties' share of the account.
- (ii) the balance of the account must be distributed allocated evenly to the wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state; and
- (iii) prior to distribution, the amounts allocated under subsections (1)(a)(i) and (1)(a)(ii) must be adjusted to ensure that a wireless provider does not receive less than the amount allocated to wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state.
- (b) For fiscal years beginning after June 30, 2011, 100% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. Each county must be allocated a minimum of 1% of the balance of the counties' share of the account.
- (c) If the department is unable to fully reimburse a wireless provider under subsection (1)(a) in any quarter, the department shall in the subsequent quarter pay from the allocation under subsection (1)(a) to wireless providers any unpaid balances from the previous quarter. If the amount available is insufficient to pay all previous unpaid balances, the department shall repeat the process of paying unpaid balances that remain unpaid for as many quarters as necessary until all unpaid balances are fully paid. The department shall review all invoices for appropriateness of costs claimed by the wireless provider. If the wireless provider contests the review, payment may not be made until the amount owed to the wireless provider is determined.
- (d) A wireless provider shall submit an invoice for cost recovery according to the allowable costs.

- (e) The department shall determine the percentage of overall subscribers, based on billing addresses, within the 9-1-1 jurisdiction for each wireless provider seeking cost recovery by dividing the wireless provider's subscribers by the total number of subscribers in that 9-1-1 jurisdiction. The percentage must be applied to the total wireless provider funds for that 9-1-1 jurisdiction, and each wireless provider shall receive distribution based on the provider's percentage. To receive cost recovery, wireless providers shall submit subscriber counts to the department on a quarterly basis. The subscriber count must be provided for each 9-1-1 jurisdiction in which the wireless provider receives cost recovery within 30 calendar days following the end of each quarter. The department shall recalculate distribution percentages on a quarterly basis.
- (f) If the department determines that a wireless provider has submitted costs that exceed allowable costs or are not submitted in the manner prescribed in 10-4-115, the department may, after giving notice to the wireless provider, suspend or withhold payment from the wireless enhanced 9-1-1 account.
- (2) The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account described in 10-4-301(1)(c)(i) to each 9-1-1 jurisdiction in accordance with 10-4-311(3) as follows:
 - (a) for each fiscal year through the fiscal year ending June 30, 2011:
- (i) 84% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.
- (ii) the balance of the account must be distributed allocated evenly to the counties with 1% or less than 1% of the total population of the state; and
- (iii) prior to distribution, the amounts allocated under subsections (2)(a)(i) and (2)(a)(ii) must be adjusted to ensure that a county does not receive less than the amount allocated to counties with 1% or less of the total population of the state; and
- (b) for fiscal years beginning after June 30, 2011, 100% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account."

Section 4. Effective date. [This act] is effective July 1, 2009.

Approved April 1, 2009

CHAPTER NO. 112

[HB 119]

AN ACT REVISING LAWS RELATED TO EMPLOYMENT; AUTHORIZING NEGOTIATION OF AGREEMENTS WITH TRIBAL GOVERNMENTS TO RECOGNIZE AND GIVE EFFECT TO CERTAIN TRIBAL WORKERS' COMPENSATION PLANS; AUTHORIZING PLAN NO. 1 EMPLOYERS TO TRANSFER CLAIM LIABILITIES TO THIRD PARTIES; REQUIRING CONTROLLING PERSONS OF PROFESSIONAL EMPLOYER ORGANIZATIONS TO SUBMIT FINGERPRINTS; INCLUDING RELIGIOUS ORGANIZATIONS AS EMPLOYERS FOR WORKERS' COMPENSATION PURPOSES UNDER CERTAIN CONDITIONS; PROVIDING A RANGE OF UP TO 3 PERCENT ON CERTAIN ASSESSMENTS ON PAID LOSSES; CLARIFYING CERTAIN PROCEDURES USED BY THE UNINSURED EMPLOYERS' FUND; CLARIFYING THAT THE TIME TO APPEAL TO

MEDIATION IS FROM THE DATE OF DETERMINATION BY THE DEPARTMENT: PROVIDING FOR CERTAIN VOLUNTARY NONBINDING MEDIATION; SPECIFYING TYPES OF MEDICAL FEE SCHEDULES THAT MAY BE USED FOR WORKERS' COMPENSATION CLAIMS; PROVIDING TIMELINES FOR PAYMENTS AND INTEREST PENALTIES; REMOVING THE 26-WEEK LIMIT ON TEMPORARY PARTIAL DISABILITY BENEFITS: ALLOWING FOR INCREASED PRESCRIPTION SUPPLIES; REVISING APPLICATION TIMELINES UNDER THE SUBSEQUENT INJURY FUND; INCREASING THE TRIGGERING AMOUNT NECESSARY FOR ASSESSMENTS UNDER THE SUBSEQUENT INJURY FUND; CLARIFYING THE JURISDICTION OF THE WORKERS' COMPENSATION COURT; AMENDING SECTIONS 39-8-202, 39-71-107, 39-71-117, 39-71-118, 39-71-123, 39-71-201, 39-71-307, 39-71-501, 39-71-506, 39-71-520, 39-71-601, 39-71-613, 39-71-704, 39-71-711, 39-71-712, 39-71-727, 39-71-743, 39-71-905, 39-71-915, 39-71-2339, 39-71-2905, AND 39-73-104, MCA: AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Tribal employment coverage. The department may, as provided in Title 18, chapter 11, enter into an agreement with a tribal government to recognize, with the same effect as the exclusive remedy and benefits under plans No. 1, 2, and 3, tribal workers' compensation plans or self-insured plans that the department determines provide adequate coverage to persons who are:

- (1) employed by an enrolled tribal member or by an association, business, corporation, or other entity at least 51% of which is owned by one or more enrolled tribal members; and
 - (2) working outside the exterior boundaries of an Indian reservation.
- **Section 2. Transfer of claim liabilities.** (1) A current or former self-insurer or group may transfer existing workers' compensation claim liabilities to another entity upon authorization from the department and concurrence of the Montana self-insurers guaranty fund by:
 - (a) submitting an application on a form designated by the department;
- (b) completing an agreement of assumption and guarantee of workers' compensation liabilities;
 - (c) submitting a loss portfolio transfer agreement; and
 - (d) posting a security deposit.
- (2) If the assuming entity fails to meet the terms of the transfer agreement, liability reverts to the original self-insurer.
- (3) The entity assuming liability for a claim shall comply with all reporting requirements set by the department.
 - (4) The department shall adopt rules to implement this section.
- Section 3. Uninsured employer as party to benefits disputes indemnification by uninsured employer for benefits paid lien for payment levy and execution. (1) An uninsured employer or an employer alleged to be uninsured is a party to all disputes concerning any benefits for which the employer may become obligated to indemnify the department pursuant to 39-71-504(1)(b).
- (2) (a) After mediation pursuant to department rules, an uninsured employer or an employer alleged to be uninsured is joined as a party when a

dispute over benefits is brought before the workers' compensation judge pursuant to 39-71-2905.

- (b) The workers' compensation judge may enter a judgment, including a default judgment, requiring an uninsured employer to indemnify the department with respect to any benefits paid or ordered payable by the department in relation to the claim.
- (c) If a judgment ordered under subsection (2)(b) includes a specific amount paid or ordered payable, the department may issue to the uninsured employer a certificate listing the amount of payment due and directing the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. The judgment becomes a lien on all real property of the uninsured employer from the time of being entered on the docket.
- (3) (a) An uninsured employer is obligated to make claim reimbursements as provided in 39-71-504(1)(b), plus the interest and other charges assessed on the claim reimbursement as provided in 39-71-504(2), when demand for those payments is made to the uninsured employer.
- (b) If the uninsured employer does not make the payments and does not dispute the obligation in the manner provided by 39-71-520, the department may issue a certificate listing the amount of payment due and directing the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. The judgment becomes a lien on all real property of the uninsured employer from the time of being entered on the docket.
- (4) A judgment lien filed pursuant to this section may be renewed for another 10-year period upon motion of the lienholder or by a judgment for that purpose.

Section 4. Section 39-8-202, MCA, is amended to read:

- "39-8-202. Initial license application application fee standards provisional license. (1) An applicant for initial licensure as a professional employer organization or group shall file with the department a completed application on a form provided by the department.
- (2) The application must be accompanied by a nonrefundable application fee and any material or information required by the department that demonstrates compliance with the requirements of this chapter. The application fee is:
 - (a) \$750 for a resident or nonresident unrestricted license; and
 - (b) \$500 for a restricted license.
- (3) As a condition of licensure under this chapter, an applicant who is not a resident or who is domiciled outside the state must first be licensed as a professional employer organization or group in the state in which the applicant is a resident or is domiciled if licensing is required by that state.
- (4) An applicant for licensure as a professional employer organization or group must meet one of the following applicable standards:
 - (a) An individual must be 18 years of age or older.
- (b) A partnership or a limited partnership shall provide the names and home addresses of all partners, indicate whether each partner is a general or a limited partner, and include a copy of the partnership agreement or an affidavit signed by all partners acknowledging that a written partnership agreement does not exist.

- (c) A corporation shall state the names and home addresses of all officers, directors, and shareholders who own a 5% or greater interest in the corporation. A domestic or foreign corporation must have filed any required documents with the secretary of state and shall remain in good standing to conduct business pursuant to this chapter.
- (d) A limited liability company shall state the names and home addresses of those individuals who own a 5% or greater interest in the limited liability company. A domestic or foreign limited liability company must have filed any required documents with the secretary of state and shall remain in good standing to conduct business pursuant to this chapter.
 - (e) A group:
 - (i) must be authorized to act on behalf of the group;
- (ii) shall include for each professional employer organization within the group the information required in subsection (4); and
- (iii) shall guarantee, on a form provided by the department and executed by each professional employer organization within the group, payment of all financial obligations with respect to wages, payroll-related taxes, insurance premiums, and employee benefits of each other member within the group.
 - (5) (a) An applicant shall also provide:
- (i) the trade name or names under which the applicant conducts business, the business's taxpayer or employer identification number, the address of the business's principal place of business in the state, and the addresses of any other offices within the state through which the applicant intends to conduct business as a professional employer organization or group. If the applicant's principal place of business is located in another state, the address must be provided.
- (ii) a list by jurisdiction of each name under which the applicant has operated in the preceding 5 years, including any alternative names, names of predecessors, and names of related business entities with common majority ownership, and detailed information on the background of each controlling person to the extent required by the department; and
- (iii) other information requested by the department to show that the applicant and each controlling person are of good moral character, have business integrity, and are financially responsible. "Good moral character" means a personal history of honesty, trustworthiness, and fairness; a good reputation for fair dealings; and respect for the rights of others and for the laws of this state and nation.
- (b) (i) As a prerequisite to the issuance of a license, the department shall require the applicant *and any controlling person* to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.
- (ii) The applicant and any controlling person shall sign a release of information to the department and is are responsible to the department of justice for the payment of all fees associated with the criminal background check.
- (iii) Upon completion of the criminal background check, the department of justice shall forward all criminal justice information, as defined in 44-5-103, concerning the applicant *or any controlling person* that involves the conviction of a criminal offense in any jurisdiction to the department, as authorized in 44-5-303.

- (iv) At the conclusion of any background check required by this section, the department must receive the criminal background check report but may not receive the fingerprint card of the applicant or of any controlling person. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant and of any controlling person.
- (c) If an applicant or any controlling person has a history of criminal convictions, then pursuant to 37-1-203, the applicant or controlling person has the opportunity to demonstrate to the department that the applicant or controlling person is sufficiently rehabilitated to warrant the public trust, and if the department determines that the applicant or controlling person is not, the license may be denied.
- (6) (a) Except for an applicant who is granted a restricted license under subsection (9), an applicant shall maintain a tangible accounting net worth of not less than \$50,000, evidenced by:
- (i) providing financial statements that have been independently audited by a certified public accountant in accordance with generally accepted accounting principles; or
- (ii) providing independently compiled financial statements and a \$100,000 security deposit in a form that is acceptable to the department.
- (b) If, after licensure, an applicant defaults in paying wages or payroll-related taxes or in meeting any liability arising pursuant to Title 39, chapter 71, or this chapter, the security deposit may be used to meet those obligations. The security deposit may not be used in determining the net worth of an applicant.
- (c) (i) Documents submitted to establish net worth must reflect net worth as of a date not more than 6 months prior to the date on which the application is submitted.
- (ii) Financial statements submitted must be attested by the president, chief financial officer, and at least one controlling person of the professional employer organization or group.
- (iii) If an applicant is unable to meet the \$50,000 net worth requirement, the applicant shall provide to the department a surety bond, a letter of credit, or marketable securities acceptable to the department in an amount of not less than \$50,000 to cover the deficiency. If, after licensure, an applicant defaults in paying wages or payroll-related taxes or in meeting any liability arising pursuant to Title 39, chapter 71, or this chapter, the surety bond, letter of credit, or marketable securities provided to the department may be used to meet those obligations.
- (7) The applicant shall maintain a positive working capital, as evidenced by financial statements.
- (8) The department may provide by rule for the acceptance, in lieu of the requirements of subsections (6) and (7), of an affidavit provided by a bonded, independent, and qualified assurance organization that has been approved by the department certifying the qualifications of a professional employer organization or group seeking licensure under this chapter.
- (9) The department may issue a restricted license for limited operation within this state to a professional employer organization or group that is a resident of or domiciled in another state if:

- (a) the applicant's state of residence or domicile provides for licensing of professional employer organizations or groups and the applicant is licensed and in good standing in that state and that state grants a similar privilege for restricted licensing to professional employer organizations or groups that are residents of or domiciled in this state and that are licensed under this chapter;
- (b) the applicant does not maintain an office, a sales force, or a sales representative in this state and does not solicit clients who are residents of or domiciled in this state; and
- (c) the applicant does not have more than 100 leased employees working in this state.
- (10) An applicant for a license shall appoint a recognized and approved entity as its registered agent to receive service of legal process issued against it in this state if a registered agent has not already been appointed.
- (11) The department may issue a provisional license to an applicant that allows the applicant to operate in this state while the applicant's application is being processed by the department. The department may not charge a fee for a provisional license. The department may adopt rules to implement the provisions of this subsection.
 - (12) A license issued under 39-8-204 or this section may not be transferred."

Section 5. Section 39-71-107, MCA, is amended to read:

- "39-71-107. Insurers to act promptly on claims in-state claims examiners. (1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.
- (2) All workers' compensation and occupational disease claims filed pursuant to the Workers' Compensation Act must be examined by a claims examiner in Montana. For a claim to be considered as examined by a claims examiner in Montana, the claims examiner examining the claim is required to determine the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the claim, maintain an office located in Montana, and examine Montana claims from that office. Use of a mailbox or maildrop in Montana does not constitute maintaining an office in Montana.
- (3) An insurer shall maintain the documents related to each claim filed with the insurer under the Workers' Compensation Act at the Montana office of the claims examiner examining the claim in Montana until the claim is settled. The documents may be either original documents or duplicates of the original documents and must be maintained in a manner that allows the documents to be retrieved from that office and copied at the request of the claimant or the department. Settled claim files stored outside of the claims examiner's office must be made available within 48 hours of a request for the file. Electronic or optically imaged documents are permitted.
- (4) (a) An insurer that uses a third-party agent to provide the insurer with claim examination services shall notify the department in writing of a change of a third-party agent at least 14 days in advance of the change.
- (b) The department may assess a penalty not to exceed \$200 against an insurer that does not comply with the advance notice provision in subsection (4)(a). The penalty may be assessed for each failure by an insurer to give the required advance notice.
 - (5) An insurer shall provide to the claimant:

- (a) a written statement of the reasons that a claim is being denied at the time of denial:
- (b) whenever benefits requested by a claimant are denied, to a claimant, a written explanation of how the claimant may appeal an insurer's decision; and
- (c) a written explanation of the amount of wage-loss benefits being paid to the claimant, along with an explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the initial payment of the benefit.
 - (6) An insurer shall:
- (a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying benefits and specifies the information needed; and
- (b) pay settlements within 30 days of the date the department issues an order approving the settlement.
 - (7) The department may adopt rules to implement this section.
- (8) (a) For purposes of this section, "settled claim" means a department-approved or court-ordered compromise of benefits between a claimant and an insurer or a claim that was paid in full.
- (b) The term does not include a claim in which there has been only a lump-sum advance of benefits."

Section 6. Section 39-71-117, MCA, is amended to read:

"39-71-117. Employer defined. (1) "Employer" means:

- (a) the state and each county, city and county, city school district, and irrigation district; all other districts established by law; all public corporations and quasi-public corporations and public agencies; each person; each prime contractor; each firm, voluntary association, limited liability company, limited liability partnership, and private corporation, including any public service corporation and including an independent contractor who has a person in service under an appointment or contract of hire, expressed or implied, oral or written; and the legal representative of any deceased employer or the receiver or trustee of the deceased employer;
- (b) any association, corporation, limited liability company, limited liability partnership, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and
- (c) any nonprofit association, limited liability company, limited liability partnership, or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as described in 39-71-118(1)(e), with nonprofit organizations or associations or federal, state, or local government entities; and
- (d) a religious corporation, religious organization, or religious trust receiving remuneration from nonmembers for agricultural production, manufacturing, or a construction project conducted by its members on or off the property of the religious corporation, religious organization, or religious trust.
- (2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

- (3) Except as provided in chapter 8 of this title, an employer defined in subsection (1) who uses the services of a worker furnished by another person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:
- (a) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and
- (b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.
- (4) An interstate or intrastate common or contract motor carrier that maintains a place of business in this state and uses an employee or worker in this state is considered the employer of that employee, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:
- (a) the worker in this state is certified as an independent contractor as provided in 39-71-417; or
- (b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation furnishing employees or workers in this state to a motor carrier has obtained Montana workers' compensation insurance on the employees or workers in Montana both at the inception of employment and during all phases of the work performed."

Section 7. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined. (1) As used in this chapter, the term "employee" or "worker" means:

- (a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.
- (b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;
- (c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not

receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

- (d) an aircrew member or other person who is employed as a volunteer under 67-2-105:
- (e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):
- (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and
- (ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.
- (f) an inmate working in a federally certified prison industries program authorized under 53-1-301;
- (g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1; and
- (h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.
- (i) a member of a religious corporation, religious organization, or religious trust while performing services for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).
 - (2) The terms defined in subsection (1) do not include a person who is:
- (a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is

using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

- (b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;
- (c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.
- (d) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.
- (3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).
- (4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.
- (b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.
- (5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.
- (b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.
- (c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.
- (d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$900 a month and not more than 1 1/2 times the state's average weekly wage.
- (6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

- (b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.
- (c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.
- (d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (6)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$200 a week and not more than 1 1/2 times the state's average weekly wage.
- (7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.
- (b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the state's average weekly wage.
- (c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.
- (8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).
- (9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.
- (10) For purposes of this section, an "employee or worker in this state" means:

- (a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;
- (b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;
- (c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or
- (d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:
 - (i) nonresident employees are hired in Montana;
 - (ii) nonresident employees' wages are paid in Montana;
 - (iii) nonresident employees are supervised in Montana; and
 - (iv) business records are maintained in Montana.
- (11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d)."

Section 8. Section 39-71-123, MCA, is amended to read:

- "39-71-123. Wages defined. (1) "Wages" means all remuneration paid for services performed by an employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium other than cash. The term includes but is not limited to:
- (a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and periods of sickness;
- (b) backpay or any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan;
- (c) tips or other gratuities received by the employee, to the extent that tips or gratuities are documented by the employee to the employer for tax purposes;
- (d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration;
- (e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and
- (f) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.
 - (2) The term "wages" does not include any of the following:
- (a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;
- (b) the amount of the payment made by the employer for employees, if the payment was made for:
- (i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;
 - (ii) sickness or accident disability under a workers' compensation policy;

- (iii) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family;
- (iv) death, including life insurance for the employee's immediate family;
 - (c) vacation or sick leave benefits accrued but not paid;
 - (d) special rewards for individual invention or discovery; or
- (e) monetary and other benefits paid to a person as part of public assistance, as defined in 53-4-201.
- (3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the term of employment for the same employer is less than four pay periods, the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work.
- (b) For good cause shown, if the use of the last four pay periods does not accurately reflect the claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including periods of idleness or seasonal fluctuations.
- (4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3). As used in this subsection, "concurrent employment" means employment in which the employee was actually employed at the time of the injury and would have continued to be employed without a break in the term of employment if not for the injury.
- (b) Except as provided in 39-71-118(7)(c), the compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.
- (c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except for the wages earned by individuals while engaged in the employments outlined in 39-71-401(3)(a) who elected not to be covered, from which the employee is disabled by the injury incurred.
- (5) For the purposes of calculating compensation benefits for an employee working for an employer, as provided in 39-71-117(1)(d), and for calculating premiums to be paid by that employer, the wages must be based upon all hours worked multiplied by the mean hourly wage by area, as published by the department in the edition of Montana Informational Wage Rates by Occupation, adopted annually by the department, that is in effect as of the date of injury or for the period in which the premium is due."

Section 9. Section 39-71-201, MCA, is amended to read:

"39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which are to be paid upon lawful appropriation all costs of administering the Workers' Compensation Act and the statutory occupational safety acts that the department is required to administer, with the exception of the certification of independent contractors

provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administration fund:

- (a) all fees and penalties provided in 39-71-107, 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and
- (b) all fees paid by an assessment of 3% of on paid losses, plus administrative fines and interest provided by this section.
- (2) For the purposes of this section, paid losses include the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the application of any deductible whether the employer or the insurer pays the losses:
 - (a) total compensation benefits paid; and
- (b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.
- (3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 1 in the form and containing the information required by the department a report of paid losses pursuant to subsection (2).
- (4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3, the state fund, shall pay a *its* proportionate share *determined by the paid losses in the preceding calendar year* of all costs of administering and regulating the Workers' Compensation Act and the statutory occupational safety acts that the department is required to administer, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. In addition, compensation plan No. 3, the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before July 1, 1990.
- (5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal may be up to 3% of the paid losses paid in the preceding calendar year by or on behalf of the plan No. 1 employer or \$500, whichever is greater. Any entity, other than the department, that assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the purposes of this section.
- (b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal may be up to 3% of the paid losses paid in the preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled under compensation plan No. 1.
- (c) By April 30 of each year, the department shall notify employers described in subsections (5)(a) and (5)(b) of the percentage of the assessment that comprises the compensation plan No. 1 proportionate share of administrative and regulatory costs. Payment of the assessment provided for by this subsection (5) must be paid by the employer in:
 - (i) one installment due on July 1; or

- (ii) two equal installments due on July 1 and December 31 of each year.
- (d) If an employer fails to timely pay to the department the assessment under this section, the department may impose on the employer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.
- (6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative and regulatory costs attributable to claims arising before July 1, 1990. The assessment is equal may be up to 3% of the paid losses paid in the preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the assessment for administrative and regulatory costs that is attributable to claims arising before July 1, 1990.
 - (b) Payment of the assessment must be paid in:
 - (i) one installment due on July 1; or
 - (ii) two equal installments due on July 1 and December 31 of each year.
- (c) If the state fund fails to timely pay to the department the assessment under this section, the department may impose on the state fund an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.
- (7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall pay a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be collected by each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures. The premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon insured employers.
- (b) The amount to be funded by the premium surcharge is equal may be up to 3% of the paid losses paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and may be up to 3% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in the next fiscal year.
- (c) On or before April 30 of each year, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge

percentage to be effective for policies written or renewed annually on and after July 1 of that year.

- (d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge collected under this section, the department may impose on the insurer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.
- (e) If an employer fails to remit to an insurer the total amount due for the premium and premium surcharge, the amount received by the insurer must be applied to the premium surcharge first and the remaining amount applied to the premium due.
- (f) The amount actually collected as a premium surcharge in a given year must be compared to the 3% of assessment on the paid losses paid in the preceding year. Any excess amount collected in excess of the 3% must be deducted from the amount to be collected as a premium surcharge in the following year. The amount collected that is less than the 3% assessed amount must be added to the amount to be collected as a premium surcharge in the following year.
- (8) On or before April 30 of each year, upon a determination by the department, By July 1, an insurer under compensation plan No. 2 that pays benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment equal of up to 3% of paid losses paid in the preceding calendar year, subject to a minimum assessment of \$500, that is due on July 1. The department shall determine and notify the insurer by April 30 of each year the amount that is due by July 1.
- (9) An employer that makes a first-time application for permission to enroll under compensation plan No. 1 shall pay an assessment of \$500 within 15 days of being granted permission by the department to enroll under compensation plan No. 1.
- (10) The department shall deposit all funds received pursuant to this section in the state treasury, as provided in this section.
- (11) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, incurred while on the business of the department either within or without the state.
- (12) Disbursements from the administration fund must be made after being approved by the department upon claim for disbursement.
- (13) The department may assess and collect the workers' compensation regulatory assessment surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage requirements of the Workers' Compensation Act. Any amounts collected by the department pursuant to this subsection must be deposited in the workers' compensation administration fund."

Section 10. Section 39-71-307, MCA, is amended to read:

- "39-71-307. Employers and insurers to file reports penalty. (1) Every employer insured by a plan No. 2 or a plan No. 3 insurer is required to file with the employer's insurer, under rules adopted by the department, a full and complete report of every accident, injury, or occupational disease to an employee arising out of or in the course of employment.
- (2) Every insurer transacting business under this chapter shall, under rules adopted by the department, make and file with the department the reports of every injury or occupational disease.
- (3) An employer, or insurer, or claims examiner who refuses or neglects to submit the reports necessary for the proper filing and review of a claim, as provided in subsection (1) or (2), shall be assessed a penalty of not less than \$200 or more than \$500 for each offense. The department shall assess and collect the penalty. An employer or insurer may contest a penalty assessment in a hearing conducted according to department rules."

Section 11. Section 39-71-501, MCA, is amended to read:

"39-71-501. Definition of uninsured employer. For the purposes of 39-71-501, 39-71-503 through 39-71-511, and 39-71-515 through 39-71-520, and [section 3], "uninsured employer" means an employer who has not properly complied with the provisions of 39-71-401."

Section 12. Section 39-71-506, MCA, is amended to read:

- "39-71-506. Lien for payment of unpaid penalties, fees, and interest, and claims—levy and execution. (1) (a) If, upon demand of the department, an uninsured employer refuses to make the payments to the fund that are provided for in 39-71-504(1)(a), (1)(c), and (2), the unpaid penalties, fees, and interest, and claims have the effect of a judgment against the employer at the time the payments become due. After issuing an order to the uninsured employer requiring payment of penalties, fees, and interest and after the due process requirements of 39-71-2401(2) and (3) are satisfied, the department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. From the time the judgment is deeketed entered on the docket, it becomes a lien upon all real property of the uninsured employer. After satisfying any due process requirements, the The department may enforce the judgment at any time within 10 years of creation of the lien.
- (b) A judgment lien filed pursuant to this section may be renewed for another 10-year period upon motion of the lienholder or by a judgment for that purpose.
- (2) The department may settle through compromise with an uninsured employer the amount due the fund under 39-71-504 subsection (1)."

Section 13. Section 39-71-520, MCA, is amended to read:

- "39-71-520. Time limit to appeal to mediation petitioning workers' compensation court failure to settle or petition. (1) A dispute concerning uninsured employers' fund benefits must be appealed to mediation within 90 days from the date of the determination by the department or the date that the determination is considered final.
- (2) (a) If the parties fail to reach a settlement through the mediation process, any party who disagrees with the department's determination may file a petition before the workers' compensation court.

- (b) A party's petition must be filed within 60 days of the mailing of the mediator's report provided for in 39-71-2411 unless the parties stipulate in writing to a longer time period for filing the petition.
- (c) If a settlement is not reached through mediation and a petition is not filed within 60 days of the mailing of the mediator's report, the determination by the department is final.
- (d) A mediator's report is not a determination by the department for the purposes of this section. A determination by the department is final if an appeal to mediation described in subsection (1) or a petition described in subsection (2)(a) is not filed within the required time period."

Section 14. Section 39-71-601, MCA, is amended to read:

"39-71-601. Statute of limitation on presentment of claim — waiver.

- (1) Except for a claim for benefits for occupational diseases pursuant to subsections (3) and (4), all claims in the case of personal injury or death must be forever barred unless signed by the claimant or the claimant's representative and presented in writing to the employer, the insurer, or the department, as the ease may be, within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act on the claimant's behalf.
- (2) The insurer may waive the time requirement up to an additional 24 months upon a reasonable showing by the claimant of:
 - (a) lack of knowledge of disability;
 - (b) latent injury; or
 - (c) equitable estoppel.
- (3) When a claimant seeks benefits for an occupational disease, the claimant's claims for benefits must be in writing, signed by the claimant or the claimant's representative, and presented in writing to the employer, the employer's insurer, or the department within 1 year from the date that the claimant knew or should have known that the claimant's condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, claims for death benefits must be presented in writing to the employer, the employer's insurer, or the department within 1 year from the date that the beneficiary knew or should have known that the decedent's death was related to an occupational disease.
- (4) Any dispute regarding the statute of limitations for filing time is considered a dispute that, after mediation pursuant to department rules, is subject to jurisdiction of the workers' compensation court."

Section 15. Section 39-71-613, MCA, is amended to read:

- "39-71-613. Regulation of attorney fees forfeiture of fee for noncompliance return of fee when claimant received benefits through fraud or deception. (1) When an attorney represents or acts on behalf of a claimant or any other party on any workers' compensation claim, the attorney shall submit to the department a contract of employment, on a form provided by the department, stating specifically the terms of the fee arrangement between the attorney and the claimant.
- (2) The department may regulate the amount of the attorney fees in any workers' compensation case. In regulating the amount of the fees, the department shall consider:
 - (a) the benefits the claimant gained due to the efforts of the attorney;

- (b) the time the attorney was required to spend on the case;
- (c) the complexity of the case; and
- (d) any other relevant matter the department may consider appropriate.
- (3) An attorney who violates a provision of this section, a rule adopted under this section, or an order fixing attorney fees under this section forfeits the right to any fees that the attorney collected or was entitled to collect.
- (4) If, after an attorney receives attorney fees and costs assessed against an insurer, the claimant is convicted of having obtained benefits through fraud or deception, the attorney fees and costs for obtaining the benefits must be returned to the insurer by the attorney.
- (5) (a) A dispute concerning the forfeiture or return of attorney fees is considered a dispute for which the workers' compensation court has original jurisdiction and is not subject to mediation or a contested case hearing.
- (b) The parties to a dispute referred to in subsection (5)(a) may voluntarily request a mediator appointed by the department and proceed to nonbinding mediation."

Section 16. Section 39-71-704, MCA, is amended to read:

- "39-71-704. Payment of medical, hospital, and related services—fee schedules and hospital rates—fee limitation. (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:
- (a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.
- (b) The insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.
- (c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.
- (d) (i) The insurer shall reimburse a worker for reasonable travel, lodging, meals, and miscellaneous expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement for state employees.
- (ii) Rules adopted under subsection (1)(d)(i) must provide for submission of claims, within 90 days from the date of travel, following notification to the claimant of reimbursement rules, must provide procedures for reimbursement receipts, and must require the use of the least costly form of travel unless the travel is not suitable for the worker's medical condition. The rules must exclude from reimbursement:
- (A) 100 miles of automobile travel for each calendar month unless the travel is requested or required by the insurer pursuant to 39-71-605;
- (B) travel to a medical provider within the community in which the worker resides;

- (C) travel outside the community in which the worker resides if comparable medical treatment is available within the community in which the worker resides, unless the travel is requested by the insurer; and
 - (D) travel for unauthorized treatment or disallowed procedures.
- (iii) An insurer is not liable for injuries or conditions that result from an accident that occurs during travel or treatment, except that the insurer retains liability for the compensable injuries and conditions for which the travel and treatment were required.
- (e) Pursuant to rules adopted by the department, an insurer shall reimburse a catastrophically injured worker's family or, if a family member is unavailable, a person designated by the injured worker or approved by the insurer for travel assistance expenditures in an amount not to exceed \$2,500 to be used as a match to those funds raised by community service organizations to help defray the costs of travel and lodging expenses incurred by the family member or designated person when traveling to be with the injured worker. These funds must be paid in addition to any travel expenses paid by an insurer for a travel companion when it is medically necessary for a travel companion to accompany the catastrophically injured worker.
- (f) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.
- (g) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:
- (i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition;
 - (ii) when necessary to monitor the status of a prosthetic device; or
- (iii) when the worker's treating physician believes that the care that would otherwise not be compensable under subsection (1)(g) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment. A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.
- (h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.
- (2) (a) The department shall annually establish a schedule of fees for medical services that are necessary for the treatment of injured workers. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule. Until the department adopts a fee schedule applicable to medical services provided by a hospital, insurers shall pay at the rate payable on June 30, 2007, for those services provided by a hospital. The rate must be adjusted by the annual

percentage increase in the state's average weekly wage, as defined in 39-71-116, factoring in changes in the hospital's medical service charges.

- (b) (i) The department may not set the rate for medical services at a rate greater than 10% above the average of the conversion factors used by *up to* the top five insurers or third-party administrators providing disability group health insurance coverage within this state who use the resource-based relative value scale to determine fees for covered services. To be included in the rate determination, the insurer or third-party administrator must occupy at least 1% of the market share for group health insurance policies as reported annually to the state auditor.
- (ii) The top five insurers or third-party administrators included under subsection (2)(b)(i) shall provide their standard conversion rates to the department.
- (iii) The department may use the conversion rates only for the purpose of determining average conversion rates under this subsection (2).
- (iv) The department shall maintain the confidentiality of the conversion rates.
- (c) The fee schedule rates established in subsection (2)(b) apply to medical services covered by the American medical association current procedural terminology codes in effect at the time the services are provided regardless of where the services are provided must be based on the following standards as adopted by the centers for medicare and medicaid services in effect at the time the services are provided, regardless of where services are provided:
 - (i) the American medical association current procedural terminology codes;
 - (ii) the healthcare common procedure coding system;
 - (iii) the medicare severity diagnosis-related groups;
 - (iv) the ambulatory payment classifications;
 - (v) the ratio of costs to charges for each hospital;
 - (vi) the national correct coding initiative edits; and
- (vii) the relative value units as adjusted annually using the most recently published resource-based relative value scale.
- (d) The department may establish additional coding standards to be utilized for use by providers when billing for medical services under this section.
- (3) (a) The department may establish by rule evidence-based utilization and treatment guidelines for primary and secondary medical services. There is a rebuttable presumption that the utilization and treatment guidelines established by the department are correct medical treatment for the injured worker
- (b) An insurer is not responsible for treatment or services that do not fall within the utilization and treatment guidelines adopted by the department unless the provider obtains prior authorization from the insurer. If prior authorization is not requested or obtained from the insurer, an injured worker is not responsible for payment of the medical treatment or services.
- (c) The department may establish by rule an independent medical review process for treatment or services denied by an insurer pursuant to this subsection (3) prior to mediation under 39-71-2401.
- (4) For services available in Montana, insurers are not required to may pay facilities located outside Montana rates that are greater than those allowed for

services delivered in Montana according to the workers' compensation fee schedule of the state where the medical service is performed.

- (5) (a) An insurer shall make payments at the fee schedule rate within 30 days of receipt of medical bills for which a claim has been accepted and for which no other disputes exist. Disputes must be defined by the department by rule.
- (b) Any unpaid balance under this subsection (5) accrues interest at 12% a year or 1% a month or a fraction of a month. If the charge is not paid within 30 days, interest on the unpaid balance accrues from the date of receipt of the original billing.
- (6) Once a determination has been made regarding the correct reimbursement amount, any overpayment made to a medical provider must be reimbursed to the insurer within 30 days of the determination. Any reimbursement amount remaining unpaid after 30 days accrues interest at 12% a year or 1% a month or a fraction of a month. Interest on the reimbursement amount remaining unpaid accrues from the date of receipt of the determination of the correct reimbursement amount.
- (5)(7) For a medical assistance facility or a critical access hospital licensed pursuant to Title 50, chapter 5, the rate for services is the usual and customary charge.
- (6)(8) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.
- (7)(9) After mediation pursuant to department rules, disputes an unresolved dispute between an insurer and a medical service provider regarding the amount of a fee for medical services must may be resolved by a hearing before the department upon written application of a party to the dispute brought before the workers' compensation court.
- (8)(10) (a) After the initial visit, the worker is responsible for \$25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.
- (b) "Visit", as used in this subsection (8) (10), means each time that the worker obtains services relating to a compensable injury or occupational disease from:
 - (i) a treating physician;
 - (ii) a physical therapist;
 - (iii) a psychologist; or
 - (iv) hospital outpatient services available in a nonhospital setting.
- (c) A worker is not responsible for the cost of a subsequent visit pursuant to subsection $\frac{(8)(a)}{(10)(a)}$ if the visit is for treatment requested by an insurer."

Section 17. Section 39-71-711, MCA, is amended to read:

- "39-71-711. Impairment evaluation ratings. (1) An impairment rating:
- (a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;
- (b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment published by the American medical association;
 - (c) must be expressed as a percentage of the whole person; and

- (d) must be established by objective medical findings.
- (2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator who is a if the injury falls within the scope of the evaluator's practice and if the evaluator is one of the following:
- (a) a physician or an osteopath licensed under Title 37, chapter 3, with admitting privileges to practice in one or more hospitals, if any, in the area where the physician or osteopath is located;
 - (b) a chiropractor licensed under Title 37, chapter 12;
- (c) a physician assistant licensed under Title 37, chapter 20, if there is not a physician as provided for in subsection (2)(a) in the area where the physician assistant is located;
 - (d) a dentist licensed under Title 37, chapter 4;
- (e) an advanced practice registered nurse licensed under Title 37, chapter 8; or
- (f) for a claimant residing out of state or upon approval of the insurer, an evaluator referred to in subsections (2)(a) through (2)(e) who is licensed or certified in another state. medical doctor or from an evaluator who is a chiropractor if the injury falls within the scope of chiropractic practice.
- (3) If the claimant and insurer cannot agree upon the rating, the mediation procedure in *Title 39, chapter 71*, part 24, of this chapter must be followed.
- (3) An evaluator must be a physician licensed under Title 37, chapter 3, except if the claimant's treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an evaluator under chapter 12.
- (4)(4) Disputes over impairment ratings are subject to the provisions of 39-71-605."

Section 18. Section 39-71-712, MCA, is amended to read:

- "39-71-712. Temporary partial disability benefits. (1) Subject to the provisions of subsection (6) (5), if prior to maximum healing an injured worker has a physical restriction and is approved to return to a modified or alternative employment that the worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a temporary work restriction, the worker qualifies for temporary partial disability benefits.
- (2) An insurer's liability for temporary partial disability must be the difference between the injured worker's average weekly wage received at the time of the injury, subject to a maximum of 40 hours a week, and the actual weekly wages earned during the period that the claimant is temporarily partially disabled, not to exceed the injured worker's temporary total disability benefit rate.
- (3) Temporary partial disability benefits are limited to a total of 26 weeks. The insurer may extend the period of temporary partial disability payments.
- (4)(3) Except as provided in subsection (6) (5), a worker is not eligible for temporary partial disability benefits or temporary total disability benefits if:
- (a) the worker has been released by the treating physician to return to a modified or alternative position that the individual is able and qualified to perform with the same employer;
- (b) the wages payable in the modified or alternative position, when combined with the temporary partial disability benefits, would result in an equivalent or higher wage than the worker received at the time of injury; and

- (c) the worker refuses to accept the modified or alternative position. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available to the worker for any reason except for the worker's incarceration as provided for in 39-71-744, resignation, or termination for disciplinary reasons caused by a violation of the employer's policies that provide for termination of employment and if the worker continues to be temporarily totally disabled as defined in 39-71-116.
- (5)(4) Temporary partial disability may not be credited against any permanent partial disability award or settlement under 39-71-703.
- (6)(5) Unless a collective bargaining agreement precludes an injured worker from working in a modified or alternative position with a different employer or includes criteria different from those outlined in this subsection (6) (5), an injured worker who has not reached maximum healing and who has a physical restriction may return to a modified or alternative position with a different employer at the same or a lower rate of wages as the rate paid by the employer at the time of injury if:
- (a) a modified or alternative employment with the employer at the time of injury is not provided and the injured worker and that employer agree to the modified or alternative position with a different employer;
- (b) a written description and all required duties of the modified or alternative position with a different employer are approved by the treating physician;
- (c) both the employer at the time of injury and the injured worker agree to the type of alternative work, the alternative employer, and the terms and conditions of employment, including payment of benefits and employment taxes for the modified or alternative position with a different employer;
- (d) an employee is not displaced as a result of the injured worker's placement in the modified or alternative position with a different employer; and
- (e) the employer at the time of injury, the different employer, and the injured worker agree in writing to the terms and conditions, including payment of benefits, covering the injured worker for subsequent injury, unemployment insurance, employment taxes, and liability and provide a copy of the agreement to the injured employee.
- (7)(6) Any additional expenses related to the modified or alternative position, including travel, equipment, or training, must be paid by either the employer at the time of injury or the different employer and may not be charged to or deducted from the wages or benefits of the injured employee.
- (8)(7) Notwithstanding a written agreement between the employer at the time of injury and a different employer, the employer at the time of injury is the primary employer if a dispute over wages, benefits, employment taxes, workers' compensation insurance, or other terms or conditions of employment occurs.
- (9)(8) The injured worker may refuse to accept a modified or alternative position with an employer other than the employer at the time of injury without penalty. If the injured worker is offered a modified or alternative position with a different employer, the injured worker must be given written notice of the right of refusal from the employer at the time of injury and the insurer prior to beginning work with the different employer."
 - **Section 19.** Section 39-71-727, MCA, is amended to read:
- "39-71-727. Payment for prescription drugs limitations. (1) For payment of prescription drugs, an insurer is liable only for the purchase of

generic-name drugs if the generic-name product is the therapeutic equivalent of the brand-name drug prescribed by the physician, unless the generic-name drug is unavailable.

- (2) If an injured worker prefers a brand-name drug, the worker may pay directly to the pharmacist the difference in the reimbursement rate between the brand-name drug and the generic-name product, and the pharmacist may bill the insurer only for the reimbursement rate of the generic-name drug.
- (3) The pharmacist may bill only for the cost of the generic-name product on a signed itemized billing, except if purchase of the brand-name drug is allowed as provided in subsection (1).
- (4) When billing for a brand-name drug, the pharmacist shall certify that the generic-name drug was unavailable.
- (5) The department shall establish $\frac{1}{2}$ a schedule of fees for prescription drugs.
- (6) The Except as provided in subsection (8), a pharmacist may not dispense more than a 30-day supply at any one time.
- (7) For purposes of this section, the terms "brand name" and "generic name" have the meanings provided in 37-7-502.
- (8) An insurer may not require a worker receiving benefits under this chapter to obtain medications from an out-of-state mail service pharmacy. However, an insurer may authorize up to a 90-day supply of medications from an in-state mail service pharmacy.
- (9) The provisions of this section do not apply to an agreement between a preferred provider organization and an insurer."

Section 20. Section 39-71-743, MCA, is amended to read:

- **"39-71-743.** Assignment or attachment of payments. (1) Payments under this chapter may are not be assignable, subject to attachment or garnishment, or held liable in any way for debts, except:
 - (a) as provided in 71-3-1118;
- (b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state law;
- (c) as provided in 53-2-612 or 53-2-613 for medical benefits paid pursuant to this chapter;
 - (d) as provided in 39-71-742; or
- (e) for workers' compensation benefits payable to an injured worker to pay restitution to an insurer whenever the injured worker is subject to court-ordered restitution for theft of workers' compensation benefits. The insurer shall notify the injured worker in writing of the withholding of any court-ordered restitution from the injured worker's benefits.
- (2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as follows:
- (a) for any periodic payment, an amount up to the percentage amount established in the guidelines promulgated by the department of public health and human services pursuant to 40-5-209; or

- (b) for any lump-sum award, an amount up to that portion of the award that is necessary to pay current child support and a past-due child support obligation.
- (3) After determination that the claim is covered under the Workers' Compensation Act, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided in 39-71-704(8) 39-71-704(10), a fee or charge is not payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer."

Section 21. Section 39-71-905, MCA, is amended to read:

- "39-71-905. Certification as person with disability eligibility for benefits under fund. (1) A person who wishes to be certified as a person with a disability for purposes of this part shall apply to the department on forms furnished by the department. The department shall conduct an investigation and shall issue a certificate to a person who, in the department's discretion, meets the requirements for certification. A person shall apply for certification before employment or within 60 days after the person becomes employed or reemployed and before an injury occurs that is covered by this part. The certification is effective on the date of employment or reemployment. Certification is effective on the date the application is approved for a person who applies for certification more than 60 days after employment or reemployment, but before an injury occurs retroactively to the date the department received the application.
- (2) If a claimant has met the provisions of subsection (1) and a subsequent claim has been accepted by an insurer, the claim is eligible for the benefits under the fund "

Section 22. Section 39-71-915, MCA, is amended to read:

- "39-71-915. Assessment of insurer employers definition collection. (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the application of any deductible, regardless of whether the employer or the insurer pays the losses:
 - (a) total compensation benefits paid; and
- (b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.
- (2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each employer insured by plan No. 3, the state fund. The assessment amount is the total amount paid by the fund in the preceding fiscal year and the expenses of administration less other realized income that is deposited in the fund. The total assessment amount to be collected must be allocated among plan No. 1 employers, plan No. 2 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate share of paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.
- (3) On or before May 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. The amount to be assessed against the

state fund must separately identify the amount attributed to claims arising before July 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or before April 30 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after July 1 in that year.

- (4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.
- (5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund assessment that is attributable to claims arising before July 1, 1990.
- (6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).
- (7) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (6). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment premium surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The assessment premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium. If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge first and the remaining amount applied to the premium due.
 - (8) (a) All assessments paid to the department must be deposited in the fund.
 - (b) Each plan No. 1 employer shall pay its assessment by July 1.
- (c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter by not later than 20 days following the end of the quarter.

- (d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1, 1990, by July 1.
- (e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the fund.
- (9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7) must be compared each year to the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator provided for by subsection (6) for the following year's assessment premium surcharge.
- (10) If the total assessment is less than \$500,000 \$1 million for any year, the department may defer the assessment amount for that year and add that amount to the assessment amount for the subsequent year."

Section 23. Section 39-71-2339, MCA, is amended to read:

"39-71-2339. Cancellation of coverage — twenty days' notice required. (1) The state fund may cancel an employer's coverage under this part for failure to report payroll or pay the premiums due or for another cause provided in the insurance policy. Cancellation may take effect only by written notice to the named insured and the department at least 20 days prior to the date of cancellation or, in cases of nonreporting of payroll or nonpayment of a premium, by failure of the employer to submit payroll reports or pay a premium within 20 days after the due date. The state fund shall notify the department of the names and effective dates of all policies canceled. However, the policy terminates on the effective date of a replacement or succeeding insurance policy issued to the insured. This section does not prevent the state fund from canceling an insurance policy before a replacement policy is issued to the insured. After the cancellation date, the employer has the same status as an employer who is not enrolled under the Workers' Compensation Act unless a replacement or succeeding insurance policy has been issued. Beginning January 1, 2006, notice Notice to the department under this section must be provided electronically.

- (2) The department:
- (a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for the state fund; and
- (b) shall, under terms and conditions acceptable to the department, accept notice of cancellation received from the agents recognized under subsection (2)(a) as the state fund's notice of cancellation.
- (3) (a) The department may assess a penalty of up to \$200 against the state fund if it does not comply with the notice requirement in subsection (1).
- (b) The penalty may be assessed for each policy cancellation that is not reported to the department in a timely manner.
- (b)(c) The state fund may contest the penalty assessment in a hearing conducted according to department rules."

Section 24. Section 39-71-2905, MCA, is amended to read:

- "39-71-2905. Petition to workers' compensation judge time limit on filing. (1) A If a claimant, or an insurer who, an employer alleged to be an uninsured employer, or the uninsured employers' fund has a dispute concerning any benefits under this chapter, 71 of this title it may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter. In addition, the district court that has jurisdiction over a pending action under 39-71-515 may request the workers' compensation judge to determine the amount of recoverable damages due to the employee. The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in this chapter 71 of this title. If the dispute relates to benefits due to a claimant under this chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under this chapter 71, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an insurer under this chapter 71 are the exclusive penalties and assessments that can be assessed by the workers' compensation judge against an insurer for disputes arising under this chapter 71.
- (2) A petition for a hearing before the workers' compensation judge must be filed within 2 years after benefits are denied."
 - **Section 25.** Section 39-73-104, MCA, is amended to read:
- **"39-73-104. Eligibility requirements for benefits.** Payment must be made under this chapter to any person who:
- (1) has silicosis, as defined in 39-73-101, that results in the person's total disability so as to render it impossible for the person to follow continuously any substantially gainful occupation;
- (2) has resided in and been an inhabitant of the state of Montana for 10 years or more immediately preceding the date of the application;
- (3) is not receiving, with respect to any month for which the person would receive a payment under this chapter, compensation under 39-71-115 equal to the sum of \$350."
- **Section 26. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.
- **Section 27. Codification instructions.** (1) [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to [section 1].
- (2) [Section 2] is intended to be codified as an integral part of Title 39, chapter 71, part 21, and the provisions of Title 39, chapter 71, part 21, apply to [section 2].
- (3) [Section 3] is intended to be codified as an integral part of Title 39, chapter 71, part 5, and the provisions of Title 39, chapter 71, part 5, apply to [section 3].
- **Section 28. Saving clause.** Except as provided in [section 30], [this act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].
- Section 29. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2009.

(2) [Sections 3, 11, 12, 15, 16, 24, 26 through 28, and 30 and this section] are effective on passage and approval.

Section 30. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to liens filed by the department of labor and industry on judgments issued against uninsured employers prior to [the effective date of this act] and to actions pending within the department of labor and industry or the workers' compensation court on [the effective date of this act] regarding benefit disputes and penalty disputes as provided in [sections 3, 12, and 24].

Approved April 1, 2009

CHAPTER NO. 113

[HB 129]

AN ACT CLARIFYING THAT POLITICAL SUBDIVISIONS MAY ADOPT FEDERAL FLOOD PLAIN MAPS TO COMPLY WITH THE NATIONAL FLOOD INSURANCE PROGRAM; AMENDING SECTIONS 76-5-103 AND 76-5-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-5-103, MCA, is amended to read:

"76-5-103. Definitions. As used in parts 1 through 4 of this chapter, unless the context otherwise requires, the following definitions apply:

- (1) "Artificial obstruction" means any obstruction that is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any flood plain or floodway that may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property.
- (2) "Channel" means the geographical area within either the natural or artificial banks of a watercourse or drainway.
- (3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.
- (4) "Designated flood plain" means a flood plain whose limits have been designated and established by order of the department pursuant to part 2 of this chapter.
- (5) "Designated floodway" means a floodway whose limits have been designated and established by order of the department pursuant to part 2 of this chapter.
- (6) "Drainway" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water less than 9 months of the year and having a bed and well-defined banks.
 - (7) "Establish" means construct, place, insert, or excavate.
- (8) "Flood" means the water of any watercourse or drainway that is above the bank or outside the channel and banks of the watercourse or drainway.

- (9) "Flood of 100-year frequency" means a flood magnitude expected to recur on the average of once every 100 years or a flood magnitude that has a 1% chance of occurring in any given year.
- (10) "Flood plain" means the area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of 100-year frequency, except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered "zone B" by the federal emergency management agency.
- (11) "Floodway" means the channel of a watercourse or drainway and those portions of the flood plain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainway.
- (12) "Natural obstruction" means any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the flood plain or floodway by a nonhuman cause.
- (13) "Owner" means any person who has dominion over, control of, or title to an obstruction.
- (14) "Political subdivision" means any incorporated city or town or any county organized and having authority to adopt and enforce land use regulations.
- (15) "Responsible political subdivision" means a political subdivision that has enacted land use regulations in accordance with parts 1 through 4.
- (16) (a) "Watercourse" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water at least 9 months of the year and having a bed and well-defined banks.
- (b) Upon order of the department, the term also includes any particular depression that would not otherwise be within the definition of watercourse."

Section 2. Section 76-5-201, MCA, is amended to read:

- "76-5-201. Program for delineation of flood plains and floodways. (1) The department shall initiate a comprehensive program for the delineation of designated flood plains and designated floodways for each watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data and may enter into arrangements with the United States geological survey, the United States army corps of engineers, or any other state or federal agency for the acquisition of data.
- (2) Before the department establishes by order a designated flood plain or a designated floodway, the department shall consult with the affected political subdivisions. Consultation must include but is not limited to the following:
- (a) specifically requesting that the political subdivisions submit pertinent data concerning flood hazards, including flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and other data that is considered appropriate;
- (b) notifying local officials, including members of the county commission, city council, and planning board, of the progress of surveys, studies, and investigations and of proposed findings, along with information concerning data and methods employed in reaching conclusions; and
- (c) encouraging local dissemination of information concerning surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the department.
- (3) Nothing in this part precludes a political subdivision from designating by ordinance or resolution, without prior state designation, flood plains and

floodways as designated by the United States federal emergency management agency and as necessary for compliance with the national flood insurance program if the department determines the designation is in compliance with parts 1 through 4 of this chapter."

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 114

[HB 137]

AN ACT REVISING LICENSE BENEFITS FOR LANDOWNERS ENROLLED IN THE HUNTER MANAGEMENT PROGRAM; ALLOWING EMPLOYEES OF LANDOWNERS TO RECEIVE THE FREE BIG GAME COMBINATION LICENSE ALLOTTED TO THE LANDOWNER; DEFINING "EMPLOYEE"; DELETING THE REQUIREMENT THAT THE COST OF A FREE LICENSE RECEIVED BY A LANDOWNER BE DEDUCTED FROM COMPENSATION PAID; AMENDING SECTION 87-1-266, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-266, MCA, is amended to read:

- "87-1-266. Hunter management program benefits for providing hunting access nonresident landowner limitation restriction on landowner liability. (1) As provided in 87-1-265, the department may establish a voluntary hunter management program to provide tangible benefits to private landowners enrolled in the block management program who grant access to their land for public hunting. The decision to enroll a landowner in the hunter management program is the responsibility of the department. Benefits may be granted as provided in this section and by rule.
- (2) As a benefit for enrolling property in the hunter management program, a resident landowner who becomes a cooperator in the program and who agrees to provide public hunting access may receive one Class AAA combination sports license, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale.
- (3) As a benefit for enrolling property in the hunter management program, a nonresident landowner who becomes a cooperator in the program and who agrees to provide public hunting access may receive one Class B-10 nonresident big game combination license, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale. The grant of a license under this subsection also qualifies the licensee to apply for a permit through the normal drawing process. The grant of a license under this subsection does not affect the limits established under 87-1-268 and 87-2-505.
- (4) (a) Instead of receiving the benefits provided in subsection (2) or (3), a landowner of record who becomes a cooperator in the hunter management program and who agrees to provide public hunting access may designate an immediate family member to receive a Class AAA combination sports license,

without charge, if the family member is a resident or a Class B-10 nonresident big game combination license, without charge, if the family member is a nonresident. An employee rather than a family member may be designated to receive a license.

- (b) For purposes of this subsection (4), an immediate family member means a parent, grandparent, child, or grandchild of the cooperator by blood or marriage, and a spouse, and includes a legally adopted children and child, a sibling of the cooperator's cooperator or spouse, and spouse's siblings and siblings' children or a niece or nephew.
- (c) If a cooperator elects to designate an immediate family member to receive a license pursuant to this subsection (4), the cost of the license must be deducted from hunter management program compensation paid to the cooperator.
- (c) For purposes of this subsection (4), the term "employee" means a person who works full time and year-round for the landowner as part of an active farm or ranch operation.
- (d) An immediate family member *or employee* who is designated to receive a license pursuant to this subsection (4) must be eligible for licensure under current Montana law and may not transfer the license by gift or sale.
- (e) The grant of a Class B-10 nonresident big game combination license to an immediate family member *or employee* pursuant to this subsection (4) does not affect the limits established in 87-1-268 and 87-2-505.
- (5) Any landowner who is enrolled in the block management program may receive the benefits provided under the hunter management program, as outlined in this section, and the benefits provided under the hunting access enhancement program, as outlined in 87-1-267.
- (6) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the hunter management program."

Section 2. Effective date. [This act] is effective on passage and approval. Approved April 1, 2009

CHAPTER NO. 115

[HB 139]

AN ACT ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO INTERVENE IN LITIGATION OR APPEALS ON FEDERAL FOREST MANAGEMENT PROJECTS IF THE DEPARTMENT DETERMINES THERE IS A SIGNIFICANT THREAT TO PUBLIC HEALTH AND SAFETY; AMENDING SECTION 76-13-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-702, MCA, is amended to read:

"76-13-702. Duties — **authority.** To implement the policy of 76-13-701, the department of natural resources and conservation:

(1) shall support sustainable forest management practices, including forest restoration, on public forests in Montana consistent with all applicable laws and administrative requirements:

- (2) shall provide technical information and educational assistance to nonindustrial, private forest landowners;
- (3) shall promote forest management activities within and adjacent to the wildland-urban interface and promote the implementation of community wildfire protection plans;
- (4) shall promote a viable forest and wood products industry and other businesses and individual activities that rely on public forest lands;
- (5) shall represent the state's interest in the federal forest management planning and policy process, including establishing cooperative agency status with federal agencies;
- (6) shall promote the development of an independent, long-term sustained yield calculation on Montana's federal forests;
- (7) has the authority to intervene in litigation or appeals on federal forest management projects that:
- (a) comply with the policy in 76-13-701 and in which local and state interests are clearly involved; or
- (b) involve fuel-loading conditions that the department considers to be a significant threat to public health and safety;
- (8) has the authority to enter into agreements with federal agencies to participate in forest management activities on federal lands; and
- (9) shall participate in and facilitate collaboration between traditional forest interests in reaching consensus-based solutions on federal land management issues."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 116

[HB 140]

AN ACT INCREASING THE AMOUNT BY WHICH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MAY EXCEED THE ANNUAL SUSTAINED HARVEST LEVEL USING CONTRACT HARVESTING IF THE DEPARTMENT IS ADDRESSING FOREST HEALTH CONCERNS; AMENDING SECTION 77-5-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-5-216, MCA, is amended to read:

- "77-5-216. Contract harvesting authorized. (1) Under direction of the board and after submitting the various portions of the sale for bid, as described in 77-5-201, the department is authorized to sell timber and forest products from contract harvesting sales through the competitive bidding process pursuant to 77-5-201(1) and (2) and to contract with firms and individuals for the removal of timber and forest products from state trust lands, the preparation of those materials into merchantable form, the transportation of those materials to a point of sale, and other purposes that the department determines to be necessary.
- (2) Except as provided in subsection (3), the department may not conduct contract harvesting on state trust lands in an amount greater than 10% of the annual sustained yield.

(3) If the department is addressing forest health concerns as provided in 77-5-217, the department may exceed the annual sustained harvest level by up to 5% 10% using contract harvesting, provided that the contract harvest volume in excess of the annual sustained harvest level contains no more than 25% merchantable sawlog volume."

Section 2. Federal funding for forest health concerns — authorized expenditure. (1) There is an account in the federal special revenue fund into which must be deposited specific federal appropriations intended to address forest health concerns.

(2) The funds in the account may be used for the purposes of 77-5-216.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 117

[HB 153]

AN ACT REVISING THE VOLUNTARY CLEANUP AND REDEVELOPMENT ACT; REVISING PROCEDURES GOVERNING APPLICATION FOR AND REVIEW OF VOLUNTARY CLEANUP PLANS; REVISING REIMBURSEMENT AND DISCLOSURE PROVISIONS; AND AMENDING SECTIONS 75-10-733, 75-10-735, AND 75-10-736, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-733, MCA, is amended to read:

"75-10-733. Voluntary cleanup plan and reimbursement of remedial action costs. (1) Any person may submit an application for the approval of a voluntary cleanup plan to the department under the provisions of this section.

- (2) A voluntary cleanup plan must include:
- (a) an environmental assessment of the facility that includes the information required in 75-10-734;
- (b) a remediation proposal that includes the information required in 75-10-734 and that meets the requirements of 75-10-721; and
- (c) the written consent of current owners of the facility or property to both the implementation of the voluntary cleanup plan and access to the facility by the applicant and its agents and the department.
- (3) (a) The applicant shall reimburse the department for any remedial action costs that the state incurs in the review and oversight of a voluntary cleanup plan.
- (b) If the applicant does not reimburse the department for its remedial action costs in the time required under 75-10-722, the department may discontinue the review or approval process of the voluntary cleanup plan or void its approval of the voluntary cleanup plan. The department may also take action to recover its outstanding costs.
- (4) The department may approve a voluntary cleanup plan that provides for phases of remediation or that addresses only a portion of the facility. To the extent that the original environmental assessment required under 75-10-734 addresses subsequent phases of remediation, the applicant may rely on that assessment when submitting voluntary cleanup plans for subsequent phases of remediation."

Section 2. Section 75-10-735, MCA, is amended to read:

- **"75-10-735. Public participation.** (1) Upon determination by the department that an application for a voluntary cleanup plan is complete pursuant to 75-10-736(1) *and* (2), the department shall publish a notice and brief analysis of the proposed plan in a daily newspaper of general circulation in the area affected and make the plan available to the public.
- (2) The notice must provide 30 days for submission of written comments to the department regarding the plan. Upon written request by 10 or more persons, by a group composed of 10 or more members, or by a local governing body of a city, town, or county within the comment period, the department shall conduct a public meeting at or near the facility regarding the proposed voluntary cleanup plan. The meeting must be held within 45 days of the date that written notice of the department's completeness determination is provided to the applicant under 75-10-736(1) 75-10-736(2).
- (3) The department shall consider and respond to relevant written or verbal comments submitted during the comment period or at the public meeting.
- (4) The department's decision on the final plan and the reasons for any significant modification of the final plan must be published in accordance with subsection (1).
- (5) Compliance with this section is considered to satisfy the public participation requirements of Title 75, chapter 1."

Section 3. Section 75-10-736, MCA, is amended to read:

- "75-10-736. Approval of voluntary cleanup plan time limits content of notice expiration of approval. (1) The department shall review for completeness, including adequacy and accuracy, in accordance with the requirements of 75-10-734, the environmental assessment component of an application for a voluntary cleanup plan and shall provide a written completeness notice to the applicant within 30 days after receipt of an application for a plan that would take 24 months or less to complete and within 60 days for a plan that would take more than 24 months to complete within 30 days of receipt. The completeness notice must note all deficiencies identified in the information submitted.
- (2) Once the department determines that the environmental assessment component of a voluntary cleanup plan is complete, the applicant may submit the remediation proposal component. The department shall review the remediation proposal for completeness, including adequacy and accuracy, in accordance with the requirements of 75-10-734, and shall provide a written completeness notice to the applicant within 30 days of receipt. The completeness notice must note all deficiencies identified in the information submitted.
- (2)(3) For Once the department determines that the application for a voluntary cleanup plan that is considered complete by the department pursuant to subsection subsections (1) and (2), the department shall provide formal written notification of approval or disapproval that the voluntary cleanup plan has been approved or disapproved no more than within 60 days for a plan that would take 24 months or less to complete and within 75 days for a plan that would take more than 24 months to complete after the department's determination that an application is complete, unless the applicant and the department agree to an extension of the review to a date certain. The review must be limited to a review of the materials submitted by the applicant, public comments, and documents or information readily available to the department. The department shall communicate with the applicant during the review period

to ensure that the applicant has the opportunity to address the public comments.

- (3)(4) (a) If the department receives five applications for review of either component of a voluntary cleanup plan in a calendar month, including applications deferred from prior months, the department may notify any additional applicants in that month that their plans must be reviewed in the order received. The 30-day 60-day period for department completeness review of deferred applications pursuant to subsection (1) must begin on the first day of the subsequent month that each plan is eligible for review.
- (b) The department shall discontinue accepting *either component of* voluntary cleanup applications when 15 applications are pending and are being reviewed by the department. The department shall establish a waiting list for applications and shall consider the applications in order of submittal.
- (c) If the department has received multiple eleanup applications for a voluntary cleanup at the same facility, the department shall notify all of the applicants and offer them the opportunity to submit a joint application.
- (4)(5) Consistent with the provisions of 75-10-707, the department may access the facility during review of *either component of* the application and implementation of the voluntary cleanup plan to confirm information provided by the applicant and verify that the cleanup is being conducted consistent with the approved plan.
- (5)(6) The department shall approve a voluntary cleanup plan if the department concludes that the plan meets the requirements specified in 75-10-734 and will attain a degree of cleanup and control of hazardous or deleterious substances that complies with the requirements of 75-10-721. Except for the period necessary for the operation and maintenance of the approved remediation proposal, the department may not approve a voluntary remediation proposal that would take longer than 60 months after department approval to complete.
- (6)(7) If a voluntary cleanup plan is not approved by the department, the department shall promptly provide the applicant with a written statement of the reasons for denial. The denial may be appealed to the board of environmental review in accordance with the provisions of 75-10-732(4).
- (7)(8) The approval of a voluntary cleanup plan by the department applies only to conditions at the facility that are known to the department at the time of department approval. If a voluntary remediation proposal is not initiated within 12 months and, except for the period necessary for the operation and maintenance of the approved remediation proposal, is not completed within 60 months after approval by the department, the department's approval lapses. However, the department may grant an extension of the time limit for completion of the voluntary cleanup plan.
- (8)(9) If reasonably unforeseeable conditions are discovered during implementation of a voluntary cleanup plan that were not identified in the environmental assessment component pursuant to subsection (1), substantially affect the risk to public health, safety, or welfare or the environment or, and substantially change the scope of the approved plan, the applicant shall promptly notify the department within 10 days of discovery. The department may require the applicant to submit an amendment to the approved plan to address the unforeseen conditions or may determine that a voluntary cleanup plan is no longer appropriate pursuant to 75-10-732(3).

- (9) Written notification by the department that a voluntary cleanup plan is not approved must state the basis for disapproval of the voluntary cleanup plan.
 - (10) Departmental approval is void if the applicant or the applicant's agents:
- (a) Failure of the applicant or the applicant's agents fail to materially comply with the voluntary cleanup plan approved by the department pursuant to this section renders the approval void.;
- (b) Submission of *submit* materially misleading information by the applicant or the applicant's agents in the application or during implementation of the voluntary cleanup plan renders the department approval void.; or
- (c) fail to report any newly discovered information to the department during the application process or implementation of the voluntary cleanup plan regarding releases or threatened releases of hazardous or deleterious substances within 10 days of discovery of that information.
- (11) Within 60 days after completion of the approved remediation proposal described in the voluntary cleanup plan approved by the department, the applicant shall provide to the department a certification from a qualified environmental professional that the plan has been fully implemented, including all documentation necessary to demonstrate the successful implementation of the plan, such as confirmation sampling, if necessary.
- (12) Except as provided in 75-10-738(2)(b), the department may not require financial assurance under this part for voluntary cleanup plans approved under this section.
- (13) If a person who would otherwise not be a liable person under 75-10-715(1) elects to undertake an approved voluntary cleanup plan, the person may not become a liable person under 75-10-715(1) by undertaking a voluntary cleanup if the person materially complies with the voluntary cleanup plan approved by the department pursuant to this section.
- (14) Immunity from liability under this section does not apply to a release that is caused by conduct that is negligent or grossly negligent or that constitutes intentional misconduct."

Approved April 1, 2009

CHAPTER NO. 118

[HB 179]

AN ACT REVISING THE DEFINITION OF COMPETITIVE ELECTRICITY SUPPLIER; AMENDING SECTIONS 69-3-2003 AND 90-3-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-2003, MCA, is amended to read:

"69-3-2003. **Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric power other than simple generation, transmission, or distribution. Ancillary services related to transmission services include energy losses, energy imbalances, scheduling and dispatching, load following, system protection, and reactive power.

- (2) "Common ownership" means the same or substantially similar persons or entities that maintain a controlling interest in more than one community renewable energy project even if the ownership shares differ between two community renewable energy projects. Two community renewable energy projects may not be considered to be under common ownership simply because the same entity provided debt or equity or both debt and equity to both projects.
- (3) "Community renewable energy project" means an eligible renewable resource that is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 5 megawatts in total calculated nameplate capacity.
- (4) (a) "Competitive electricity supplier" means any person, corporation, or governmental entity that is selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or cooperative.
- (b) The term does not include governmental entities selling electricity produced only by facilities generating less than 250 kilowatts that were in operation prior to 1990.
- (5) "Compliance year" means each calendar year beginning January 1 and ending December 31, starting in 2008, for which compliance with this part must be demonstrated.
 - (6) "Cooperative utility" means:
- (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or
 - (b) an existing municipal electric utility as of May 2, 1997.
- (7) "Eligible renewable resource" means a facility either located within Montana or delivering electricity from another state into Montana that commences commercial operation after January 1, 2005, and that produces electricity from one or more of the following sources:
 - (a) wind;
 - (b) solar;
 - (c) geothermal;
- (d) water power, in the case of a hydroelectric project that does not require a new appropriation, diversion, or impoundment of water and that has a nameplate rating of 10 megawatts or less;
 - (e) landfill or farm-based methane gas;
 - (f) gas produced during the treatment of wastewater;
- (g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;
- (h) hydrogen derived from any of the sources in this subsection (7) for use in fuel cells; and
- (i) the renewable energy fraction from the sources identified in subsections (7)(a) through (7)(h) of electricity production from a multiple-fuel process with fossil fuels.
 - (8) "Local owners" means:
 - (a) Montana residents or entities composed of Montana residents;
 - (b) Montana small businesses;

- (c) Montana nonprofit organizations;
- (d) Montana-based tribal councils;
- (e) Montana political subdivisions or local governments;
- (f) Montana-based cooperatives other than cooperative utilities; or
- (g) any combination of the individuals or entities listed in subsections (8)(a) through (8)(f).
- (9) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on January 1, 2005, including the public utility's successors or assignees.
- (10) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity generated by an eligible renewable resource that is tracked and verified by the commission and includes all of the environmental attributes associated with that 1 megawatt-hour unit of electricity production.
- (11) "Small customer" means a retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts.
- (12) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the community renewable energy project and other eligible renewable resources that are:
 - (a) located within 5 miles of the project;
 - (b) constructed within the same 12-month period; and
 - (c) under common ownership."

Section 2. Section 90-3-1003, MCA, is amended to read:

- **"90-3-1003. Research and commercialization account use.** (1) The research and commercialization account provided for in 90-3-1002 is statutorily appropriated, as provided in 17-7-502, to the board of research and commercialization technology, provided for in 2-15-1819, for the purposes provided in this section.
- (2) The establishment of the account in 90-3-1002 is intended to enhance the economic growth opportunities for Montana and constitute a public purpose.
 - (3) The account may be used only for:
- (a) loans that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana;
- (b) grants that are to be used for production agriculture research and commercialization projects, clean coal research and development projects, or renewable resource research and development projects to be conducted at research and commercialization centers located in Montana;
- (c) matching funds for grants from nonstate sources that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana; or
- (d) administrative costs that are incurred by the board in carrying out the provisions of this part.
- (4) At least 20% of the account funds approved for research and commercialization projects must be directed toward projects that enhance production agriculture.
- (5) (a) At least 30% of the account funds approved for research and commercialization projects must be directed toward projects that enhance clean coal research and development or renewable resource research and development.

- (b) If the board is not in receipt of a qualified application for a project to enhance clean coal research and development or renewable resource research and development, subsection (5)(a) does not apply.
- (6) An applicant for a grant shall provide matching funds from nonstate sources equal to 25% of total project costs. The requirement to provide matching funds is a qualifier, but not a criterion, for approval of a grant.
- (7) The board shall establish policies, procedures, and criteria that achieve the objectives in its research and commercialization strategic plan for the awarding of grants and loans. The criteria must include:
- (a) the project's potential to diversify or add value to a traditional basic industry of the state's economy;
- (b) whether the project shows promise for enhancing technology-based sectors of Montana's economy or promise for commercial development of discoveries;
- (c) whether the project employs or otherwise takes advantage of existing research and commercialization strengths within the state's public university and private research establishment;
- (d) whether the project involves a realistic and achievable research project design;
 - (e) whether the project develops or employs an innovative technology;
 - (f) verification that the project activity is located within the state;
- (g) whether the project's research team possesses sufficient expertise in the appropriate technology area to complete the research objective of the project;
- (h) verification that the project was awarded based on its scientific merits, following review by a recognized federal agency, philanthropic foundation, or other private funding source; and
 - (i) whether the project includes research opportunities for students.
- (8) The board shall direct the state treasurer to distribute funds for approved projects. Unallocated interest and earnings from the account must be retained in the account. Repayments of loans and any agreements authorizing the board to take a financial right to licensing or royalty fees paid in connection with the transfer of technology from a research and commercialization center to another nonstate organization or ownership of corporate stock in a private sector organization must be deposited in the account.
- (9) The board shall refer grant applications to external peer review groups. The board shall compile a list of persons willing to serve on peer review groups for purposes of this section. The peer review group shall review the application and make a recommendation to the board as to whether the application for a grant should be approved. The board shall review the recommendation of the peer review group and either approve or deny a grant application.
- (10) The board shall identify whether a grant or loan is to be used for basic research, applied research, or some combination of both. For the purposes of this section, "applied research" means research that is conducted to attain a specific benefit or solve a practical problem and "basic research" means research that is conducted to uncover the basic function or mechanism of a scientific question.
 - (11) For the purposes of this section:
- (a) "clean coal research and development" means research and development of projects that would advance the efficiency, environmental performance, and

cost-competitiveness of using coal as an energy source well beyond the current level of technology used in commercial service;

- (b) "renewable resource research and development" means research and development that would advance:
- (i) the use of any of the sources of energy listed in 69-3-2003(6) 69-3-2003(7) to produce electricity; and
- (ii) the efficiency, environmental performance, and cost-competitiveness of using renewable resources as an energy source well beyond the current level of technology used in commercial service."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to competitive electricity suppliers during the compliance year beginning January 1, 2009, for the renewable energy standard pursuant to 69-3-2004.

Approved April 1, 2009

CHAPTER NO. 119

[HB 203]

AN ACT REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO NOTIFY THE PUBLIC WHEN INTRODUCING OR TRANSPLANTING WOLVES, BEARS, AND MOUNTAIN LIONS ON PRIVATE OR PUBLIC PROPERTY; PROHIBITING THE TRANSPLANTATION OF ANY ANIMAL ONTO PRIVATE PROPERTY WITHOUT PRIOR PERMISSION FROM THE LANDOWNER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Notification of transplantation or introduction of wildlife. (1) When the decision to introduce or transplant a wolf, bear, or mountain lion is made pursuant to this part, the department shall:
- (a) provide public notice on its website and, when practical, by personal contact in the general area where the animal is released; and
- (b) notify the public through print and broadcast media of the availability of release information on the department's website.
- (2) Prior permission from the landowner is required before any animal may be transplanted onto private property.
- **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 87, chapter 5, part 7, and the provisions of Title 87, chapter 5, part 7, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 120

[HB 204]

AN ACT REVISING WORKERS' COMPENSATION LAW TO PROVIDE THAT AN APPLICANT WHO HAS BEEN CERTIFIED AS AN INDEPENDENT

CONTRACTOR IS NOT REQUIRED TO SUBMIT DOCUMENTS PREVIOUSLY SUBMITTED IF THE APPLICANT VERIFIES THAT THE PREVIOUSLY SUBMITTED DOCUMENTS ARE STILL CURRENT AND VALID OR THE DEPARTMENT DECIDES THE DOCUMENTS ARE STILL CURRENT AND VALID; AND AMENDING SECTION 39-71-417, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-417, MCA, is amended to read:

- "39-71-417. Independent contractor certification. (1) (a) (i) Except as provided in subsection (1)(a)(ii), a person who regularly and customarily performs services at a location other than the person's own fixed business location shall apply to the department for an independent contractor exemption certificate unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.
- (ii) An officer or manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) may apply, but is not required to apply, to the department for an independent contractor exemption certificate.
- (b) A person who meets the requirements of this section and receives an independent contractor exemption certificate is not required to obtain a personal workers' compensation insurance policy.
 - (c) For the purposes of this section, "person" means:
 - (i) a sole proprietor;
 - (ii) a working member of a partnership;
 - (iii) a working member of a limited liability partnership; or
 - (iv) a working member of a member-managed limited liability company.
- (2) The department shall adopt rules relating to an original application for or renewal of an independent contractor exemption certificate. The department shall adopt by rule the amount of the fee for an application or certificate renewal. The application or renewal must be accompanied by the fee.
- (3) The department shall deposit the application or renewal fee in an account in the state special revenue fund to pay the costs of administering the program.
- (4) (a) To Obtain an independent contractor exemption certificate, the applicant shall swear to and acknowledge the following:
- (i) that the applicant has been and will continue to be free from control or direction over the performance of the person's own services, both under contract and in fact; and
- (ii) that the applicant is engaged in an independently established trade, occupation, profession, or business and will provide sufficient documentation of that fact to the department.
- (b) For the purposes of subsection (4)(a)(i), an endorsement required for licensure, as provided in 37-47-303, does not imply or constitute control.
- (5) (a) An applicant for an independent contractor exemption certificate shall submit an application under oath on a form prescribed by the department and containing the following:
 - (a)(i) the applicant's name and address;
 - (b)(ii) the applicant's social security number;

- (e)(iii) each occupation for which the applicant is seeking independent contractor certification; and
- (d)(iv) other documentation as provided by department rule to assist in determining if the applicant has an independently established business.
- (b) The department shall adopt a retention schedule that maintains copies of documents submitted in support of an initial application or renewal application for an independent contractor exemption certificate for a minimum of 3 years after an application has been received by the department. The department shall, to the extent feasible, produce renewal applications that reduce the burden on renewal applicants to supply information that has been previously provided to the department as part of the application process.
- (c) An applicant who applies on or after July 1, 2011, to renew an independent contractor exemption certificate is not required to submit documents that have been previously submitted to the department if:
- (i) the applicant certifies under oath that the previously submitted documents are still valid and current; and
- (ii) the department, if it considers it necessary, independently verifies a specific document or decides that a document has not expired pursuant to the document's own terms and is therefore still valid and current.
- (6) The department shall issue an independent contractor exemption certificate to an applicant if the department determines that an applicant meets the requirements of this section.
- (7) (a) When the department approves an application for an independent contractor exemption certificate and the person is working under the independent contractor exemption certificate, the person's status is conclusively presumed to be that of an independent contractor.
- (b) A person working under an approved independent contractor exemption certificate has waived all rights and benefits under the Workers' Compensation Act and is precluded from obtaining benefits unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.
- (c) For the purposes of the Workers' Compensation Act, a person is working under an independent contractor exemption certificate if:
- (i) the person is performing work in the trade, business, occupation, or profession listed on the person's independent contractor exemption certificate; and
- (ii) the hiring agent and the person holding the independent contractor exemption certificate do not have a written or an oral agreement that the independent contractor exemption certificate holder's status with respect to that hiring agent is that of an employee.
- (8) Once issued, an independent contractor exemption certificate remains in effect for 2 years unless:
 - (a) suspended or revoked pursuant to 39-71-418; or
 - (b) canceled by the independent contractor.
- (9) If the department's independent contractor central unit denies an application for an independent contractor exemption certificate, the applicant may contest that decision as provided in 39-71-415(2)."

Approved April 1, 2009

CHAPTER NO. 121

[HB 223]

AN ACT REVISING LAWS GOVERNING THE REVOCATION OF HUNTING, FISHING, AND TRAPPING PRIVILEGES; AUTHORIZING THE REVOCATION OF THE PRIVILEGE TO HUNT, FISH, OR TRAP IF A PERSON COMMITS CRIMINAL MISCHIEF OR TRESPASS ON PROPERTY OWNED OR ADMINISTERED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS OR COMMITS CRIMINAL TRESPASS WHILE HUNTING, FISHING, OR TRAPPING; AND AMENDING SECTIONS 23-1-106, 45-6-101, 45-6-203, AND 87-1-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-1-106, MCA, is amended to read:

- **"23-1-106. Rules penalties enforcement.** (1) The department may make rules governing the use, occupancy, and protection of the lands and property under its control.
- (2) Any person who injures or damages any land or property under control of the department or private property thereon or therein or violates any of the rules made by the department relating to these areas pursuant to subsection (1) is guilty of a misdemeanor and shall be fined not more than \$500 or be imprisoned in the county jail for not more than 6 months.
- (3) It is unlawful and a misdemeanor punishable as provided in subsection (2) to refuse to exhibit for inspection any park permit, proof of age, or proof of residency upon request by a fish and game warden, park ranger, or peace officer.
- (4) The department shall enforce the provisions of this chapter and rules implementing this chapter. The director of the department shall employ all necessary and qualified personnel for enforcement purposes.
- (5) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:
 - (a) of search, seizure, and arrest;
- (b) to investigate activities in this state regulated by this chapter and rules of the department and the fish, wildlife, and parks commission; and
- (c) to report violations to the county attorney of the county in which they occur."
 - **Section 2.** Section 45-6-101, MCA, is amended to read:
- **"45-6-101. Criminal mischief.** (1) A person commits the offense of criminal mischief if the person knowingly or purposely:
- (a) injures, damages, or destroys any property of another or public property without consent;
- (b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;
 - (c) damages or destroys property with the purpose to defraud an insurer; or
- (d) fails to close a gate previously unopened that the person has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

- (2) A person convicted of criminal mischief must be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the restitution. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered must be made prior to the release of state jurisdiction over the person convicted
- (3) A person convicted of the offense of criminal mischief shall be fined not to exceed \$1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of \$1,000, injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, the offender shall be fined an amount not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.
- (4) Amounts involved in criminal mischiefs committed pursuant to a common scheme or the same transaction, whether against the public or the same person or several persons, may be aggregated in determining pecuniary loss.
- (5) A person convicted of or who forfeits bond or bail for committing an act of criminal mischief involving property owned or administered by the department of fish, wildlife, and parks is subject to an additional penalty as provided in 87-1-102(2)(e)."

Section 3. Section 45-6-203, MCA, is amended to read:

- **"45-6-203.** Criminal trespass to property. (1) Except as provided in 15-7-139, 70-16-111, and 76-13-116, a person commits the offense of criminal trespass to property if the person knowingly:
 - (a) enters or remains unlawfully in an occupied structure; or
 - (b) enters or remains unlawfully in or upon the premises of another.
- (2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.
- (3) A person convicted of or who forfeits bond or bail for committing an act of criminal trespass involving property owned or administered by the department of fish, wildlife, and parks or while hunting, fishing, or trapping is subject to an additional penalty as provided in 87-1-102(2)(f)."

Section 4. Section 87-1-102, MCA, is amended to read:

"87-1-102. Penalties — violation of state law. (1) A person who purposely, knowingly, or negligently violates a provision of this title or any other state law pertaining to fish and game is guilty of a misdemeanor, except if a felony is expressly provided by law, and shall be fined an amount not less than \$50 or more than \$1,000 or imprisoned in the county detention center for not more than 6 months, or both, unless a different punishment is expressly provided by law for the violation. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of that person's license and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period set by the court. If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss of privileges as

imposed by the court. The person shall surrender all licenses, as ordered by the court, to the department within 10 days.

- (2) (a) A person convicted of unlawfully taking, killing, possessing, or transporting a bighorn sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals shall be fined an amount not less than \$500 or more than \$2,000 or imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.
- (b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, or mountain lion or any part of these animals shall be fined an amount not less than \$300 or more than \$1,000 or imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture; unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.
- (c) A person convicted of unlawfully attempting to trap or hunt a game animal shall be fined an amount not less than \$200 or more than \$600 or imprisoned in the county detention center for not more than 60 days, or both.
- (d) A person convicted of purposely, knowingly, or negligently taking, killing, trapping, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined an amount not less than \$100 or more than \$1,000, imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current license and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period, and any pelts possessed unlawfully must be confiscated. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.
- (e) Upon conviction of or forfeiture of bond or bail imposed for an act of criminal mischief, as defined in 45-6-101, involving property owned or administered by the department, a person shall forfeit any current license and the privilege to hunt, fish, or trap in this state for at least 24 months from the date of conviction or forfeiture.
- (f) Upon conviction of or forfeiture of bond or bail imposed for committing an act of criminal trespass, as defined in 45-6-203, involving property owned or administered by the department or while hunting, fishing, or trapping, the privilege of a person to hunt, fish, or trap in this state may be revoked for up to 24 months from the date of conviction or forfeiture.

- (e)(g) A person convicted of hunting, fishing, or trapping while that person's license is forfeited or a privilege is denied shall be imprisoned in the county detention center for not less than 5 days or more than 6 months. In addition, that person may be fined an amount not less than \$500 or more than \$2,000.
- (3) If a person is convicted of illegally taking an animal described in 87-1-111 or 87-1-115 through the use of spotlights, nightscopes, or infrared scopes, the person is prohibited from fishing or hunting in the state for an additional 5 years following the ending date of the original prohibition period. In addition, the person, upon conviction or forfeiture of bond or bail, shall successfully complete, at the person's own expense, a department-sponsored hunter education course.
- (4) A person convicted or who has forfeited bond or bail under this section and whose license privileges are forfeited may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or permit during the period when license privileges have been forfeited. A person convicted of unlawfully purchasing, acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping license during the period when license privileges have been forfeited shall be fined an amount not less than \$500 or more than \$2,000, imprisoned in the county jail for not more than 60 days, or both.
- (5) A person convicted or who has forfeited bond or bail under this section and who has been ordered to pay restitution under the provisions of 87-1-111 or 87-1-115 may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later. If the violation involved the unlawful taking of a moose, a bighorn sheep, or a mountain goat, the person may not apply for a special license or enter a drawing for a special license or permit for the same species of game animal that was unlawfully taken for an additional period of 5 years following the ending date of the first 5-year period. A person convicted of unlawfully applying for any special license under Title 87, chapter 2, part 7, or unlawfully entering a drawing for a special license or permit shall be fined an amount not less than \$500 or more than \$2,000, imprisoned in the county detention center for not more than 60 days, or both.
- (6) (a) A person convicted of a second offense of any of the following offenses within 10 years of the first conviction or who is convicted of two or more of the following offenses at different times within a 10-year period is subject to the penalties provided in subsection (6)(b):
 - (i) hunting during a closed season;
 - (ii) spotlighting;
 - (iii) hunting without a license;
 - (iv) unlawful taking of more than double the legal bag limit;
 - (v) unlawful possession of more than double the legal bag limit; and
 - (vi) waste of game by abandonment in the field.
- (b) (i) A person convicted of the offenses in subsection (6)(a) in the time periods specified in subsection (6)(a) shall be fined an amount not less than \$2,000 or more than \$5,000 or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit all current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for 60 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period.

- (ii) The department shall notify the offender of the loss of privileges.
- (iii) The offender shall surrender all hunting, fishing, and trapping licenses to the department within 10 days after having received notice from the department that privileges have been revoked.
- (7) (a) A person convicted of a third offense of any of the following offenses within 10 years of the first conviction is subject to the penalties provided in subsection (7)(b):
 - (i) hunting during a closed season;
 - (ii) spotlighting;
 - (iii) hunting without a license; and
 - (iv) unlawful taking of more than double the legal bag limit.
- (b) (i) A person convicted of the offenses in subsection (7)(a) in the time period specified in subsection (7)(a) shall be fined an amount not less than \$5,000 or more than \$10,000 or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit all current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for life.
 - (ii) The department shall notify the offender of the loss of privileges.
- (iii) The offender shall surrender all hunting, fishing, and trapping licenses to the department within 10 days after having received notice from the department that privileges have been revoked.
- (8) Subject to sentencing restrictions, the court shall order a person who is convicted pursuant to this section to pay the costs of imprisonment under this section.
- (9) A mandatory forfeiture of privileges imposed pursuant to this section does not apply to juveniles. However, the court may, at its discretion, order forfeiture of a juvenile's license and privilege to hunt, fish, or trap upon conviction or forfeiture of bond or bail for a violation of this title.
- (10) Notwithstanding the provision of subsection (1), the penalties provided by this section are in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2.
- (11) If an administrative authority suspends a license, permit, or privilege to obtain a license or permit issued under this title, the administrative authority or the department shall notify the person of the suspension and the person shall surrender the license or permit to the department within 10 days.
- (12) For the purposes of this section, the terms "knowingly", "negligently", and "purposely" have the same meaning as provided in 45-2-101."

Approved April 1, 2009

CHAPTER NO. 122

[HB 230]

AN ACT REVISING LAWS GOVERNING LOCAL GOVERNMENT EMPLOYEE INCENTIVE PROGRAMS TO ALLOW FOR LIMITED INCENTIVE AWARDS FOR PARTICIPATION IN PROGRAMS DESIGNED TO IMPROVE EMPLOYEE HEALTH AND SAFETY; AMENDING SECTIONS 7-4-501, 7-4-505, AND 7-4-506, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-501, MCA, is amended to read:

- "7-4-501. Establishment of program award value limited. (1) A governing body may develop and administer an employee incentive award program to appropriately recognize and monetarily reward local government employees in a timely manner for:
- (a) suggestions or inventions that contribute to the efficiency, economy, or other improvement of local government by reducing costs of governmental operations; or
- (b) participation in or successful completion of a program designed to improve employee health or enhance employee safety.
 - (2) An award to an individual under this part may not exceed \$50 in value."

Section 2. Section 7-4-505, MCA, is amended to read:

- **"7-4-505. Eligibility for award.** (1) Except as provided in subsection (2), an employee may be eligible for an incentive award if:
 - (a) the employee's suggestion or invention results in:
 - (a) eliminating or reducing an agency's expenditures; or
- (b) improving services to the public by permitting more work to be accomplished without increasing the cost of governmental operations; or
- (b) the employee participates in or successfully completes a program designed to improve employee health or enhance employee safety.
- (2) (a) An employee may not be eligible for an incentive award *under subsection* (1)(a) if the employee's suggestion or invention directly relates to the employee's assigned duties and responsibilities unless the proposal is so superior or meritorious as to warrant warrants special recognition as determined by the governing body.
- (b) Suggestions or inventions relating to the following matters may not be considered for awards:
 - (i) personnel grievances;
 - (ii) classification and pay of positions;
 - (iii) matters recommended for study or review; and
- (iv) proposals resulting from assigned or contracted audits, studies, surveys, reviews, or research."

Section 3. Section 7-4-506, MCA, is amended to read:

"7-4-506. Agency head to grant award. After an agency implements an employee's suggestion or invention and the amount of monetary savings to the local government is estimated or an employee participates in or successfully completes a health or safety program, an agency head, upon written application to and approval from the governing body and the incentive awards advisory council, if there is such a council, may grant an incentive award to an employee whose proposal or activity meets the requirements of 7-4-505."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 123

[HB 244]

AN ACT REVISING THE CIRCUMSTANCES UNDER WHICH A COUNTY OFFICER MAY BE ABSENT FROM THE STATE WITHOUT FORFEITING THE OFFICER'S OFFICE; AMENDING SECTION 7-4-2208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2208, MCA, is amended to read:

- **"7-4-2208. Absence of county officers from state.** (1) Subject to subsection (2) and except as provided in 10-1-1008, if a county officer is absent from the state for a period of more than 60 days or for a period longer than 15 30 consecutive days without the consent of the board of county commissioners, the officer forfeits the office.
- (2) The sheriff, undersheriff, or deputy sheriffs of any county may absent themselves from the state, with the permission of the board, for a period of more than 60 days for the sole purpose of attending a recognized and accredited law enforcement training school without effecting forfeiture of their offices.
- (2) If the county officer who is seeking consent to be absent from the state for more than 30 consecutive days is a member of the board of county commissioners, the officer may participate in the vote on the question of providing consent for the absence."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 124

[HB 270]

AN ACT REVISING FLOOD PLAIN LAWS; CLARIFYING THE DEFINITION OF "FLOOD PLAIN"; ELIMINATING THE REQUIREMENT FOR CONSTRUCTING STRUCTURES ON FILL WITHIN THE FLOOD PLAIN; AND AMENDING SECTIONS 76-5-103 AND 76-5-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-5-103, MCA, is amended to read:

- **"76-5-103. Definitions.** As used in parts 1 through 4 of this chapter, unless the context otherwise requires, the following definitions apply:
- (1) "Artificial obstruction" means any obstruction that is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any flood plain or floodway that may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property.
- (2) "Channel" means the geographical area within either the natural or artificial banks of a watercourse or drainway.

- (3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.
- (4) "Designated flood plain" means a flood plain whose limits have been designated and established by order of the department.
- (5) "Designated floodway" means a floodway whose limits have been designated and established by order of the department.
- (6) "Drainway" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water less than 9 months of the year and having a bed and well-defined banks.
 - (7) "Establish" means construct, place, insert, or excavate.
- (8) "Flood" means the water of any watercourse or drainway that is above the bank or outside the channel and banks of the watercourse or drainway.
- (9) "Flood of 100-year frequency" means a flood magnitude expected to recur on the average of once every 100 years or a flood magnitude that has a 1% chance of occurring in any given year.
- (10) "Flood plain" means the area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of 100-year frequency, except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered "zone B" or a "shaded Xzone" by the federal emergency management agency.
- (11) "Floodway" means the channel of a watercourse or drainway and those portions of the flood plain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainway.
- (12) "Natural obstruction" means any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the flood plain or floodway by a nonhuman cause.
- (13) "Owner" means any person who has dominion over, control of, or title to an obstruction.
- (14) "Political subdivision" means any incorporated city or town or any county organized and having authority to adopt and enforce land use regulations.
- (15) "Responsible political subdivision" means a political subdivision that has enacted land use regulations in accordance with parts 1 through 4.
- (16) (a) "Watercourse" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water at least 9 months of the year and having a bed and well-defined banks.
- (b) Upon order of the department, the term also includes any particular depression that would not otherwise be within the definition of watercourse."

Section 2. Section 76-5-402, MCA, is amended to read:

- **"76-5-402. Permissible uses within flood plain but outside floodway.** Permits must must be granted for the following uses within that portion of the flood plain not contained within the designated floodway to the extent that they are not prohibited by any other ordinance, regulation, or statute:
 - (1) any use permitted in the designated floodway;
- (2) structures, including but not limited to residential, commercial, and industrial structures, provided that:
 - (a) the structures meet the minimum standards adopted by the department;

- (b) residential structures are constructed on fill such so that the lowest floor elevation, (including basements), is 2 feet above the 100-year flood elevation;
- (c) commercial and industrial structures are either constructed on fill as specified in subsection (2)(b) or are adequately floodproofed up to an elevation no lower than 2 feet above the 100-year flood elevation. The floodproofing must be in accordance with the minimum standards adopted by the department."

Approved April 1, 2009

CHAPTER NO. 125

[HB 283]

AN ACT REVISING WORKERS' COMPENSATION LAWS; PROVIDING FOR VOLUNTARY CERTIFICATION OF WORKERS' COMPENSATION CLAIMS EXAMINERS; REQUIRING A LETTER OF INTENT TO CREATE A NEW EXEMPTION UNDER THE WORKERS' COMPENSATION ACT; ESTABLISHING CRITERIA FOR CERTIFYING CLAIMS EXAMINERS; AMENDING SECTION 2-6-109, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, section 39-71-105, MCA, states that it is public policy for the workers' compensation system to provide protections for employees that are at "reasonably constant rates" for employers; and

WHEREAS, over time the types of occupations, persons, and businesses that are exempt from the coverage requirements of the Workers' Compensation Act have continually expanded; and

WHEREAS, solvency of the workers' compensation system requires a broad base of coverage.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Letter of intent required to create new exemption. (1) A bill draft request to create and list an additional exemption under Title 39, chapter 71, must include a letter of intent not exceeding 1,000 words that addresses the criteria in subsection (2).
- (2) The letter of intent must contain a good faith effort to provide the following:
- (a) an estimate of the number of employees statewide who would become exempt from coverage under the Workers' Compensation Act;
- (b) an estimate of the number of employers statewide who would no longer be required to provide workers' compensation coverage to the exempt workers;
- (c) an analysis of which entity would become responsible for the costs of injury:
- (d) an analysis of the change in potential liability to an employer if an exempt employee is injured;
- (e) an estimate of the reduction in total state payroll for the occupation for which the exemption is being requested; and
 - (f) an explanation of the possible social costs of allowing the exemption.
- (3) The legislative fiscal analyst shall provide to the bill draft requester an independent assessment of the letter of intent.

- (4) The department of labor and industry shall provide an independent assessment of the letter of intent regarding information that is within the expertise of that department.
 - (5) For the purposes of this section, a letter of intent is a public record.
- (6) A bill draft request submitted without this letter of intent may not be processed for introduction to the legislature.

Section 2. Voluntary certification program for claims examiners—purpose—rulemaking—advisory committee—continuing education. (1) Pursuant to the public policy stated in 39-71-105, accurate and prompt claims handling practices are necessary to provide appropriate service to injured workers, employers, and medical providers. In order to further that public policy, the purpose of this section is to authorize the department to establish a voluntary certification program for claims examiners. The department shall administer the voluntary certification program.

- (2) The voluntary certification program is intended to improve the handling of workers' compensation claims by:
- (a) establishing minimum qualifications and procedures for certifying claims examiners;
 - (b) requiring continuing education for certified claims examiners;
- (c) better educating certified claims examiners about changes in the law; and
- (d) providing standards for the qualifications of instructors, courses, and materials.
- (3) The department shall adopt rules for the certification of workers' compensation claims examiners, providing for:
 - (a) minimum qualifications;
 - (b) examination;
 - (c) 2-year certification and renewal;
 - (d) continuing education requirements; and
- (e) a waiver of the examination requirement for an individual requesting certification as a claims examiner within the first 12 months after the department has adopted the initial rules under this subsection (3). The waiver is available only to an individual who has been actively engaged in the work of a claims examiner in this state, working on workers' compensation claims for 5 of the 7 years immediately preceding the individual's application for certification under this section.
- (4) The department may appoint an advisory committee composed of injured workers, insurers, self-insured employers, third-party administrators, claims examiners, and members of the public to advise the department on setting standards for certification and continuing education.
 - (5) The department shall maintain:
 - (a) a list of all certified claims examiners; and
 - (b) the following records related to certified claims examiners:
 - (i) documentation of current and historical certifications;
 - (ii) beginning and ending dates of certifications; and
 - (iii) continuing education records.

- (6) The training curriculum and continuing education used by insurers, self-insured employers, and third-party administrators for claims examiners must relate to the state workers' compensation system or to interactions among injured workers, medical providers, and employers. The training curriculum, course content, instructors, materials, instructional format, and the sponsoring organization must be approved by the department as qualifying for use in certification of claims examiners. The department may offer specialized training for continuing education purposes that is exempt from the approval requirements of this subsection.
- (7) The department shall determine the number of credit hours to be awarded for completion of an approved training curriculum or department-approved specialized training. The department may accept continuing education credits approved by the insurance commissioner's office as provided in Title 33, chapter 17, the office of public instruction, or the state bar of Montana to satisfy the continuing education requirements for renewal of the claims examiner certification. The department, in its discretion, may accept continuing education credits from other accrediting sources.
- (8) The department shall by rule adopt fees commensurate with the costs of administering the voluntary certification program. All fees collected by the department as provided in this section must be deposited in the workers' compensation administration fund provided for in 39-71-201. The department may charge a fee for the certification program, including but not limited to fees for:
 - (a) initial certification, including examination;
 - (b) certification renewal;
- (c) approval of training curricula, including continuing education courses, course content, instructors, materials, instructional format, and sponsoring organizations; and
 - (d) specialized training offered by the department.

Section 3. Section 2-6-109, MCA, is amended to read:

- "2-6-109. Prohibition on distribution or sale of mailing lists exceptions penalty. (1) Except as provided in subsections (3) through (9), in order to protect the privacy of those who deal with state and local government:
- (a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and
- (b) a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.
- (2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.
- (3) This section does not prevent an individual from compiling a mailing list by examination of records that are otherwise open to public inspection.
 - (4) This section does not apply to the lists of:
- (a) registered electors and the new voter lists provided for in 13-2-115, to lists of:
 - (b) the names of employees governed by Title 39, chapter 31, to lists of;
- (c) persons holding driver's licenses or Montana identification cards provided for under 61-5-127, or to lists of;

- (d) persons holding professional or occupational licenses governed by Title 23, chapter 3; Title 37, chapters 1 through 4, 6 through 29, 31, 34, 35 through 36, 40, 47, 48, 50, 51, 53, 54, 60, 65 through 69, 72, and 73, and 76; and Title 50, chapters 39, 72, 74, and 76; or
 - (e) persons certified as claims examiners under [section 2].
- (5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to state law or subject to Title 33, chapter 17.
- (6) This section does not apply to the right of access by Montana law enforcement agencies.
- (7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.
- (8) This section does not apply to the use by the public employees' retirement board of a mailing list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the mailing list is not released to the organization.
- (9) This section does not apply to a public school providing lists of graduating students to representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.
- (10) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."
- **Section 4. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 8, and the provisions of Title 2, chapter 8, apply to [section 1].
- (2) [Section 2] is intended to be codified as an integral part of Title 39, chapter 71, part 3, and the provisions of Title 39, chapter 71, part 3, apply to [section 2].

Section 5. Effective date. [This act] is effective July 1, 2009.

Approved April 1, 2009

CHAPTER NO. 126

[HB 288]

AN ACT BANNING REPRODUCTIVE HUMAN CLONING; AND ESTABLISHING PENALTIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 3], the following definitions apply:

- (1) "Embryo" means an organism of the species Homo sapiens from the single cell stage to 8 weeks of development.
- (2) "Fetus" means an organism of the species Homo sapiens from 8 weeks of development until complete expulsion or extraction from a woman's body or

removal from an artificial womb or other similar environment designed to nurture the development of the organism.

- (3) "Oocyte" means the human female germ cell, the egg.
- (4) "Reproductive human cloning" means human cloning intended to result in the gestation or birth of a child who is genetically identical to another conceptus, embryo, fetus, or human being, living or dead.
- (5) "Somatic cell" means a diploid cell, having a complete set of chromosomes, obtained or derived from a living or deceased human body at any stage of development.

Section 2. Prohibited acts — **penalties.** (1) A person or entity, public or private, may not knowingly:

- (a) perform or attempt to perform reproductive human cloning;
- (b) participate in an attempt to perform reproductive human cloning;
- (c) ship, transfer, or receive for any purpose an embryo for reproductive human cloning; or
- (d) ship, transfer, or receive, in whole or in part, any oocyte, embryo, fetus, or human somatic cell for the purpose of reproductive human cloning.
 - (2) A violation of subsection (1)(a) or (1)(b), or both, is a felony.
 - (3) A violation of subsection (1)(c) or (1)(d), or both, is a misdemeanor.
- (4) All fines collected under this section must be deposited in the state general fund.
- Section 3. Scientific research exception. (1) [Sections 1 and 2] do not restrict areas of scientific research not specifically prohibited by [sections 1 and 2], including research into the use of nuclear transfer or other cloning techniques to produce molecules, deoxyribonucleic acid, tissues, organs, plants, cells other than human embryos, or animals other than humans.
- (2) [Sections 1 and 2] do not apply to in vitro fertilization, the administration of fertility-enhancing drugs, or other medical procedures used to assist a woman in becoming or remaining pregnant if the procedure is not specifically intended to result in the gestation or birth of a child who is genetically identical to another conceptus, embryo, fetus, or human being, living or dead.
- (3) Nothing in this section prohibits embryonic stem cell research using embryonic stem cell lines of uncloned origin.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 3].

Approved April 1, 2009

CHAPTER NO. 127

[HB 294]

AN ACT ALLOWING A NATURAL GAS UTILITY THAT HAS RESTRUCTURED TO ACQUIRE NATURAL GAS PRODUCTION AND GATHERING RESOURCES AND INCLUDE THEM IN THE RATE BASE; ESTABLISHING PROCEDURES FOR THE ACQUISITION AND INCLUSION OF THE RESOURCES IN THE RATE BASE; AMENDING

SECTIONS 69-3-1402 AND 69-3-1404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

- **Section 1. Statement of purpose.** The purpose of [sections 1 through 4] is to establish procedures for a natural gas utility that has restructured pursuant to this part to acquire rate-based facilities.
- **Section 2.** Acquisition of rate-based facilities. A natural gas utility that provides its customers with a choice of natural gas suppliers pursuant to 69-3-1403 and that does not own natural gas production and gathering resources on [the effective of this act] may acquire those facilities and place them in the rate base as provided in [sections 1 through 4].
- Section 3. Application and approval of natural gas production and gathering resources. (1) A natural gas utility may apply to the commission for approval of a natural gas production and gathering resource that is not yet procured.
- (2) (a) Within 45 days of the natural gas utility's submission of an application under subsection (1), the commission shall determine whether or not the application is adequate and in compliance with the commission's minimum filing requirements.
- (b) If the commission determines that the application is inadequate, the commission shall, within 10 days of the determination, provide written notice to the natural gas utility of the deficiencies.
- (3) The commission shall issue an order within 270 days of receipt of an adequate application for approval of an application to lease or acquire an equity interest in natural gas production and gathering resources.
- (4) To facilitate timely consideration of an application, the commission may initiate proceedings to evaluate planning and procurement activities related to a potential resource procurement prior to the natural gas utility's submission of an application for approval.
- (5) (a) The commission may approve or deny, in whole or in part, an application for approval of a natural gas production resource, a gathering resource, or both.
- (b) The commission may consider all relevant information known up to the time that the administrative record in the proceeding is closed in the evaluation of an application for approval.
- (c) A commission order granting approval of an application must find that the application is in whole or in part in the public interest.
- (d) The commission order may include a provision for allowable natural gas production and gathering assets cost of service when the utility has filed an application for the lease or acquisition of an equity interest in natural gas production and gathering resources.
- (e) The commission order may include other findings that the commission determines necessary.
- (f) A commission order that denies approval must describe why the findings required in subsection (5)(c) could not be reached.
- (6) Except as otherwise provided in this part, if the commission has issued an order containing the findings required under subsection (5)(c), the commission may not subsequently disallow the recovery of costs related to the

approved natural gas production and gathering resource based on contrary findings.

- (7) Nothing in this section limits the commission's ability to, in any future rate proceeding, inquire into the manner in which the natural gas utility has managed, dispatched, operated, or maintained any resource or managed any natural gas supply purchase agreement as part of its overall resource portfolio. The commission may subsequently disallow rate recovery for the costs that result from the failure of a natural gas utility to reasonably manage, dispatch, operate, maintain, or administer natural gas production and gathering resources in a manner consistent with [sections 1 through 4] and commission rules.
- (8) By March 31, 2010, the commission shall adopt rules prescribing minimum filing requirements for applications filed pursuant to this part.
- Section 4. Use of natural gas production and gathering resources. (1) Natural gas production and gathering resources acquired by a natural gas utility pursuant to this part:
- (a) must be used by the natural gas utility to serve and benefit customers that have not made a choice of natural gas suppliers within the natural gas utility's Montana service territory; and
- (b) may not be removed from the rate base unless the commission finds that customers of the natural gas utility will not be adversely affected.
- (2) Natural gas production and gathering assets cost of service may not be allocated to a customer being served by an alternative natural gas supplier.

Section 5. Section 69-3-1402, MCA, is amended to read:

- **"69-3-1402. Definitions.** As used in this part, the following definitions apply:
- (1) "Customer" means a natural gas customer or consumer of natural gas supply or natural gas transmission facilities, storage facilities, or distribution facilities.
- (2) "Distribution facilities" means those facilities that are not transmission facilities:
- (a) by and through which natural gas is received from a transmission services provider and transmitted to the customer; and
 - (b) operated by a distribution services provider.
- (3) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of natural gas to the public.
- (4) "Natural gas production and gathering assets cost of service" means a return on invested capital and all costs associated with the acquisition, construction, administration, operation, and maintenance of a plant or equipment, minerals, and mineral rights owned or leased by a public utility and used for natural gas production and gathering.
- (5) "Natural gas production and gathering resources" means plants or equipment, minerals, and mineral rights used to extract natural gas from the earth and to collect, purify, measure, regulate, compress, and transport natural gas from its place of production to its connection with a transmission facility.
- (4)(6) "Natural gas supplier" means a person, including aggregators, market aggregators, brokers, and marketers, licensed by the commission that is offering to sell natural gas to retail customers in the state of Montana.

- (5)(7) "Natural gas utility" means a utility regulated by the commission on May 2, 1997, that provides natural gas services to the public.
- (6)(8) "Open access" means that a natural gas utility has made its transmission facilities, storage facilities, or distribution facilities available to all natural gas suppliers, transmission services providers, distribution services providers, and customers on a nondiscriminatory and comparable basis.
- (7)(9) "Performance-based ratemaking" means those forms of regulation that include but are not limited to the use of revenue indexing, price indexing, ranges of authorized return, gas cost indexing, and innovative use of utility-related assets and activities, such as system sales of excess natural gas supplies, release of upstream pipeline capacity, and performance of billing services for other natural gas suppliers. A performance-based regulation may also include a mechanism for automatic annual adjustments of revenue to prices to reflect changes in any index adopted for the implementation of the performance-based form of regulation.
- (8)(10) "Storage facilities" means those facilities that are owned, controlled, or operated by a person offering storage service for natural gas and generally means any underground reservoir suitable for the storage of natural gas and the facilities used to inject and withdraw natural gas into and out of that underground reservoir.
 - (9)(11) "Transition costs" means:
- (a) a natural gas utility's net, verifiable production-related and gathering-related costs, including costs of capital, that become unrecoverable as a result of customer choice and open access. These costs include but are not limited to:
- (i) regulatory assets and deferred charges that exist as a result of current regulatory practices and that may be accounted for up to the point in time that the commission issues a final order in a docket addressing transition costs, including all costs, expenses, and fees related to the issuance of transition bonds:
- (ii) the above-market costs associated with existing gas supply commitments;
- (iii) other natural gas utility investments rendered uneconomic as a result of implementation of customer choice and open access;
- (iv) the costs associated with renegotiation or buyout of existing natural gas purchase contracts; and
- (v) the costs associated with the issuance of any related transition bonds authorized by the commission pursuant to 69-3-1403.
- (b) the costs of refinancing or retiring debt or equity capital of the natural gas utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.
- (10)(12) "Transmission facilities" means those facilities owned, controlled, and operated by a transmission services provider that are used to transport natural gas from a gathering line or storage facility to a distribution facility, storage facility, or end-use customer.
- (11)(13) "Transmission services provider" means a person controlling or operating transmission facilities.

- (12)(14) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits program costs.
- (13)(15) "Universal system benefits programs" means public purpose programs for cost-effective local energy conservation, low-income energy bill discounts, low-income weatherization, and emergency low-income energy bill assistance."
 - **Section 6.** Section 69-3-1404, MCA, is amended to read:
- "69-3-1404. Functional separation code of conduct emergency services customer protection. (1) A Except as provided in [sections 1 through 4], a natural gas utility that provides customer choice and open access on its system shall:
- (a) functionally separate its natural gas production and gathering *resources* from its natural gas transmission, storage, and distribution services and remove natural gas production and gathering *resources* from the rate base;
- (b) adopt and comply with commission-approved standards of conduct to be included in a tariff to govern its natural gas transmission, storage, and distribution services; and
- (c) provide emergency natural gas supply and related services to the extent necessary to maintain the operational integrity of the transmission system as determined by the commission.
- (2) The commission shall develop standards that protect consumers and natural gas suppliers from anticompetitive and abusive practices.
- (3) This part does not reduce or otherwise change the authority of the commission to review the prudence of natural gas purchases made by a natural gas utility for its customers that do not have a choice or that have not made a choice of natural gas suppliers or have not been assigned a natural gas supplier."
- **Section 7.** Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 69, chapter 3, part 14, and the provisions of Title 69, chapter 3, part 14, apply to [sections 1 through 4].
 - Section 8. Effective date. [This act] is effective on passage and approval.
- **Section 9. Applicability.** [This act] applies to applications received by the public service commission after March 31, 2010.

Approved April 1, 2009

CHAPTER NO. 128

[HB 308]

AN ACT ALLOWING A SENTENCING COURT TO ORDER THAT AN OFFENDER MAKE A DONATION OF FOOD TO A FOOD BANK PROGRAM TO FULFILL ALL OR PART OF A SENTENCE; AMENDING SECTION 46-18-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or

nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

- (i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 vears for a felony: or
- (ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.
- (b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.
- (2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.
- (3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:
 - $\frac{(a)}{(i)}$ a fine as provided by law for the offense;
- (b)(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;
- (e)(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;
 - (d)(iv) commitment of:
- (i)(A) an offender not referred to in subsection (3)(d)(ii) (3)(a)(iv)(B) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), and 45-5-625(4); or
- (ii)(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;
- (e)(v) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;
- (f)(vi) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;
- (g)(vii) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or
- (h)(viii) any combination of subsections (2) through (3)(g) and (3)(a)(i) through (3)(a)(vii).

- (b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.
- (4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) of this section may include but are not limited to:
 - (a) limited release during employment hours as provided in 46-18-701;
 - (b) incarceration in a detention center not exceeding 180 days;
 - (c) conditions for probation;
 - (d) payment of the costs of confinement;
 - (e) payment of a fine as provided in 46-18-231;
 - (f) payment of costs as provided in 46-18-232 and 46-18-233;
 - (g) payment of costs of assigned counsel as provided in 46-8-113;
- (h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;
- (i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;
 - (j) community service;
 - (k) home arrest as provided in Title 46, chapter 18, part 10;
- (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- (m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;
 - (n) participation in a day reporting program provided for in 53-1-203;
- (o) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or
- (p) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p).
- (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.
- (6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

- (7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.
- (8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

 ${\bf Section\,2.\,\,Effective\,date.\,} [This\,act]\, is\, effective\, on\, passage\, and\, approval.$

Approved April 1, 2009

CHAPTER NO. 129

[HB 363]

AN ACT REVISING THE TEACHERS' RETIREMENT SYSTEM TO ALLOW RETIRED TEACHERS, SPECIALISTS, AND ADMINISTRATORS TO RETURN TO WORK FOR A LIMITED PERIOD OF TIME UNDER CERTAIN CIRCUMSTANCES WITHOUT A REDUCTION IN THEIR RETIREMENT BENEFITS; AMENDING SECTION 19-20-731, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Reemployment of certain retired teachers, specialists and administrators procedure definitions. (1) Subject to the provisions of this section:
- (a) a teacher, specialist, or administrator who has been receiving a retirement allowance for no less than 2 months, except a disability retirement allowance pursuant to part 9 of this chapter, may be employed on a full-time basis by an employer for a maximum of 3 years during the lifetime of the retired member without the loss or interruption of any payments or retirement benefits if:
- (i) the retired member completed $30\,\mathrm{or}$ more years of creditable service prior to retirement;
- (ii) the retired member holds a valid certificate pursuant to the provisions of 20-4-106; and
- (iii) each year, prior to employing a retired member, the employer certifies to the office of public instruction and to the retirement board that after having advertised the position for that year the employer has been unable to fill the position because the employer either has received no qualified applications or has not received an acceptance of an offer of employment made to a nonretired teacher, specialist, or administrator;
- (b) the employer certification required by this section must include the retired member's name and social security number and a copy of the proposed contract of employment for the retired member;
- (c) upon receipt of the employer's certification and of the proposed contract of employment, the retirement board shall verify whether the retired member meets the requirements of subsection (1)(a)(i) and shall notify the employer and the retired member of its findings;
- (d) a retired member reemployed under this section is ineligible for active membership under 19-20-302 and is ineligible to receive service credit under any retirement system identified in Title 19; and

- (e) the retirement board shall report to the appropriate committee each legislative session regarding the implementation of and results arising from this section
- (2) An employer employing a retired member pursuant to this section shall contribute monthly to the retirement system an amount equal to the sum of the contribution rates required by 19-20-602, 19-20-604, 19-20-605, and 19-20-607.
- (3) A retired member reemployed pursuant to this section is exempt from the earnings and employment limits provided in 19-20-731.
- (4) If reemployed in a position covered by a collective bargaining agreement pursuant to Title 39, chapter 31, the retired member is subject to all the terms and conditions of the agreement and is entitled to all the benefits and protections of the agreement.
 - (5) The board may adopt rules to implement this section.
 - (6) As used in this section, the following definitions apply:
 - (a) "Employer" means a school district as defined in 20-6-101 and 20-6-701.
 - (b) "Year" means all or any part of a school year.

Section 2. Section 19-20-731, MCA, is amended to read:

- "19-20-731. Postretirement employment limitations cancellation and recalculation of benefits. (1) (a) Except as provided in [section 1] or as otherwise provided in this section, a retired member may be employed part-time by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:
 - (i) one-third of the sum of the member's average final compensation; or
- (ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.
- (b) For the purposes of this subsection (1), the maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all remuneration paid to the retired member, excluding:
- (i) the amount of health insurance premiums paid by the employer on the retired member's behalf;
 - (ii) the value of housing provided by the employer to the retired member;
- (iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;
- (iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and
 - (v) payroll taxes paid by the employer on behalf of the retired member.
- (2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.
- (3) Except as provided in [section 1] and in subsection (5) of this section, the retirement benefit of a retired member:
- (a) employed in a part-time position or earning more than allowed by subsections (1) and (2) must be temporarily reduced by \$1 for each dollar earned

over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be canceled if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

- (b) employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment.
- (4) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection (3), the retirement benefit of a member:
- (a) who was reemployed and earned less than 1 year of creditable service must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later. The reinstated retirement benefit is the amount and option that the retired member would have been entitled to receive had the retired member not returned to employment.
- (b) who was reemployed and earned at least 1 year of creditable service must be recalculated under 19-20-804 if the member has attained normal retirement age or under 19-20-802 if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated normal form benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were canceled.
- (5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled.
- (6) For purposes of this section, "position eligible to participate in the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor, as those terms are defined in 39-8-102.
- (7) The retirement allowance of any retired member who is employed in a position and who elects to participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the optional retirement program."
- **Section 3.** Codification instruction. [Section 1] is intended to be codified as an integral part of Title 19, chapter 20, part 7, and the provisions of Title 19, chapter 20, part 7, apply to [section 1].
- **Section 4. Effective date applicability.** [This act] is effective July 1, 2009, and applies to retired teachers, specialists, and administrators who are employed for school fiscal years beginning on or after [the effective date of this act] and who will exceed the postretirement limits provided in 19-20-731.

Section 5. Termination. [This act] terminates June 30, 2015.

Approved April 1, 2009

CHAPTER NO. 130

[HB 366]

AN ACT ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ENTER INTO AGREEMENTS WITH ADJOINING STATES REGARDING RECIPROCAL FISHING PRIVILEGES IN MONTANA RIVERS AND STREAMS IF THE BORDERING STATE GRANTS THE SAME OR SIMILAR PRIVILEGES; AMENDING SECTIONS 87-2-1001 AND 87-2-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-1001, MCA, is amended to read:

"87-2-1001. Reciprocal fishing privileges of licensees of bordering states. (1) Any person who is properly licensed to fish in a state that borders Montana and who complies with Montana fish and game laws and regulations may fish in any part of a lake, reservoir, pond, river, stream, or body of water in Montana that lies within or partly within 10 miles of the boundaries of Montana when the water is declared to be open to fishing by the department if the bordering state grants the same or similar privileges in any body or bodies of water or in all lakes, reservoirs, ponds, rivers, streams, or bodies of water similarly defined designated in a reciprocal agreement as authorized in subsection (2) within its boundaries to holders of valid Montana fishing licenses, and if the bordering state enters into a reciprocal agreement with Montana setting forth terms as provided by this part.

(2) The department is authorized to enter into reciprocal agreements with corresponding state officials of adjoining states for purposes of providing reciprocal fishing privileges upon any body or bodies of water as described in subsection (1). A reciprocal agreement may include provisions by which each state shall honor the license of the other state only when a valid reciprocal license is purchased from the honoring state, the charge for the reciprocal license being set by mutual agreement of the states."

Section 2. Section 87-2-1003, MCA, is amended to read:

"87-2-1003. Bodies of water subject to reciprocal privileges. It is the primary purpose of this part to provide a method whereby the fishing opportunities afforded upon any part of any body of water located within or partly within 10 miles of the boundaries of this state may be mutually enjoyed by the residents of Montana and the residents of such the adjoining states, and it is not intended to cover the waters of rivers or streams, subject to the terms of a reciprocal agreement as authorized in 87-2-1001."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 131

[HB 383]

AN ACT PROVIDING FOR THE ISSUANCE OF A CERTAIN NUMBER OF FREE HUNTING LICENSES TO CERTAIN YOUTHS WITH LIFE-THREATENING ILLNESSES; DEFINING "LIFE-THREATENING ILLNESS"; AMENDING SECTION 87-2-805, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-805, MCA, is amended to read:

"87-2-805. (Temporary) Persons under eighteen years of age — youth combination sports license — terminally ill youth with life-threatening illness under seventeen eighteen years of age — free wildlife conservation license for resident seniors and certain minors. (1) Resident minors who are 12 years of age or older and under 15 years of age may fish and may hunt upland game and migratory game birds during the open season with only a conservation license. Resident minors who are 15 years of age may hunt migratory game birds with only a conservation license. Resident minors who are under 12 years of age may fish without a license. A nonresident person under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B, B-4, or B-5 fishing license unless the nonresident person under 15 years of age is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

- (2) A resident, as defined by 87-2-102, who is 12 years of age or older and under 15 years of age may purchase a Class A-3 deer A tag for 6.50 and a Class A-5 elk tag for 8.
- (3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license for \$25. A resident who is 12 years of age or older and under 18 years of age and who applies for any hunting license for the first time is entitled to receive a youth combination sports license free of charge.
 - (b) The youth combination sports license includes:
 - (i) a conservation license;
 - (ii) a fishing license;
 - (iii) an upland game bird license;
 - (iv) an elk license; and
 - (v) a deer license.
- (c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license for \$8.
- (d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license for \$3.
- (e) A person who lawfully purchases or is granted a free youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A person who hunts or fishes using a youth combination sports license purchased or granted free after the person reaches 18 years of age is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:
- (i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and
- (ii) a monetary fine of not less than \$500 and not more than \$5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.

- (f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license.
- (4) (a) The department may issue a free resident or nonresident big game combination license, as applicable, or a free resident or nonresident antelope license and wildlife conservation license, as applicable, to a resident or nonresident youth under 47 18 years of age who has been diagnosed with a terminal life-threatening illness. In order for a youth to qualify for the free license, the department must receive documentation that the youth has been diagnosed with a life-threatening illness from a licensed physician verifying that the youth is terminally ill licensed physician. The free license may be issued to a youth on a one-time basis for only one hunting season. As used in this subsection, "life-threatening illness" means any progressive, degenerative, or malignant disease or condition that results in a significant threat, likelihood, or certainty that the child's life expectancy will not extend past the child's 19th birthday unless the course of the disease is interrupted or abated.
- (b) In exercising hunting privileges, the youth must be in the company of an adult in possession of a valid Montana hunting license or of a licensed Montana outfitter and conduct all hunting within the terms and conditions of the license issued.
- (c) The department may waive hunter safety and education and bowhunter education requirements in 87-2-105 for a qualified youth under this subsection (4) and, in appropriate circumstances, may also allow the qualified youth to hunt from a vehicle in the manner described in 87-2-803.
- (d) The department may limit the number of licenses issued pursuant to this subsection (4) to a total of 25 annually.
- (5) Resident minors who are 12 years of age or older and under 15 years of age and residents who are 62 years of age or older must, upon application and production of the documentation and information required by 87-2-202(1), be issued a resident wildlife conservation license without charge. (Terminates February 28, 2009—sec. 7, Ch. 452, L. 2007.)
- 87-2-805. (Effective March 1, 2009) Persons under eighteen years of age youth combination sports license terminally ill youth with life-threatening illness under seventeen eighteen years of age. (1) Resident minors who are 12 years of age or older and under 15 years of age may fish and may hunt upland game and migratory game birds during the open season with only a conservation license. Resident minors who are 15 years of age may hunt migratory game birds with only a conservation license. Resident minors who are under 12 years of age may fish without a license. A nonresident person under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B, B-4, or B-5 fishing license unless the nonresident person under 15 years of age is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.
- (2) A resident, as defined by 87-2-102, who is 12 years of age or older and under 15 years of age may purchase a Class A-3 deer A tag for 6.50 and a Class A-5 elk tag for 8.50 and a Class A-5 elk tag for 8.50
- (3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license for \$25. A resident who is 12 years of age or older and under 18 years of age and who applies for any hunting

license for the first time is entitled to receive a youth combination sports license free of charge.

- (b) The youth combination sports license includes:
- (i) a conservation license;
- (ii) a fishing license;
- (iii) an upland game bird license;
- (iv) an elk license; and
- (v) a deer license.
- (c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license for \$8.
- (d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license for \$3.
- (e) A person who lawfully purchases or is granted a free youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A person who hunts or fishes using a youth combination sports license purchased or granted free after the person reaches 18 years of age is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:
- (i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and
- (ii) a monetary fine of not less than \$500 and not more than \$5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.
- (f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license.
- (4) (a) The department may issue a free resident or nonresident big game combination license, as applicable, or a free resident or nonresident antelope license and wildlife conservation license, as applicable, to a resident or nonresident youth under 47 18 years of age who has been diagnosed with a terminal life-threatening illness. In order for a youth to qualify for the free license, the department must receive documentation that the youth has been diagnosed with a life-threatening illness from a licensed physician verifying that the youth is terminally ill licensed physician. The free license may be issued to a youth on a one-time basis for only one hunting season. As used in this subsection, "life-threatening illness" means any progressive, degenerative, or malignant disease or condition that results in a significant threat, likelihood, or certainty that the child's life expectancy will not extend past the child's 19th birthday unless the course of the disease is interrupted or abated.
- (b) In exercising hunting privileges, the youth must be in the company of an adult in possession of a valid Montana hunting license or of a licensed Montana outfitter and conduct all hunting within the terms and conditions of the license issued.
- (c) The department may waive hunter safety and education and bowhunter education requirements in 87-2-105 for a qualified youth under this subsection (4) and, in appropriate circumstances, may also allow the qualified youth to hunt from a vehicle in the manner described in 87-2-803.

(d) The department may limit the number of licenses issued pursuant to this subsection (4) to a total of 25 annually."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 132

[HB 432]

AN ACT CLARIFYING SCHOOL TRUSTEE ELECTIONS; AUTHORIZING ELECTION BY ACCLAMATION IF THE NUMBER OF CANDIDATES FOR VACANT SCHOOL TRUSTEE POSITIONS IS LESS THAN THE NUMBER OF POSITIONS TO BE ELECTED; AMENDING SECTION 20-3-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-313, MCA, is amended to read:

- **"20-3-313. Election by acclamation notice.** (1) If the number of candidates filing for a <u>position</u> vacant positions or filing a declaration of intent to be a write-in candidate under 13-10-211 is equal to or less than the number of positions to be elected and there is no other reason for the election, the trustees may give notice that an a trustee election will not be held. Notice must be given no later than 25 days before the election.
- (2) If an a trustee election is not held, the trustees shall declare elected by acclamation the candidate who filed for the position or who filed a declaration of intent to be a write-in candidate and shall issue a certificate of election to the candidate."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 133

[HB 545]

AN ACT REVISING THE MEMBERSHIP OF THE COUNTY COMPENSATION BOARD; AND AMENDING SECTION 7-4-2503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2503, MCA, is amended to read:

- "7-4-2503. Salary schedule for certain county officers county compensation board. (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, justice of the peace, and county auditor in all counties where the office is authorized must be established by the county governing body based upon the recommendations of the county compensation board provided for in subsection (4).
- (b) Except as provided in subsection (2), the annual salary established pursuant to subsection (1)(a) must be uniform for all county officers referred to in subsection (1)(a).

- (2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of \$400 a year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to \$2,000 a year.
- (b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of \$2,000 a year.
- (c) The county sheriff must receive a longevity payment amounting to 1% of the salary determined under subsection (1) for each year of service with the sheriff's office, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.
- (d) If the clerk and recorder is also the county election administrator, the clerk and recorder may receive, in addition to the base salary provided in subsection (1)(a), up to \$2,000 a year. The additional salary provided for in this subsection (2)(d) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.
- (e) The county treasurer may receive, in addition to the base salary provided in subsection (1)(a), up to \$2,000 a year. The additional salary provided for in this subsection (2)(e) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.
- (3) (a) Subject to subsection (3)(b), the salary for the county attorney must be set as provided in subsection (4).
- (b) If the uniform base salary set for county officials pursuant to subsection (1) is increased, then the county attorney is entitled to at least the same increase unless the increase would cause the county attorney's salary to exceed the salary of a district court judge.
- (c) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of \$1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of \$1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of additional service up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of \$500.
- (ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase.
 - (4) (a) There is a county compensation board consisting of:
 - (i) the county commissioners;
- (ii) three of the county officials described in subsection (1) appointed by the board of county commissioners;
 - (iii) the county attorney;
- (iv) and two to four resident taxpayers appointed initially by the board of county commissioners to staggered terms of 3 years, with the initial

appointments of one or two tax payer members for a 2-year term and one or two tax payer members for a 3-year term; and

- (v) (A) subject to subsection (4)(a)(v)(B), one resident taxpayer appointed by each of the three county officials described in subsection (4)(a)(ii).
 - (B) The appointments in subjection (4)(a)(v)(A) are not mandatory.
- (b) The county compensation board shall hold hearings annually for the purpose of reviewing the compensation paid to county officers. The county compensation board may consider the compensation paid to comparable officials in other Montana counties, other states, state government, federal government, and private enterprise.
- (b)(c) The county compensation board shall prepare a compensation schedule for the elected county officials, including the county attorney, for the succeeding fiscal year. The schedule must take into consideration county variations, including population, the number of residents living in unincorporated areas, assessed valuation, motor vehicle registrations, building permits, and other factors considered necessary to reflect the variations in the workloads and responsibilities of county officials as well as the tax resources of the county.
- (e)(d) A recommended compensation schedule requires a majority vote of the county compensation board, and at least two county commissioners must be included in the majority. A recommended compensation schedule may not reduce the salary of a county officer that was in effect on May 1, 2001.
- (d)(e) The provisions of this subsection (4) do not apply to a county that has adopted a charter form of government or to a charter, consolidated city-county government."

Approved April 1, 2009

CHAPTER NO. 134

[SB 47]

AN ACT REVISING THE MONTANA TITLE LOAN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO REFUSE TO ISSUE OR RENEW A TITLE LENDER'S LICENSE ON VARIOUS GROUNDS INCLUDING AN APPLICANT'S MAKING MATERIAL MISSTATEMENTS OF FACT; PROVIDING THAT A PERSON MAY NOT APPLY FOR A LICENSE FOR 1 YEAR FOLLOWING A DENIAL OR REFUSAL BY THE DEPARTMENT TO ISSUE OR RENEW A LICENSE; PROVIDING THAT THE VIOLATION OF CERTAIN SPECIFIED FEDERAL ACTS, INCLUDING THE TRUTH IN LENDING ACT AND THE FAIR CREDIT REPORTING ACT, IS ALSO A VIOLATION OF THE MONTANA TITLE LOAN ACT; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; REVISING THE DEPARTMENT'S FEES FOR EXAMINING LICENSEES; AND AMENDING SECTIONS 31-1-805 AND 31-1-810, MCA.

Be it enacted by the Legislature of the State of Montana:

- **Section 1. Denial of license and license renewal.** (1) (a) Except as provided in subsection (1)(b), the department shall deny any new license or refuse to renew any license if:
- (i) the applicant does not meet the qualifications stated in this part or in rules adopted pursuant to this part;

- (ii) the department finds that the criminal history of any employee of the applicant at the time of application or renewal demonstrates any conviction involving fraud or financial dishonesty or if the department's findings show civil judgments involving fraudulent or dishonest financial dealings; or
- (iii) the applicant makes any material misstatement of fact or any material omission of fact in the application.
- (b) A denial is not required pursuant to subsection (1)(a)(ii) if the department finds that the applicant dismissed the employee promptly upon learning of the employee's conviction involving fraud or financial dishonesty or of civil judgments involving fraudulent or dishonest financial dealings by the employee.
- (2) The department shall provide written notice to the applicant of the denial or refusal in writing, setting forth in the notice the grounds upon which the denial or refusal is based.
- (3) The applicant has the right to a hearing under the Montana Administrative Procedure Act on any denial or refusal to issue a license. The request for a hearing must be made within 10 days of the date of receipt of the written notice of denial or refusal.
- (4) An applicant whose application for licensure or renewal has been denied or refused may not reapply for 1 year following the denial or refusal.
- Section 2. Violation of specified federal laws rulemaking authority. (1) A violation of any applicable provision of the Truth in Lending Act, 15 U.S.C. 1601, et seq., the Equal Credit Opportunity Act, 15 U.S.C. 1691, et seq., the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq., the Fair Debt Collection Practices Act, 15 U.S.C. 1692, et seq., the Financial Services Modernization Act of 1999 (Gramm-Leach-Bliley Act), 15 U.S.C. 6801, et seq., the USA PATRIOT Act of 2001, as reauthorized, Public Law 107-56, or the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, or any regulation promulgated under those acts is also a violation of this part.
 - (2) The department shall adopt rules to implement this section.
 - Section 3. Section 31-1-805, MCA, is amended to read:
- "31-1-805. Qualifications for licensure. (1) To be eligible for licensure as a title lender, an applicant must be a natural person residing in this state, a business entity formed under the laws of this state, or a foreign business entity qualified to conduct business in this state.
- (2) (a) The application for licensure must be in writing, under oath, and in the form prescribed by the department.
 - (b) The application must contain:
 - (i) the name of the applicant;
 - (ii) the date of formation if a business entity;
 - (iii) the physical address of each title loan office to be operated;
- (iv) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and
 - (v) any other pertinent information that the department may require.
- (3) The department may not issue or renew a license if findings are made that the criminal history of any employees of the applicant at the time of application demonstrates any convictions involving fraud or financial

dishonesty or if the findings show civil judgments involving fraudulent or dishonest financial dealings.

- (4)(3) An applicant for licensure shall pay an application fee of \$500, unless less than 6 months remain in the calendar year, in which case the fee is \$250, and an annual license renewal fee of \$500 for each title loan office that the applicant intends to operate or operates in this state.
- (5)(4) (a) Each license must specify the location of the specific title loan office to which it applies and must be conspicuously displayed in the title loan office.
- (b) Before any title loan office location may be changed or moved by the title lender, the department shall approve the change of location by endorsing the license for that title loan office or mailing the licensee a new license for that title loan office without charge.
- (6)(5) (a) Upon the filing of the application and the payment of the fee by a person eligible to apply for a title lender's license, the department shall issue a license to the applicant to engage in the title loan business in accordance with the provisions of this part for a period that expires on the last day of December following the date of its issuance.
- (b) Each license must be uniquely numbered and may not be transferred or assigned. Renewal licenses are effective for a period of 1 year.
- (7)(6) Each licensee shall post a bond in the amount of \$10,000 for each location. The bond must continue in effect for 2 years after the licensee ceases operation in this state. The bond must be available to pay damages and penalties to consumers harmed by a violation of this part.
- (8)(7) More than one place of business may not be maintained under the same license, but the department may issue more than one license to the same licensee if the licensee is otherwise qualified."
 - Section 4. Section 31-1-810, MCA, is amended to read:
- **"31-1-810. Examinations fees.** (1) The department may conduct an examination of a licensee's title lending operation at any time to ensure that the licensee is in compliance with the provisions of this part.
- (2) A licensee shall pay the department a fee in the amount of \$300 a day \$37.50 an hour for each examiner required to conduct an annual examination.
- (3) A licensee shall make available to a department examiner the information required under 31-1-815 or as required by rule.
- (4) Completion of an annual examination must, in the absence of the department's finding of just cause to revoke or suspend a license, constitute grounds for license renewal."
- **Section 5.** Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 31, chapter 1, part 8, and the provisions of Title 31, chapter 1, part 8, apply to [sections 1 and 2].

Approved April 1, 2009

CHAPTER NO. 135

[SB 49]

AN ACT REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ESTABLISH HIGH-PERFORMANCE BUILDING STANDARDS FOR STATE-OWNED BUILDINGS AND NEW STATE-LEASED BUILDINGS;

AMENDING SECTION 17-7-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

- **Section 1. High-performance building standards.** (1) New buildings and major renovations constructed under 17-7-202 and new state-leased buildings must:
 - (a) be built and operated as high-performance buildings; and
- (b) exceed the International Energy Conservation Code most recently adopted by the department of labor and industry by 20% or to the extent that is cost-effective over the life of the building or major renovation.
- (2) The department, in collaboration with the Montana university system and other state agencies, shall adopt high-performance building standards. In developing these standards, the department shall consider:
- (a) integrated design principles to optimize energy performance, enhance indoor environmental quality, and conserve natural resources;
- (b) cost-effectiveness, including productivity, deferred maintenance, and operational considerations;
- (c) environmental, economic, and social sustainability of materials and components; and
 - (d) building functionality, durability, and maintenance.

Section 2. Section 17-7-201, MCA, is amended to read:

- **"17-7-201. Definitions of building and construction.** In this part, the following definitions apply:
 - (1) (a) "Building" includes a:
- (a)(i) building, facility, or structure constructed or purchased wholly or in part with state moneys money;
 - (b)(ii) building, facility, or structure at a state institution;
- (e)(iii) building, facility, or structure owned or to be owned by a state agency, including the department of transportation.
 - (2)(b) "Building" The term does not include a:
- (a)(i) building, facility, or structure owned or to be owned by a county, city, town, school district, or special improvement district;
- (b)(ii) facility or structure used as a component part of a highway or water conservation project.
- (3)(2) "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration.
- (3) "High-performance building" means a building that integrates and optimizes all major high-performance building attributes, including but not limited to:
 - (a) energy efficiency;
 - (b) durability;
 - (c) life-cycle performance; and
 - (d) occupant productivity."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 17, chapter 7, part 2, and the provisions of Title 17, chapter 7, part 2, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to buildings constructed, renovated, or leased after [the effective date of this act].

Approved April 1, 2009

CHAPTER NO. 136

[SB 184]

AN ACT REVISING LICENSE APPLICATION RESTRICTIONS ON LICENSES FOR BEAR, MOUNTAIN LION, AND WILD BUFFALO OR BISON; AMENDING SECTION 87-2-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-702, MCA, is amended to read:

- "87-2-702. Restrictions on special licenses availability of bear and mountain lion licenses. (1) A person who has killed or taken any game animal, except a deer, an elk, or an antelope, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species.
- (2) The commission may require applicants for special permits authorized by this chapter to obtain a valid big game license for that species for the current year prior to applying for a special permit.
- (3) A person may take only one grizzly bear in Montana with a license authorized by 87-2-701.
- (4) (a) Except as provided in 87-1-271(2), a person who receives a moose, mountain goat, or limited mountain sheep license, as authorized by 87-2-701, with the exception of an anterless antlerless moose or an adult ewe game management license issued under 87-2-104, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (4)(a), "limited mountain sheep license" means a license that is valid for an area in which the number of licenses issued is restricted.
- (b) Except as provided in 87-1-271(2), a person who takes a mountain sheep using an unlimited mountain sheep license, with the exception of a mountain sheep taken pursuant to an adult ewe license, as authorized by 87-2-701, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (4)(b), "unlimited mountain sheep license" means a license that is valid for an area in which the number of licenses issued is not restricted.
- (5) An application for a wild buffalo or bison license must be made on the same form and is subject to the same license application deadline as the special license for moose, mountain goat, and mountain sheep.
- (6) (a) Licenses for spring bear hunts must be available for purchase at department offices after April 15 of any license year. However, a person who purchases a license for a spring bear hunt after April 15 of any license year may not use the license until 5 days after the license is issued.
- (b) Licenses for fall bear hunts must be available for purchase at department offices after August 31 of any license year. However, a person who purchases a license for a fall bear hunt after August 31 of any license year may not use the license until 5 days after the license is issued.

(7) Licenses for mountain lion hunts must be available for purchase at department offices after August 31 of any license year. However, a person who purchases a license for a mountain lion hunt after August 31 of any license year may not use the license until 5 days after the license is issued."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2009

CHAPTER NO. 137

[SB 216]

AN ACT ALLOWING SCHOOL DISTRICT TRUSTEES TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE MONTANA YOUTH CHALLENGE PROGRAM TO PROVIDE EDUCATIONAL OR VOCATIONAL SERVICES TO A STUDENT WHO IS A RESIDENT OF THE DISTRICT; ALLOWING A SCHOOL DISTRICT TO INCLUDE A RESIDENT STUDENT WHO IS RECEIVING EDUCATIONAL OR VOCATIONAL SERVICES FROM THE MONTANA YOUTH CHALLENGE PROGRAM UNDER AN INTERLOCAL AGREEMENT IN THE ENROLLMENT COUNT OF THE DISTRICT FOR THE PURPOSE OF CALCULATING AVERAGE NUMBER BELONGING; AMENDING SECTIONS 20-7-420, 20-9-311, AND 20-9-707, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-420, MCA, is amended to read:

- "20-7-420. Residency requirements financial responsibility for special education. (1) Except for a pupil attending the Montana youth challenge program or a job corps program pursuant to 20-9-707, a child's district of residence for special education purposes must be determined in accordance with the provisions of 1-1-215, unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last-known district of residence is the child's district of residence.
- (2) The superintendent of public instruction is financially responsible for tuition and transportation as established under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401, who attends school outside the district and county of residence because the student has been placed in a foster care or group home licensed by the state. The superintendent of public instruction is not financially responsible for tuition and transportation for a child who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.
- (3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from available funds. However, the

amount spent from available funds for this purpose may not exceed \$500,000 during a biennium.

(4) A state agency that makes a placement of a child with a disability is responsible for the financial costs of room and board and the treatment of the child. The state agency that makes an out-of-state placement of a child with a disability is responsible for the education fees required to provide a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4."

Section 2. Section 20-9-311, MCA, is amended to read:

- **"20-9-311. Calculation of average number belonging (ANB) three-year averaging.** (1) Average number belonging (ANB) must be computed for each budget unit as follows:
- (a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the next school day if those dates do not fall on a school day, and divide the sum by two; and
- (b) multiply the average enrollment calculated in subsection (1)(a) by the sum of 180 and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.
- (2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.
- (3) When a school district has approval to operate less than the minimum aggregate hours under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.
- (4) (a) For the purpose of calculating ANB, enrollment in an education program:
- (i) from 180 to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time enrollment;
- (ii) from 360 to 539 aggregate hours of pupil instruction per school year is counted as half-time enrollment;
- (iii) from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time enrollment; and
- (iv) 720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.
- (b) Enrollment in a program intended to provide fewer than 180 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.
- (c) Enrollment in a self-paced program or course may be converted to an hourly equivalent based on the hours necessary and appropriate to provide the course within a regular classroom schedule.
- (d) A pupil in kindergarten through grade 12 who is concurrently enrolled in more than one public school, program, or district may not be counted as more than one full-time pupil for ANB purposes.
- (5) For a district that is transitioning from a half-time to a full-time kindergarten program, the state superintendent shall count kindergarten enrollment in the previous year as full-time enrollment for the purpose of calculating ANB for the elementary programs offering full-time kindergarten in

the current year. For the purposes of calculating the 3-year ANB, the superintendent of public instruction shall count the kindergarten enrollment as one-half enrollment and then add the additional kindergarten ANB to the 3-year average ANB for districts offering full-time kindergarten.

- (6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.
- (7) The enrollment of preschool pupils, as provided in 20-7-117, may not be included in the ANB calculations.
- (8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that the ANB is calculated as a separate budget unit when:
- (a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated as a separate budget unit for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;
- (ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;
- (iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or
- (iv) two or more districts consolidate or annex under the provisions of 20-6-422 or 20-6-423, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:
 - (A) 75% of the basic entitlement for the fourth year;
 - (B) 50% of the basic entitlement for the fifth year; and
 - (C) 25% of the basic entitlement for the sixth year.
- (b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;
- (c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

- (d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.
- (9) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent.
- (10) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes only if the pupil is offered access to the complete range of educational services for the basic education program required by the accreditation standards adopted by the board of public education.
- (b) Access to school programs and services for a student placed by the trustees in a private program for special education may be limited to the programs and services specified in an approved individual education plan supervised by the district.
- (c) Access to school programs and services for a student who is incarcerated in a facility, other than a youth detention center, may be limited to the programs and services provided by the district at district expense under an agreement with the incarcerating facility.
- (d) This subsection (10) may not be construed to require a school district to offer access to activities governed by an organization having jurisdiction over interscholastic activities, contests, and tournaments to a pupil who is not otherwise eligible under the rules of the organization.
- $\left(11\right)$ A district may include only, for ANB purposes, an enrolled pupil who is otherwise eligible under this title and who is:
- (a) a resident of the district or a nonresident student admitted by trustees under a student attendance agreement and who is attending a school of the district:
- (b) unable to attend school due to a medical reason certified by a medical doctor and receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;
- (c) unable to attend school due to the student's incarceration in a facility, other than a youth detention center, and who is receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;
- (d) receiving special education and related services, other than day treatment, under a placement by the trustees at a private nonsectarian school or private program if the pupil's services are provided at the district's expense under an approved individual education plan supervised by the district;
- (e) participating in the running start program at district expense under 20-9-706;
- (f) receiving educational services, provided by the district, using appropriately licensed district staff at a private residential program or private residential facility licensed by the department of public health and human services;

- (g) enrolled in an educational program or course provided at district expense using electronic or offsite delivery methods, including but not limited to tutoring, distance learning programs, online programs, and technology delivered learning programs, while attending a school of the district or any other nonsectarian offsite instructional setting with the approval of the trustees of the district. The pupil shall:
 - (i) meet the residency requirements for that district as provided in 1-1-215;
- (ii) live in the district and must be eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or
- (iii) attend school in the district under a mandatory attendance agreement as provided in 20-5-321.
- (h) a resident of the district attending *the Montana youth challenge program* or a Montana job corps program under an interlocal agreement with the district under 20-9-707.
- (12) A district shall, for ANB purposes, calculate the enrollment of an eligible Montana youth challenge program participant as half-time enrollment.
- (12)(13) (a) For an elementary or high school district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated using the current year ANB for all budget units or the 3-year average ANB for all budget units, whichever generates the greatest maximum general fund budget.
- (b) For a K-12 district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated separately for the elementary and high school programs pursuant to subsection (12)(a) (13)(a) and then combined.
- (13)(14) The term "3-year ANB" means an average ANB over the most recent 3-year period, calculated by:
- (a) adding the ANB for the budget unit for the ensuing school fiscal year to the ANB for each of the previous 2 school fiscal years; and
 - (b) dividing the sum calculated under subsection (13)(a) (14)(a) by three."
 - **Section 3.** Section 20-9-707, MCA, is amended to read:
- **"20-9-707.** Agreement with *Montana youth challenge program or* accredited Montana job corps program. (1) The trustees of a school district may enter into an interlocal cooperative agreement for the ensuing school fiscal year under the provisions of Title 7, chapter 11, part 1, with *the Montana youth challenge program or with* a Montana job corps program accredited by the northwest association of schools and colleges to provide educational or vocational services that are supplemental to the educational programs offered by the resident school district.
- (2) A student who receives educational or vocational services at the Montana youth challenge program or a Montana job corps program pursuant to an agreement authorized under subsection (1) must be enrolled, for purposes of calculating average number belonging, in a public school in the student's district of residence. Credits taken at the Montana youth challenge program or an accredited Montana job corps program must be approved by the school district and meet the requirements for graduation at a school in the student's district of residence, must be taught by an instructor who has a current and appropriate Montana high school certification, and must be reported by the institution to the student's district of residence. Upon accumulating the

necessary credits at either a school in the district of residence or at the Montana youth challenge program or at an accredited Montana job corps program pursuant to an interlocal cooperative agreement, a student must be allowed to graduate from the school in the student's district of residence.

- (3) A school district that, pursuant to an interlocal cooperative agreement, allows an enrolled student to attend *the Montana youth challenge program or* a Montana job corps program accredited as prescribed in subsection (1) is not responsible for payment of the student's transportation costs to the job corps program.
- (4) A student attending the Montana youth challenge program or a job corps program may not claim the Montana youth challenge program's or job corps program's facility as the student's residence for the purposes of this section."

Section 4. Effective date — applicability. [This act] is effective July 1, 2009, and applies to school fiscal years beginning on or after July 1, 2010.

Approved April 1, 2009

CHAPTER NO. 138

[SB 323]

AN ACT PROVIDING THAT PRIOR TO SIGNING A WRITTEN RENTAL AGREEMENT THE LANDLORD AND TENANT SHALL AGREE TO ACCEPT THE DEFAULT EXTENSION PERIOD FOR THE LEASE CHOSEN BY THE TENANT THAT IS TO BE GIVEN EFFECT IF THE LEASE IS NOT REVISED OR NEITHER PARTY GIVES NOTICE OF TERMINATION TO THE OTHER PRIOR TO THE RENTAL AGREEMENT'S ORIGINAL TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Extension of written rental agreements. (1) Prior to signing a written rental agreement, the landlord and tenant shall agree to accept a default extension period for the lease chosen by the tenant pursuant to subsection (2) that is to be given effect if a revised lease is not agreed to or if neither party gives a 30-day written notice of termination to the other prior to the rental agreement's original termination date.
- (2) The tenant shall choose from a list of default options, including but not limited to renewal for an additional term of equal length as the original term, renewal for a set term that is not of equal length as the original term, renewal on a month-to-month basis, or termination of the tenancy.
- (3) If neither party gives a 30-day written notice to the other as to the extension or termination of the tenancy, the mutually agreed upon default option takes affect immediately following the termination of the original rental agreement.
- (4) If the landlord and tenant fail to establish a default option at the beginning of the tenancy as required in subsection (1) and neither party gives a 30-day written notice to the other to terminate the tenancy, the tenancy continues on a month-to-month basis.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 70, chapter 24, part 2, and the provisions of Title 70, chapter 24, part 2, apply to [section 1].

Approved April 1, 2009

CHAPTER NO. 139

[HB 106]

AN ACT CHANGING "ALTERED" BIRTH CERTIFICATES TO "AMENDED" BIRTH CERTIFICATES; AND AMENDING SECTIONS 50-15-202 AND 50-15-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-15-202, MCA, is amended to read:

"50-15-202. Unattended birth. (1) If a birth is unattended and neither parent is able to prepare a birth certificate, the local registrar shall:

- (a) secure information from any person having knowledge of the birth;
- (b) prepare and file a birth certificate;
- (c) within the time prescribed by the department, file a supplementary report furnishing information omitted from the original birth certificate if additional information is received.
- (2) Birth certificates completed by a supplementary report shall may not be considered "delayed" or "altered" "amended"."

Section 2. Section 50-15-204, MCA, is amended to read:

- **"50-15-204. Delayed or amended birth certificate.** (1) (a) If a certificate of birth for a person born in this state has not been filed within 1 year of the birth, a delayed certificate of birth may be filed in accordance with rules adopted by the department. A delayed certificate of birth may not be registered until the requirements regarding facts pertaining to the delayed certificate, as specified by rule, have been met.
- (b) A birth of a person in this state whose name has not been registered within 1 year after the birth must be registered on a delayed certificate of birth form. The delayed certificate must contain the date of registration and a summary statement of the information submitted to explain the delayed registration.
 - (c) A delayed certificate of birth may not be registered for a deceased person.
- (d) The department may not register a delayed certificate of birth if an applicant for a delayed certificate of birth does not submit the minimum documentation required by rule for delayed registration or if the department has cause to question the validity or adequacy of the applicant's sworn statement or the documentation provided to establish the facts and the deficiencies are not corrected. The department shall advise the applicant of the reasons for the refusal to register the delayed certificate of birth. The department shall advise the applicant of the right to seek an order from a court of competent jurisdiction to obtain registration of the delayed certificate of birth as provided in 50-15-222.
- (e) The department may, by rule, provide for the dismissal of an application for registration of a delayed certificate of birth that is not actively pursued.
- (2) The department or its designee may amend a birth, death, or fetal death certificate upon submitting proof as required by the department.
- (3) The department shall adopt rules establishing the circumstances under which vital records may be corrected or amended and the procedure to correct or amend those records.

- (4) If birth certificates are altered amended by the department after filing, the certificate must show the date of the alteration amendment and the mark "altered" "amended". A summary statement of the evidence in support of the alteration amendment must be endorsed on the certificate.
- (5) The probative value of a "delayed" or "altered" "amended" certificate of birth is determined by the judicial or administrative body before whom the certificate is offered as evidence."

Approved April 2, 2009

CHAPTER NO. 140

[HB 304]

AN ACT NAMING A PORTION OF U.S. HIGHWAY 2 AFTER HIGHWAY PATROL OFFICER DAVID GRAHAM; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO PROVIDE MARKERS TO RECOGNIZE THE DESIGNATION WHEN EXISTING SIGNS NEED REPLACING; REQUIRING NEW ROADWAY MAPS TO INCLUDE THE DESIGNATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Trooper David A. Graham was a dedicated trooper to the safety and protection of the citizens of Montana; and

WHEREAS, David was dedicated to the happiness of his family and friends; and

WHEREAS, David will always be loved and missed dearly as he was the most helpful and loving person we have known.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Highway patrol officer David Graham memorial highway. (1) There is established the highway patrol officer David Graham memorial highway on the existing U.S. highway 2 from the southern boundary of the city of Kalispell to the western boundary of the city of Columbia Falls.
- (2) When existing road signs on the designated highway need replacement, the department shall provide appropriate markers to recognize the memorial designation of the highway.
- (3) Maps that identify roadways in Montana must be updated to reflect the memorial designation in subsection (1) when the maps are updated.
- **Section 2.** Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 2, 2009

CHAPTER NO. 141

[HB 311]

AN ACT NAMING A PORTION OF U.S. HIGHWAY 2 AFTER HIGHWAY PATROL OFFICER EVAN F. SCHNEIDER; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO PROVIDE MARKERS TO RECOGNIZE THE DESIGNATION WHEN EXISTING SIGNS NEED

REPLACING; REQUIRING NEW ROADWAY MAPS TO INCLUDE THE DESIGNATION: AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Evan F. Schneider proudly and honorably served the great State of Montana as a Montana Highway Patrol Trooper; his service record was exemplary; and even the people he arrested thanked him for his kindness and respect; and

WHEREAS, Evan helped many Montanans who were in crisis on our State's highways; and

WHEREAS, Evan joyfully fulfilled his duty as a Montana Highway Patrol Trooper to protect every person who travels Montana's highways; and

WHEREAS, we honor his ultimate sacrifice, his final duty to the citizens of Montana.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Highway patrol officer Evan F. Schneider memorial highway. (1) There is established the highway patrol officer Evan F. Schneider memorial highway on the existing U.S. highway 2 from the eastern boundary of the city of Columbia Falls to the western boundary of the city of Hungry Horse.
- (2) When existing road signs on the designated highway need replacement, the department shall provide appropriate markers to recognize the memorial designation of the highway.
- (3) Maps that identify roadways in Montana must be updated to reflect the memorial designation in subsection (1) when the maps are updated.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 2, 2009

CHAPTER NO. 142

[HB 324]

AN ACT ALLOWING A RETIRING LAW ENFORCEMENT OFFICER TO PURCHASE CERTAIN FIREARMS ISSUED TO THE OFFICER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purchase of firearm by retiring law enforcement officer. A sheriff or other peace officer, as defined in 7-32-303, who is terminating from service and is eligible for a retirement benefit from a retirement plan under Title 19, chapters 6 through 9, 19, or 21, may request to purchase firearms that have been issued to the sheriff or peace officer and that are legal for a private citizen to possess. If the request is accepted, the parties shall agree on the purchase price, not to exceed fair market value.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 32, part 3, and the provisions of Title 7, chapter 32, part 3, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 2, 2009

CHAPTER NO. 143

[SB 141]

AN ACT REPEALING FRANCHISE DISABILITY INSURANCE; REPEALING SECTION 33-22-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 33-22-401, MCA, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 2, 2009

CHAPTER NO. 144

[SB 173]

AN ACT CLARIFYING THE ABILITY OF SCHOOL DISTRICTS TO SHARE SUPERINTENDENTS AND PRINCIPALS; AND AMENDING SECTION 20-4-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-401, MCA, is amended to read:

- **"20-4-401.** Appointment and dismissal of district superintendent or county high school principal. (1) The trustees of any high school district, except a county high school or other high school district that operates under a separate board of trustees due to alternative methods of electing the members of the high school board of trustees as provided in 20-3-352(3), and the trustees of the elementary district where its high school building is located shall jointly employ and appoint a district superintendent. The trustees of a county high school or other high school district that operates under a separate board of trustees due to alternative methods of electing the members of the high school board of trustees as provided in 20-3-352(3) shall employ and appoint a district superintendent, except that they the trustees of a county high school district may employ and appoint a holder of a class 3 teacher certificate with a district superintendent. The trustees of any other district may employ and appoint a district superintendent.
- (2) Whenever a joint board of trustees has been formed by a county high school and the elementary district where the county high school is located, the joint board shall jointly employ and appoint a district superintendent. During the term of contract of the jointly appointed district superintendent, neither district may separately employ and appoint a district superintendent or county high school principal.
- (3) School districts other than those provided in subsection (2) that form a joint board of trustees or the boards of trustees of two or more districts may jointly employ and appoint a district superintendent, as allowed in 20-3-362, or may enter into an interlocal agreement pursuant to Title 7, chapter 11, part 1, to cooperatively share the employment of a district superintendent.
- (4) The written contract of employment of a district superintendent or a county high school principal must be authorized by the proper resolution of the trustees of the district or the joint board of trustees and executed in duplicate by the presiding officer of the trustees or joint board of trustees and the clerks of the

districts in the name of the districts and by the district superintendent or the county high school principal. The contract must be for a term of not more than 3 years, and after the second successive contract, the contract is considered to be renewed for a further term of 1 year from year to year unless the trustees, by resolution passed by a majority vote of its membership, resolve to terminate the services of the district superintendent or the county high school principal at the expiration of the existing contract. The trustees shall take the termination action and notify the district superintendent or the county high school principal in writing of their intent to terminate the superintendent's or principal's services at the expiration of the superintendent's or principal's current contract not later than February 1 of the last year of the contract.

- (5) Whenever a joint board of trustees or the boards of trustees of two or more districts employs a person as the district superintendent under subsection (2) or (3), the districts shall prorate the compensation provided by the contract of employment on the basis of the number of teachers employed by each district.
- (6) At any time the class 3 teacher certification or the endorsement of the certificate of a district superintendent or a county high school principal that qualifies the person to hold the position becomes invalid, the trustees of the district or the joint board of trustees shall discharge the person as the district superintendent or county high school principal regardless of the unexpired term of the contract. The trustees may not compensate the superintendent or principal under the terms of the contract for any services rendered subsequent to the date of the invalidation of the teacher certificate.
- (7) A district superintendent or county high school principal may not engage in any work or activity that the trustees consider to be in conflict with the duties and employment as the district superintendent or county high school principal."

Approved April 2, 2009

CHAPTER NO. 145

[SB 208]

AN ACT AUTHORIZING THE GOVERNING BODY OF A COUNTY, CITY, OR TOWN TO CONSIDER THE EMPLOYEES OF PRIVATE, NONPROFIT HOSPITALS, HEALTH CENTERS, OR NURSING HOMES TO BE EMPLOYEES OF THE COUNTY, CITY, OR TOWN SOLELY FOR THE PURPOSE OF PARTICIPATION IN GROUP HOSPITALIZATION, MEDICAL, HEALTH, INCLUDING LONG-TERM DISABILITY, ACCIDENT, OR GROUP LIFE INSURANCE CONTRACTS OR PLANS; AMENDING SECTION 2-18-702, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-702, MCA, is amended to read:

"2-18-702. Group insurance for public employees and officers. (1) (a) Except as provided in subsection (1)(c), all counties, cities, towns, school districts, and the board of regents shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans for the benefit of their officers and employees and their dependents. The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing

greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents.

- (b) The governing body of a county, city, or town may, at its discretion, consider the employees of private, nonprofit economic development organizations, hospitals, health centers, or nursing homes to be employees of the county, city, or town solely for the purpose of participation in group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans as provided in subsection (1)(a). The governing body of the county, city, or town may require an employee, or organization, hospital, health center, or nursing home to pay the actual cost of coverage required for participation or may, at its discretion and subject to any restriction on who may be a member of a group, pay all or part of the cost of coverage of the employee of the organization.
- (c) The governing body of a third, fourth, fifth, sixth, or seventh class county or the board of trustees of a hospital district may, at its discretion, exempt employees of a county hospital, county rest home *or nursing home*, or hospital district from participation in group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans provided pursuant to subsection (1)(a) or (1)(b).
- (2) State employees and elected officials, as defined in 2-18-701, may participate in state employee group benefit plans as are provided for under part 8 of this chapter.
- (3) For state officers and employees, the premiums required from time to time to maintain the insurance in force must be paid by the insured officers and employees, and the state treasurer shall deduct the premiums from the salary or wages of each officer or employee who elects to become insured, on the officer's or employee's written order, and issue a warrant for the premiums to the insurer.
- (4) For the purpose of this section, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates licensees in the field of health or the services of hospitals, clinics, or sanitariums or both professional and hospital services must be construed as group insurance and the dues payable under the plans must be construed as premiums for group insurance.
- (5) If the board of trustees of a school district implements a self-insured group health plan or if the board of regents implements an alternative to conventional insurance to provide group benefits to its employees, the board shall maintain the alternative plan on an actuarially sound basis."

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved April 2, 2009

CHAPTER NO. 146

[SB 409]

AN ACT PROVIDING FOR THE ENFORCEMENT OF THE USE OF A MUFFLER FOR AN ENGINE COMPRESSION BRAKE DEVICE; PROVIDING FOR A NOTICE OF DEFICIENCY; PROVIDING A PENALTY; AND AMENDING SECTIONS 61-9-321, 61-9-501, AND 61-9-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-9-321, MCA, is amended to read:

- **"61-9-321. Engine compression brake device use.** (1) A commercial motor vehicle equipped with an engine compression brake device must be equipped with a muffler in good working condition to prevent excessive noise.
- (2) An operator of a commercial motor vehicle that has an engine compression brake device with a factory-installed muffler or an equivalent after-market muffler may not be prohibited from using the engine compression brake device.
- (3) The department of transportation employees who are designated as peace officers pursuant to 61-10-154 shall work with law enforcement in the enforcement of standards adopted pursuant to this section.
 - (a) Notice of a deficiency must be given pursuant to 61-9-501.
- (b) A violation of the rules adopted to implement to this section is punishable as provided in 61-9-521."
 - Section 2. Section 61-9-501, MCA, is amended to read:
- **"61-9-501.** Inspections by officers of the department. (1) The department or its agents may at any time upon reasonable cause to believe that a vehicle is unsafe or not equipped as required by law or that its equipment is not in proper adjustment or repair require the driver of such the vehicle to stop and submit such the vehicle to an inspection and such test with reference thereto as may be appropriate.
- (2) In the event such the vehicle and its equipment are found to be in safe condition and in full compliance with the law, the officer making such the inspection may issue to the driver an official certificate of inspection and approval of such the vehicle specifying those parts or equipment so that have been inspected and approved.
- (3) In the event such the vehicle is found to be in unsafe condition or any required part or equipment is not present or is not in proper repair and adjustment, the officer shall give a written notice to the driver and shall send a copy to the department. Said The notice shall must specify the deficiencies and require that such the vehicle be placed in safe condition and its equipment in proper repair and adjustment within 5 days, except as provided in subsection (4).
- (4) For the purpose of 61-9-321 only, the notice must require the engine compression brake device muffler be in proper repair and adjustment within 14 days."
 - Section 3. Section 61-9-503, MCA, is amended to read:
- **"61-9-503. Owners and drivers to comply with inspection laws.** (1) No person driving a vehicle may refuse to submit the vehicle to an inspection and test when required to do so by the department or an authorized officer or employee of the department.
- (2) Every owner or driver, upon receiving a notice as provided in 61-9-501, shall comply therewith and shall within 5 days have the deficiencies corrected and forward notification of the correction to the department. In lieu of compliance with this subsection, the vehicle may not be operated, except as provided in subsection (3).
- (3) No person may operate any vehicle after receiving a notice with reference thereto as above provided except as may be necessary to return the vehicle to the residence or place of business of the owner or driver, if within a distance of 20 miles, or to a garage until the vehicle and its equipment have been placed in

proper repair and adjustment and otherwise made to conform to the requirements of this chapter."

Approved April 2, 2009

CHAPTER NO. 147

[HB 24]

AN ACT INSTRUCTING THE MONTANA CODE COMMISSIONER TO RENUMBER AND RECODIFY TITLE 15, CHAPTER 30, MONTANA CODE ANNOTATED, SPECIFICALLY RELATING TO THE RATE AND RETURN OF THE INDIVIDUAL INCOME TAX AND CERTAIN PORTIONS OF THE ADMINISTRATION AND COLLECTION OF THE INDIVIDUAL INCOME TAX; COMBINING CERTAIN INDIVIDUAL INCOME TAX PROVISIONS TO IMPROVE USABILITY AND IMPROVE THE RECODIFICATION; AMENDING SECTIONS 15-30-111, 15-30-114, 15-30-171, 15-30-172, 15-30-174, 15-30-176, AND 15-30-177, MCA; AND REPEALING SECTIONS 15-30-110, 15-30-115, 15-30-173, 15-30-175, 15-30-178, AND 15-30-179, MCA. Be it enacted by the Legislature of the State of Montana:

- **Section 1. Instructions to code commissioner.** (1) The code commissioner is instructed to renumber sections and parts of the Montana Code Annotated currently in Title 15, chapter 30.
- (a) The code commissioner shall create new parts of Title 15, chapter 30, and all sections within current parts must be moved and renumbered to the new parts. Except as provided in subsections (1)(b) and (1)(c), the sections must retain their current codified relationship.
- (b) All sections in Title 15, chapter 30, part 1, except 15-30-126 and 15-30-141 through 15-30-149, must be recodified as integral parts of two new parts of Title 15, chapter 30, one part based upon the rate and return of the individual income tax and the second part relating to specific tax credits and tax checkoffs.
- (c) Section 15-30-126 must be recodified as an integral part of Title 15, chapter 31, governing corporation license or income tax.
- (d) Sections 15-30-141 through 15-30-149 must be recodified as an integral part of Title 15, chapter 30, current part 3, relating to tax administration and collections, as that part is recodified.
- (2) The code commissioner is instructed to change internal references within and to the renumbered sections, including sections enacted or amended by the 61st legislature, to reflect the new section numbers assigned to sections pursuant to this section.
- (3) Any enactment, including an enactment of the 61st legislature, that requires that a section be codified in a part of Title 15, chapter 30, and that is recodified pursuant to this section is codified as an integral part of the recodified part, and the provisions of the newly recodified part apply to the recodified section.
- (4) Any amendment to the following sections repealed by [section 9], unless specifically coordinated in another act, is to be codified as an integral part of the specified section:
 - (a) 15-30-110 to be codified in 15-30-111;
 - (b) 15-30-115 to be codified in 15-30-114:

- (c) 15-30-173 to be codified in 15-30-172;
- (d) 15-30-178 to be codified in 15-30-174;
- (e) 15-30-175 to be codified in 15-30-176; and
- (f) 15-30-179 to be codified in 15-30-177.

Section 2. Section 15-30-111, MCA, is amended to read:

- **"15-30-111. Adjusted gross income.** (1) Adjusted Subject to subsection (13), adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:
- (a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law:
- (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);
- (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;
- (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;
- (d) depreciation or amortization taken on a title plant as defined in 33-25-105;
- (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;
- (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and
- (g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.
- (2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:
- (a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law:
- (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);
- (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;
- (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;

- (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:
- (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;
- (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;
 - (d) all Montana income tax refunds or tax refund credits;
- (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);
- (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;
 - (g) all benefits received under the workers' compensation laws;
- (h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;
- (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- (j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;
- (k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;
- (l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;
- (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;
- (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;
- (o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;
- (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is

required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

- (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303; and
- (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero.
- (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(1) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.
- (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.
- (5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.
- (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.
- (7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.
- (8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.
- (9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the

federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

- (b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.
- (10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.
- (11) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.
- (12) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (12)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:
 - (i) is a health care professional licensed in Montana as provided in Title 37;
- (ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;
- (iii) has had a student loan incurred as a result of health-related education; and
- (iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (12)(b) as an incentive to practice in Montana.
- (b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in

50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.

(13) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)"

Section 3. Section 15-30-114, MCA, is amended to read:

- "15-30-114. Additional exemption for dependent child with a disability physician's verification. (1) In lieu of the exemption in 15-30-112(5), an exemption for twice the amount allowed for dependents is allowed for each dependent child with a disability.
- (2) In order to be eligible for the exemption, a dependent child with a disability must, for the taxable year of the taxpayer, have as the child's principal place of abode the home of the taxpayer and have a permanent disability of great enough severity that it constitutes not less than 50% disability to the body as a whole. An exemption may be allowed for a dependent with a permanent disability after the individual reaches the age of majority if the individual continues to be a dependent.
- (3) A taxpayer claiming the exemption provided for in subsection (1) shall provide with the taxpayer's income tax return written documentation by a licensed physician that the disability qualifies under subsection (2). The written documentation remains in effect in subsequent tax years for the purpose of claiming the additional exemption unless there is a change in the dependent's physical circumstances to the extent that the dependent no longer qualifies for the additional exemption. The taxpayer shall inform the department of any change in the dependent's eligibility. The department may inquire by mail whether any material change has occurred in the dependent's physical circumstances that may affect the dependent's eligibility for the additional exemption and that may require additional written documentation by a licensed physician at any time that the department considers necessary."

Section 4. Section 15-30-171, MCA, is amended to read:

- "15-30-171. Residential property tax credit for elderly definitions. As used in 15-30-171, through 15-30-179 15-30-172, 15-30-174, 15-30-176, and 15-30-177, the following definitions apply:
- (1) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.
 - (2) "Claimant" means a person who is eligible to file a claim under 15-30-172.
 - (3) "Department" means the department of revenue.
- (4) "Gross household income" means all income received by all individuals of a household while they are members of the household.
- (5) "Gross rent" means the total rent in cash or its equivalent actually paid during the claim period by the renter or lessee for the right of occupancy of the homestead pursuant to an arm's-length transaction with the landlord.
 - (6) "Homestead" means:

- (a) a single-family dwelling or unit of a multiple-unit dwelling that is subject to property taxes in Montana and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling; or
- (b) a single-family dwelling or unit of a multiple-unit dwelling that is rented from a county or municipal housing authority as provided in Title 7, chapter 15.
- (7) (a) "Household" means an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses.
- (b) The term does not include bona fide lessees, tenants, or roomers and boarders on contract.
- (8) "Household income" means the amount obtained by subtracting 6,300 from gross household income.
- (9) (a) "Income" means, except as provided in subsection (9)(b), federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income, including but not limited to:
- (i) the amount of any pension or annuity, including Railroad Retirement Act benefits and veterans' disability benefits;
 - (ii) the amount of capital gains excluded from adjusted gross income;
 - (iii) alimony;
 - (iv) support money;
 - (v) nontaxable strike benefits;
 - (vi) cash public assistance and relief;
 - (vii) interest on federal, state, county, and municipal bonds; and
- (viii) all payments received under federal social security except social security income paid directly to a nursing home.
- (b) For the purposes of this subsection (9), income is reduced by the taxpayer's basis.
- (10) "Property tax billed" means taxes levied against the homestead, including special assessments and fees but excluding penalties or interest during the claim period.
 - (11) "Rent-equivalent tax paid" means 15% of the gross rent."

Section 5. Section 15-30-172, MCA, is amended to read:

- "15-30-172. Residential property tax credit for elderly eligibility disallowance or adjustment. (1) In order to be eligible to make a claim under 15-30-171, through 15-30-179 15-30-172, 15-30-174, 15-30-176, and 15-30-177, an individual:
- (a) must have reached age 62 or older during the claim period for which relief is sought;
 - (b) must have resided in Montana for at least 9 months of that period;
- (c) must have occupied one or more dwellings in Montana as an owner, renter, or lessee for at least 6 months of the claim period; and
 - (d) must have less than \$45,000 of gross household income.
- (2) A person is not disqualified as a claimant if the person changes residences during the claim period, provided that the person occupies one or more dwellings in Montana as an owner, renter, or lessee for at least 6 months during the claim period.

- (3) A claim is disallowed if the department finds that the claimant received title to the claimant's homestead primarily for the purpose of receiving benefits under 15-30-171, 15-30-172, 15-30-174, 15-30-176, and 15-30-177.
- (4) When the landlord and tenant have not dealt at arm's length and the department judges the gross rent charged to be excessive, the department may adjust the gross rent to a reasonable amount."

Section 6. Section 15-30-174, MCA, is amended to read:

- "15-30-174. Residential property tax credit for elderly filing date. (1) Except as provided in subsection (2), a claim for relief must be submitted at the same time the claimant's individual income tax return is due. For an individual not required to file a tax return, the claim must be submitted on or before April 15 of the year following the year for which relief is sought.
- (2) A receipt showing property tax billed or a receipt showing gross rent paid, whichever is appropriate, must be filed with each claim. In addition, each claimant shall, at the request of the department, supply all additional information necessary to support a claim.
- (2)(3) The department may grant a reasonable extension for filing a claim whenever, in its judgment, good cause exists.
- (3)(4) In the event that an individual who would have a claim under 15-30-171, through 15-30-179 15-30-172, 15-30-174, 15-30-176, and 15-30-177 dies before filing the claim, the personal representative of the estate of the decedent may file the claim.
- (4)(5) The department or an individual may revise a return and make a claim under 15-30-171, through 15-30-179 15-30-172, 15-30-174, 15-30-176, and 15-30-177 within 5 years from the last day prescribed for filing a claim for relief."

Section 7. Section 15-30-176, MCA, is amended to read:

- "15-30-176. Residential property tax credit for elderly—computation of relief. The amount of the tax credit granted under the provisions of 15-30-171, through 15-30-179 15-30-172, 15-30-174, 15-30-176, and 15-30-177 is computed as follows:
- (1) In the case of a claimant who owns the homestead for which a claim is made, the credit is the amount of property tax billed less the deduction specified in subsection (4).
- (2) In the case of a claimant who rents the homestead for which a claim is made, the credit is the amount of rent-equivalent tax paid less the deduction specified in subsection (4).
- (3) In the case of a claimant who both owns and rents the homestead for which a claim is made, the credit is:
- (a) the amount of property tax billed on the owned portion of the homestead less the deduction specified in subsection (4); plus
- (b) the amount of rent-equivalent tax paid on the rented portion of the homestead less the deduction specified in subsection (4).
- (4) Property tax billed and rent-equivalent tax paid are reduced according to the following schedule:

Household income Amount of reduction \$0 - \$999 \$0 \$1,000 - \$1,999 \$0 \$2,000 - \$2,999 the product of .006 times the household income

\$3,000 - \$3,999	the product of .016 times the household income
\$4,000 - \$4,999	the product of .024 times the household income
\$5,000 - \$5,999	the product of .028 times the household income
\$6,000 - \$6,999	the product of .032 times the household income
\$7,000 - \$7,999	the product of .035 times the household income
\$8,000 - \$8,999	the product of .039 times the household income
\$9,000 - \$9,999	the product of .042 times the household income
\$10,000 - \$10,999	the product of .045 times the household income
\$11,000 - \$11,999	the product of .048 times the household income
\$12,000 & over	the product of .050 times the household income

(5) For a claimant whose household income is \$35,000 or more but less than \$45,000, the amount of the credit is equal to the credit calculated under this section multiplied by the decimal equivalent of a percentage figure according to the following table:

Gross household income	Percentage of credit allowed
\$35,000 - \$37,500	40%
\$37,501 - \$40,000	30%
\$40,001 - \$42,500	20%
\$42,501 - \$44,999	10%
\$45,000 or more	0%

- (6) The credit granted may not exceed \$1,000.
- (7) Relief under 15-30-171, 15-30-172, 15-30-174, 15-30-176, and 15-30-177 is a credit against the claimant's Montana individual income tax liability for the claim period. If the amount of the credit exceeds the claimant's liability under this chapter, the amount of the excess must be refunded to the claimant. The credit may be claimed even though the claimant has no income taxable under this chapter."

Section 8. Section 15-30-177, MCA, is amended to read:

- "15-30-177. Residential property tax credit for elderly limitations denial of claim. (1) Only one claimant per household in a claim period under the provisions of 15-30-171, through 15-30-179 15-30-172, 15-30-174, 15-30-176, and 15-30-177 is entitled to relief.
- (2) Except as provided in subsection (3), a claim for relief may not be allowed for any portion of property taxes billed or rent-equivalent taxes paid that is derived from a public rent or tax subsidy program.
- (3) Except for dwellings rented from a county or municipal housing authority, a claim for relief may not be allowed on rented lands or rented dwellings that are not subject to Montana property taxes during the claim period.
- (4) A person filing a false or fraudulent claim under the provisions of 15-30-171, 15-30-172, 15-30-174, 15-30-176, and 15-30-177 must be charged with the offense of unsworn falsification to authorities pursuant to 45-7-203. If a false or fraudulent claim has been paid, the amount paid may be recovered as any other debt owed to the state. An additional 10% may be added to the amount due as a penalty. The unpaid debt must bear interest from the date of the original payment of claim until paid, at the rate of 1% per month."

Section 9. Repealer. Sections 15-30-110, 15-30-115, 15-30-173, 15-30-175, 15-30-178, and 15-30-179, MCA, are repealed.

Approved April 3, 2009

CHAPTER NO. 148

[HB 67]

AN ACT CLARIFYING THAT THE SCHEDULE OF PRICES FOR COUNTY LEGAL PRINTING ARE ADOPTED BY ADMINISTRATIVE RULE; DIRECTING THE CODE COMMISSIONER TO RENUMBER STATUTES RELATED TO COUNTY PRINTING AS PART OF THE STATUTES RELATED TO STATE PRINTING; AMENDING SECTION 7-5-2404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-2404, MCA, is amended to read:

- **"7-5-2404. Establishment of maximum prices.** (1) The board shall adopt, *by rule*, and publish a schedule of maximum prices to be charged for county legal advertising.
- (2) The board shall conduct hearings when required to determine maximum rates for county legal advertising. Notice of the hearing must be mailed to the Montana association of counties and the Montana newspaper association.
- (3) The board shall deliver, free of charge, to each board of county commissioners in this state a copy of every schedule of maximum prices adopted by the board within 30 days of its publication, together with a notice of the date fixed by the board when the prices will be effective.
- (4) The county commissioners shall require each establishment that prints county legal advertising to verify that:
- (a) the legal advertisement was published on the dates ordered by the county and in the style set by the board; and
 - (b) the price was not in excess of the maximum price set by the board.
 - (5) The board may not establish maximum prices for printed county forms."

Section 2. Instructions to code commissioner. The code commissioner is directed to renumber Title 7, chapter 5, part 24, MCA, as an integral part of Title 18, chapter 7, MCA.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2009

CHAPTER NO. 149

[HB 72]

AN ACT CLARIFYING THE DURATION OF THE CARETAKER RELATIVE EDUCATIONAL AUTHORIZATION AFFIDAVIT; AMENDING SECTION 20-5-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-503, MCA, is amended to read:

- "20-5-503. Caretaker relative educational authorization affidavit use immunity format. (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child has the same authority as a custodial parent of the child to discuss with an educator the educational progress of the child, consent to an educational service, and consent to medical care related to an educational service for the child for which parental consent is usually required if a caretaker relative educational authorization affidavit is completed in compliance with this section.
- (2) An affidavit is effective only if it is signed by the caretaker relative, under oath, before a notary public. A clear photographic copy of an affidavit completed in compliance with this section is sufficient in any instance in which an original is required by a school official or health care provider.
- (3) Unless parental rights have been judicially terminated or unless the ability to give legal consent for the child to receive an educational service and any medical care related to the educational service for which parental consent is usually required has been granted to the caretaker relative pursuant to 40-4-211 and 40-4-228, a decision by a parent of the child communicated to a school official, a health care provider, or both, regarding the child supersedes a conflicting decision by a caretaker relative made pursuant to an affidavit completed in compliance with this section. However, a decision by a parent does not supersede a decision by a caretaker relative pursuant to an affidavit completed in compliance with this section if the decision by the parent endangers the life of the child. A school official or health care provider may require reasonable proof of authenticity of a decision by a parent intended to supersede a decision by a caretaker relative.
- (4) (a) A public or private entity or individual who acts in good faith reliance on a caretaker relative educational authorization affidavit completed in compliance with this section and who has no actual knowledge of facts contrary to those indicated in the affidavit is not subject to civil liability or criminal prosecution or to a professional disciplinary procedure for an action that would have been proper if the facts had been as the entity or individual believed them to be
- (b) This subsection (4) applies even if an educational service or educationally related medical care, or both, are provided to a child against the wishes of a parent of that child if the person rendering the service does not have actual knowledge of the parent's wishes.
- (5) A person who relies on an affidavit completed in compliance with this section has no obligation to make further inquiry or investigation.
- (6) An affidavit completed in compliance with this section is effective for the earlier of:
- (a) the end of the first school year after delivery of the affidavit to a school district;
 - (b) until it has been revoked by the caretaker relative; or
 - (c) until the child no longer resides with the caretaker relative.
- (7) If the child ceases to live with the caretaker relative or the caretaker relative revokes the affidavit, the caretaker relative shall provide written notice of that fact to all persons to whom the caretaker relative has given the affidavit or to whom the caretaker relative has caused the affidavit to be given.
- (8) This section does not relieve a person from a violation of other law, and this section does not affect the rights of a child's parent except as provided in this section.

(9) A caretaker relative educational authorization affidavit is invalid unless it is written in substantially the following form and contains the warning provided for in paragraph 5 of the format below:

CARETAKER RELATIVE'S EDUCATIONAL AUTHORIZATION AFFIDAVIT

Use of this affidavit is authorized by 20-5-503, MCA.

1. INSTRUCTIONS: The completion and signing of the affidavit before a notary public are sufficient to authorize educational enrollment and services and school-related medical care for the named child. Please print clearly.

The child named below lives in my home, and I am 18 years of age or older.

- a. Name of child:
- b. Child's date of birth:
- c. My name (caretaker relative):
- d. My home address:
- e. My relationship to the child (the caretaker relative must be an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the caretaker relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child):
- 2. I hereby certify that this affidavit is not being used for the purpose of circumventing school residency laws, to take advantage of a particular academic program or athletic activity, to circumvent a disciplinary action of a previous school, or for an otherwise unlawful purpose.
 - 3. My date and year of birth:
 - 4. Check the following if true (all must be checked for this affidavit to apply):
- [] A parent of the child identified in paragraph 1a of this affidavit has left the child with me and has expressed no definite time period when the parent will return for the child.
- [] The child is now residing with me on a full-time basis.
 [] I am unable to locate or contact the parents of the child at this time to notify the parents of my intended authorization, or the parents refuse to regain custody of the child even though I have asked in writing that the parents do so.
- [] No adequate provision, such as appointment of a guardian ad litem or execution of a power of attorney, has been made for enrollment of the child in school, other educational services, or educationally related medical services.
- 5. WARNING: DO NOT SIGN THIS FORM IF ANY OF THE STATEMENTS ABOVE ARE INCORRECT OR YOU WILL BE COMMITTING A CRIME PUNISHABLE BY A FINE, IMPRISONMENT, OR BOTH.
- $6.\,$ I declare under penalty of false swearing under the laws of Montana that the foregoing is true and correct.

Signed this day of, 20	
(Signature of caretaker relative)	
(Signature county state and seal of note:	rv public

gnature, county, state, and seal of notary public)

7. NOTICES:

- a. Completion of this affidavit does not affect the rights of the child's parents or legal guardian regarding the care, custody, and control of the child and does not mean that the caretaker relative has legal custody of the child.
- b. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.
- c. This affidavit is not valid for more than 6 months after the date on which it is signed by the earetaker relative effective until the earlier of:
- i. the end of the first school year after delivery of the affidavit to a school district;
 - ii. revocation by the caretaker relative; or
 - iii. the child no longer resides with the caretaker relative.
 - 8. ADDITIONAL INFORMATION:
- a. TO CARETAKER RELATIVES: If the child stops living with you, you shall notify anyone to whom you have given this affidavit, as well as anyone who received the affidavit from someone else.
- b. TO PUBLIC AND PRIVATE SCHOOL OFFICIALS AND PUBLIC AND PRIVATE HEALTH CARE PROVIDERS:
- (1) A public or private school official or a public school district official may require additional reasonable evidence that the caretaker relative lives at the address provided in item 1d of the affidavit form.
- (2) A public or private entity or individual who acts in good faith reliance upon a caretaker relative educational authorization affidavit to enroll a child in school or to provide educational services or educationally related medical care, or both, without actual knowledge of facts contrary to those indicated in the affidavit, is not subject to criminal prosecution or civil liability to any person, or subject to any professional disciplinary action, for reliance on an affidavit completed in compliance with 20-5-503, MCA."
 - Section 2. Effective date. [This act] is effective on passage and approval.
- **Section 3. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to caretaker relative educational authorization affidavits completed in compliance with 20-5-503 for the 2008-2009 school year.

Approved April 3, 2009

CHAPTER NO. 150

[HB 93]

AN ACT CLARIFYING MEDICAL DIRECTION FOR EMERGENCY MEDICAL SERVICES; CLARIFYING THE PROCEDURES FOR HANDLING COMPLAINTS RELATED TO PREHOSPITAL AND INTERFACILITY EMERGENCY CARE; AMENDING SECTIONS 50-6-104, 50-6-201, 50-6-203, 50-6-302, 50-6-317, AND 50-6-323, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-6-104, MCA, is amended to read:

"50-6-104. Interdepartmental cooperation required. The department of public health and human services, the department of justice, the board of medical examiners, and other interested departments or divisions shall develop in writing a mutually agreeable plan of cooperation so that governmental effort

will efforts are not be duplicated and governmental resources will be are applied on a reasonable priority basis."

- Section 2. Emergency medical care standards review process. (1) The board of medical examiners shall establish patient care standards for prehospital and interfacility emergency medical treatment and transportation.
- (2) (a) Complaints involving prehospital care, interfacility care, or the operation of an emergency medical service, as defined in 50-6-302, must be filed with the board and reviewed by a screening panel pursuant to 37-1-307.
- (b) If a complaint is initially filed with the department of public health and human services, the department shall refer the complaint to the board for review by a screening panel.
- (3) (a) When a complaint involves the operation or condition of an emergency medical service, the screening panel shall refer the complaint to the department for investigation as provided in 50-6-323.
- (b) When a complaint involves patient care provided by an emergency medical technician, the screening panel shall:
- (i) refer the complaint to the board for investigation as provided in 37-1-308 and 50-6-203; and
- (ii) forward to the department the complaint and the results of the screening panel's initial review as soon as the review is completed.
- (c) When a complaint involves a combination of patient care and emergency medical service matters, the screening panel shall refer the complaint to both the department and the board for matters that fall within the jurisdiction of each entity.
 - (4) For a complaint involving patient care, the board shall:
 - (a) immediately share with the department any information indicating:
 - (i) a potential violation of department rules; or
- (ii) that the existing policies or practices of an emergency medical service may be jeopardizing patient care; and
 - (b) notify the department when:
 - (i) a sanction is imposed upon an emergency medical technician; or
 - (ii) the complaint is resolved.
- $\ensuremath{(5)}$ For a complaint involving an emergency medical service, the department shall:
 - (a) immediately share with the board any information indicating:
 - (i) a potential violation of board rules; or
- (ii) that the practices of an emergency medical technician may be jeopardizing patient care; and
 - (b) notify the board when:
 - (i) a sanction is imposed upon an emergency medical service; or
 - (ii) the complaint is resolved.

Section 3. Section 50-6-201, MCA, is amended to read:

"50-6-201. Legislative findings — duties of board. (1) The legislature finds and declares that prompt and efficient emergency medical care of the sick and injured at the scene and during transport to a health care facility is an important ingredient necessary for reduction of the mortality and morbidity

rate during the first critical minutes immediately after an accident or the onset of an emergent condition and that a program for emergency medical technicians is required in order to provide the safest and most efficient delivery of emergency care.

(2) The board has a duty to ensure that emergency medical technicians provide proper treatment to patients in their care."

Section 4. Section 50-6-203, MCA, is amended to read:

- "50-6-203. Rules. (1) The board, after consultation with the department of public health and human services, the department of justice, and other appropriate departments, associations, and organizations, shall adopt rules of the board implementing this part, including but not limited to:
- (a) training and eertification licensure of emergency medical technicians; and
 - (b) the administration of drugs by emergency medical technicians; and
- (c) the handling of complaints involving patient care provided by emergency medical technicians.
- (2) The board may, by rule, establish various levels of emergency medical technician eertification licensure and shall specify for each level the training requirements, acts allowed, recertification relicensure requirements, and any other requirements regarding the training, performance, or eertification licensure of that level of emergency medical technician that it considers necessary, subject to the provisions of 37-1-138."

Section 5. Section 50-6-302, MCA, is amended to read:

- **"50-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:
- (1) "Aircraft" has the same meaning given provided in 67-1-101. The term includes any fixed-wing airplane or helicopter.
- (2) (a) "Ambulance" means a privately or publicly owned motor vehicle or aircraft that is maintained and used for the transportation of patients.
 - (b) The term does not include:
- (i) a motor vehicle or aircraft owned by or operated under the direct control of the United States; or
- (ii) air transportation services, such as charter or fixed-based operators, that are regulated by the federal aviation administration and that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.
- (3) "Board" means the Montana state board of medical examiners provided for in 2-15-1731.
- (3)(4) "Department" means the department of public health and human services provided for in 2-15-2201.
- (4)(5) "Emergency medical service" means a prehospital or interhospital interfacility emergency medical transportation or treatment service provided by an ambulance or nontransporting medical unit that is licensed by the department.
- (5) "Medical control" means the function of a licensed physician in providing direction, advice, or orders to an emergency medical service provider.

- (6) "Nontransporting medical unit" means an aggregate of persons who are organized to respond to a call for emergency medical service and to treat a patient until the arrival of an ambulance. Nontransporting medical units provide any one of varying types and levels of service defined by department rule but may not transport patients.
- (7) "Offline medical direction" means the function of a board-licensed physician or physician assistant in providing:
- (a) medical oversight and supervision for an emergency medical service or an emergency medical technician; and
- (b) review of patient care techniques, emergency medical service procedures, and quality of care.
- (8) "Online medical direction" means the function of a board-licensed physician or physician assistant or the function of a designee of the physician or physician assistant in providing direction, advice, or orders to an emergency medical technician for prehospital and interfacility emergency care as identified in a plan for offline medical direction.
- (7) "Offline medical director" means a physician who is responsible and accountable for the overall medical direction and medical supervision of an emergency medical service and who is responsible for the proper application of patient care techniques and the quality of care provided by the emergency medical services personnel. The term includes only a physician who volunteers the physician's services as an offline medical director or whose total reimbursement for those services in any 12-month period does not exceed \$5,000.
- (8)(9) (a) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.
- (b) The term does not include an individual who is nonambulatory and who needs transportation assistance solely because that individual is confined to a wheelchair as the individual's usual means of mobility.
- (9)(10) "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States."
 - Section 6. Section 50-6-317, MCA, is amended to read:
- "50-6-317. Liability protection. (1) A physician, physician assistant, or registered nurse licensed under the laws of this state who gives instructions for medical eare provides online medical direction to a member of an emergency medical service without compensation or for compensation not exceeding \$5,000 in any 12-month period and whose professional practice is not primarily in an emergency or trauma room or ward is not liable for civil damages for an injury resulting from the instructions, except damages for an injury resulting from the gross negligence of the physician, physician assistant, or nurse, if the instructions given by the physician, physician assistant, or nurse are:
- (a) consistent with the protocols and the medical control offline medical direction plan approved by the department in licensing the emergency medical service; and
- (b) consistent with the level of eertification or licensure of the emergency medical services personnel instructed by the physician, *physician assistant*, or nurse.

- (2) An offline medical director An individual who volunteers or who is reimbursed \$5,000 or less in any 12-month period for providing offline medical direction is not liable for civil damages for an injury resulting from the performance of his the individual's offline medical direction duties, except damages for an injury resulting from the gross negligence of the director individual."
 - **Section 7.** Section 50-6-323, MCA, is amended to read:
- **"50-6-323. Powers and duties of department.** (1) The department has general authority to supervise and regulate emergency medical services in Montana.
- (2) The Upon referral by a screening panel pursuant to [section 2], the department shall receive and review and may investigate complaints relating to the operation of any emergency medical service, including complaints concerning:.
 - (3) In investigating a complaint, the department may review:
- (a) patient the type and condition of equipment and procedures used by an emergency medical service to provide care provided at the scene or during prehospital or interfacility transportation by an emergency medical service;
 - (b) the condition of any vehicle or aircraft used as an ambulance; or
- (c) $\frac{individual}{individual}$ general performance by an emergency medical service $\frac{individual}{individual}$ general performance by an emergency medical service
- (d) the results of any investigation conducted by the board concerning patient care by an emergency medical technician who was, at the time of the complaint, providing care through the emergency medical service that is the subject of a complaint under investigation by the department.
- (3)(4) Upon completion of an investigation as provided in subsection (2) (3), the department shall take appropriate action, including sharing information regarding complaints with the board as provided in [section 2] and the institution of initiating any necessary legal proceedings, as authorized under this part.
- (4)(5) In order to carry out the provisions of this part, the department shall prescribe and enforce rules for emergency medical services. Rules of the department may include but are not limited to the following:
- (a) the classification and identification of specific types and levels of prehospital and interhospital interfacility medical transportation or treatment services;
 - (b) procedures for issuing, denying, renewing, and canceling licenses;
- (c) minimum licensing standards for each type and level of service, including requirements for personnel, medical control offline medical direction, online medical direction, maintenance, equipment, reporting, recordkeeping, sanitation, and minimum insurance coverage as determined appropriate by the department; and
- (d) other requirements necessary and appropriate to assure the quality, safety, and proper operation and administration of emergency medical services.
 - (5) (6) A rule under adopted pursuant to this section is not effective until:
 - (a) a public hearing has been held for review of the rule; and
- (b) notice of the public hearing and a copy of the proposed rules have been sent to all persons licensed under 50-6-306 to conduct or operate an emergency

medical service. Notice must be sent at least 30 days prior to the date of the public hearing."

Section 8. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 50, chapter 6, part 1, and the provisions of Title 50, chapter 6, apply to [section 2].

Approved April 3, 2009

CHAPTER NO. 151

[HB 367]

AN ACT PROVIDING FOR A SEPARATE POSTADOPTIVE COUNSELING AND SUPPORT PROGRAM WITHIN A CHILD-PLACING AGENCY; SPECIFYING THAT THE COSTS OF THE PROGRAM MAY NOT BE INCLUDED IN PLACEMENT FEES; AND AMENDING SECTIONS 42-2-409 AND 42-7-105, MCA.

WHEREAS, child-placing agencies that provide care and placement of children are in a unique position to provide care and support to a birth parent after relinquishment of a child, especially to parents of few means, which would be consistent with the agencies' ministry; and

WHEREAS, there are currently financial and other means of support for parents who choose to keep their children that are compelling parents of little means to keep their children; and

WHEREAS, the ability to provide similar forms of support to a parent who has chosen to relinquish a child in order to give the parent a chance to grieve and to assist the parent with counseling, temporary housing, mentoring services, job training, life skills development, budgeting and financial management, and educational opportunities will provide birth parents with another option that can help provide for their future after their children have been placed with adoptive families; and

WHEREAS, explicit authority for the program is necessary with the caveat that the program must be kept separate from any program for the placement of children and must be paid for by the agency with separate funds.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Postadoptive counseling and support intent. (1) An agency may have a specific program, separate from its program for the care and placement of children, to provide postadoptive counseling and support for birth parents who have relinquished children for adoption. The program may include but is not limited to grief and loss counseling, temporary housing, mentoring services, job training, life skills development, budgeting and financial management, educational opportunities, and transportation.
- (2) (a) The provision of the services in subsection (1) may not be included by an agency in the fees related to placement for adoption by a parent as provided in 42-7-101.
- (b) An agency providing postadoptive counseling and support shall include a full accounting of the operation of the program as part of the financial statement required in 52-8-104.
- (c) An agency may accept federal funds, grants, or donations specifically for the purpose of funding a program to provide the services in subsection (1) that is separate from the agency's program for the care and placement of children.

Section 2. Section 42-2-409, MCA, is amended to read:

- **"42-2-409. Counseling requirements.** (1) Counseling of the birth mother is required in department, agency, and direct parental placement adoptions. If any other parent is involved in an adoptive placement, counseling of that parent is encouraged.
- (2) Counseling must be performed by a person employed by the department or by a staff person of a licensed child-placing agency designated to provide this type of counseling. Unless the counseling requirement is waived for good cause by a court, a minimum of 3 hours of counseling must be completed prior to execution of a relinquishment of parental rights and consent to adopt. A relinquishment and consent to adopt executed prior to completion of required counseling is void.
 - (3) During counseling, the counselor shall offer an explanation of:
- (a) adoption procedures and options that are available to a parent through the department or licensed child-placing agencies;
- (b) adoption procedures and options that are available to a parent through direct parental placement adoptions, including the right to an attorney and that legal expenses are an allowable expense that may be paid by a prospective adoptive parent as provided in 42-7-101 and 42-7-102;
- (c) the alternative of parenting rather than relinquishing the child for adoption;
- (d) the resources that are available to provide assistance or support for the parent and the child if the parent chooses not to relinquish the child;
- (e) the legal and personal effect and impact of terminating parental rights and of adoption;
- $(f)\ \ the\ options\ for\ contact\ and\ communication\ between\ the\ birth\ family\ and\ the\ adoptive\ family;$
- (g) postadoptive issues, including grief and loss, and the existence of a postadoptive counseling and support program;
- (h) the reasons for and importance of providing accurate medical and social history information under 42-3-101;
 - (i) the operation of the confidential intermediary program; and
- (j) the fact that the adoptee may be provided with a copy of the original birth certificate upon request after reaching 18 years of age, unless the birth parent has specifically requested in writing that the vital statistics bureau withhold release of the original birth certificate.
- (4) The counselor shall prepare a written report containing a description of the topics covered and the number of hours of counseling. The report must specifically include the counselor's opinion of whether or not the parent understood all of the issues and was capable of informed consent. The report must, on request, be released to the person counseled, to the department, to an agency, or with the consent of the person counseled, to an attorney for the prospective adoptive parents."

Section 3. Section 42-7-105, MCA, is amended to read:

- "42-7-105. Prohibited activities violations penalties. (1) A person, other than the department or a licensed child-placing agency, may not:
 - (a) advertise in any public medium that the person:
 - (i) knows of a child who is available for adoption; or

- (ii) is willing to accept a child for adoption or knows of prospective adoptive parents for a child; or
 - (b) engage in placement activities as defined in 52-8-101.
- (2) An individual other than an extended family member or stepparent of a child may not obtain legal or physical custody of a child for purposes of adoption unless the individual has a favorable preplacement evaluation or a court-ordered waiver of the evaluation.
- (3) A person who, as a condition for placement, relinquishment, or consent to the adoption of a child, knowingly offers, gives, agrees to give, solicits, accepts, or agrees to accept from another person, either directly or indirectly, anything other than the fees allowed under 42-7-101 commits the offense of paying or charging excessive adoption process fees.
- (4) It is illegal to require repayment or reimbursement of anything provided to a birth parent under 42-7-101. All payments by the adoptive parent made on behalf of a birth parent pursuant to this section are considered a gift to the birth parent.
- (5) Nothing in this section prohibits a licensed child-placing agency from maintaining a separate program for the assistance of a biological parent who is in need of postadoptive counseling and support as provided in [section 1]. Services must be provided based on need and may not be contingent on a placement being made privately, by the department, or by a licensed child-placing agency. A postadoptive counseling and support program may not be used to induce a biological parent to place a child for adoption.
- (5)(6) A person convicted of the offense of paying or charging excessive adoption process fees, attempting to recover expenses incurred from an adoption process, or otherwise violating this title may be fined an amount not to exceed \$10,000 in an action brought by the appropriate city or county attorney. The court may also enjoin from further violations any person who violates this title."
- **Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 42, chapter 4, part 2, and the provisions of Title 42, chapter 4, part 2, apply to [section 1].

Approved April 3, 2009

CHAPTER NO. 152

[SB 20]

AN ACT CLARIFYING THE MEANING OF THE TERM "SUBSTANTIAL COMPLIANCE"; PROVIDING A STATEMENT OF LEGISLATIVE PURPOSE FOR THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTIONS 2-4-101 AND 2-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, on November 6, 2007, the Montana Supreme Court issued its opinion in the case of Montana Society of Anesthesiologists v. Montana Board of Nursing, 2007 MT 290, 339 Mont. 472, 171 P.3d 704 (2007) (MSA opinion), holding that a nurse anesthetist may practice without direct supervision by an anesthesiologist M.D.; and

WHEREAS, the Montana Society of Anesthesiologists (MSA) challenged the legality of an administrative rule adopted by the Montana Board of Nursing,

alleging, among other things, that the rule was adopted without a sufficient statement of reasonable necessity, as required by section 2-4-305(6)(b), MCA, of the Montana Administrative Procedure Act (MAPA); and

WHEREAS, in the MSA opinion, the Montana Supreme Court held that because MAPA, in section 2-4-305(7), MCA, requires that rules must be adopted in "substantial compliance" with MAPA and because the Montana Supreme Court had previously held that substantial compliance has occurred if the purpose of MAPA has been fulfilled, the defective notice of proposed rulemaking substantially complied with MAPA because the purpose of MAPA is to give public notice of the adoption of a rule and that adequate notice had been given by the Board of Nursing; and

WHEREAS, under the rationale employed by the Montana Supreme Court in the MSA opinion, every rule adopted by an agency could be found to be in substantial compliance with MAPA since every notice of proposed rulemaking gives some notice of a proposed rule adoption, amendment, or repeal; and

WHEREAS, the Legislature intends that a determination of whether MAPA's substantial compliance requirement in section 2-4-305(7), MCA, has been satisfied requires an analysis of more than whether an agency provided adequate public notice of its proposed rule, but rather requires an analysis of whether the agency complied with 2-4-302, 2-4-303, 2-4-305, or 2-4-306, MCA; and

WHEREAS, enactment of this legislation is not intended by the Legislature as a comment upon the outcome of the MSA opinion, but rather is intended to change the analysis used by the courts when determining whether MAPA's substantial compliance requirement, found in section 2-4-305(7), MCA, has been satisfied in future cases.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-101, MCA, is amended to read:

- **"2-4-101. Short title** *purpose.* (1) This chapter shall be is known and may be cited as the "Montana Administrative Procedure Act".
 - (2) The purposes of the Montana Administrative Procedure Act are to:
- (a) generally give notice to the public of governmental action and to provide for public participation in that action;
- (b) establish general uniformity and due process safeguards in agency rulemaking, legislative review of rules, and contested case proceedings;
- (c) establish standards for judicial review of agency rules and final agency decisions; and
- (d) provide the executive and judicial branches of government with statutory directives."

Section 2. Section 2-4-305, MCA, is amended to read:

"2-4-305. Requisites for validity — authority and statement of reasons. (1) The agency shall fully consider written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the register, the differences must be described in the statement of reasons for and against agency action. When

written or oral submissions have not been received, an agency may omit the statement of reasons.

- (2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.
- (3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement. A substantive rule may not be proposed or adopted unless:
- (a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter of the rule as a subject upon which the agency shall or may adopt rules; or
- (b) the rule implements and relates to a subject matter or an agency function that is clearly and specifically included in a statute to which the grant of rulemaking authority extends.
- (4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.
- (5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.
- (6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:
 - (a) consistent and not in conflict with the statute; and
- (b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency. A statement that merely explains what the rule provides is not a statement of the reasonable necessity for the rule.
- (7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. The measure of whether an agency has adopted a rule in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and

this section is not whether the agency has provided notice of the proposed rule, standing alone, but rather must be based on an analysis of the agency's substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

- (8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in citations of authority for rules and in citations of sections implemented by rules. An agency may use an amended proposal notice but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a statement of reasonable necessity.
- (9) If a majority of the members of the appropriate administrative rule review committee notify the committee presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to the proposal notice and will address the objections at the next committee meeting. Following notice by the committee to the agency, the proposal notice may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period during which the adoption notice must be published, unless prior to that time, the committee and does not make the same objection. A copy of the committee's notification to the agency must be included in the committee's records."

Section 3. Effective date. [This act] is effective on passage and approval. Approved April 3, 2009

CHAPTER NO. 153

[SB 82]

AN ACT GENERALLY REVISING LAWS RELATING TO RECOVERY OF MEDICAID BENEFITS FOR SERVICES PAID ON BEHALF OF MEDICAID RECIPIENTS; REMOVING THE COUNTY FROM THE RECOVERY OF MEDICAID BENEFITS PROCESS; PROVIDING DEFINITIONS; AMENDING SECTIONS 53-2-612, 53-6-165, 53-6-167, 53-6-168, AND 53-6-178, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-2-612, MCA, is amended to read:

- "53-2-612. Lien of department or county upon third-party recoveries. (1) Upon notice by the department, a county, or the recipient to a third party or the third party's insurer as provided in subsection (5)(b), the department or county has a lien upon all money paid by a third party or the third party's insurer in satisfaction of a judgment or settlement arising from a recipient's claim for damages or compensation for personal injury, disease, illness, or disability to the extent that the department or county has paid medical assistance on behalf of the recipient for the same personal injury, disease, illness, or disability and to the extent that the money represents payment for medical expenses.
- (2) The department or county may, in the name of the recipient on whose behalf medical assistance has been paid by the department or county, commence and prosecute to final conclusion any action that may be necessary to recover from a third party or the third party's insurer compensation or damages for

medical assistance paid by the department or county on behalf of the recipient. This section does not affect the right of the recipient to initiate and prosecute to final conclusion an action for damages or compensation in the recipient's own name in accordance with the provisions of this section.

- (3) (a) The lien:
- (i) applies to all money paid by a third party or a third party's insurer regardless of whether the recovery is allocated by the parties or a court to any particular type or element of damages; and
 - (ii) is subordinate to the lien of an attorney under 37-61-420.
- (b) Unless specifically provided by law, the recipient's right to recover damages or compensation from a third party or a third party's insurer may not be reduced or denied on the ground that the recipient's costs of medical treatment and medical-related services have been paid by the department or county under any public assistance program.
- (c) From the amount collected by the department, county, or recipient from legal proceedings or as a result of settlement, reasonable attorney fees and costs must be first deducted and paid. Unless the department or county and the recipient agree to a different settlement, the amount previously paid as medical assistance by the department or county, less a pro rata share of attorney fees and costs, must be deducted next and paid to the department or county, but only to the extent that the amount paid as medical assistance does not exceed the portion of the amount collected that represents payment of medical expenses. The remainder, if any, must be paid to the recipient.
- (d) In all cases of payment to the department or county out of an amount collected from a third party or insurer on a recipient's claim, the amount of the lien must be reduced by a pro rata share of attorney fees and costs as provided in subsection (3)(c), but the department or county may not be required to participate in payment of attorney fees and costs unless the recipient's claim results in recovery out of which the department or county receives full or partial payment of its lien.
- (e) (i) Except as provided in subsections (3)(e)(i)(ii) and (3)(e)(ii)(iii), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.
- (i)(ii) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the medicaid program.
- (ii)(iii) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.
- (4) (a) A recipient of medical assistance or the recipient's legal representative shall notify the department or county by certified letter within 30 days if the recipient or the recipient's legal representative asserts a claim against a third party or a third party's insurer for damages or compensation for a personal injury, disease, illness, or disability for which the department or county paid medical assistance in whole or in part or for which the recipient has

applied for medical assistance. The notice must be mailed to the director of the department or the county commissioners of the county that paid medical assistance. At the same time, a copy must be sent by certified mail to the third party or the third party's insurer.

- (b) The notice must contain the following information:
- (i) the name and address of the recipient and the recipient's legal representative, if any;
- (ii) the name and address of the third party alleged to be liable to the recipient;
 - (iii) the name and address of any known insurer of the third party; and
 - (iv) the judicial district and docket number of any action filed.
- (c) A recipient or the recipient's legal representative who has received actual notice that the department or county has paid medical assistance is liable to the department or county for the amount it is entitled to receive under this section if
- (i) the recipient or the recipient's legal representative fails to timely notify the department or county or fails to mail a copy of the notice to the third party or the third party's insurer; and
- (ii) a third party or the third party's insurer that did not receive notice from the department or county as provided for in subsection (5)(b) pays the recipient or the recipient's legal representative without satisfying any lien of the department or county.
- (5) (a) If a third party or the third party's insurer that has received notice of the department's or county's lien as provided for in subsection (5)(b) makes payment in whole or in part of the recipient's claim without first satisfying the lien of the department or county, the third party or the third party's insurer is liable to the department or county for the amount the department or county is entitled to receive under this section.
- (b) For the purposes of subsection (5)(a), a third party or the third party's insurer has been given notice if:
- (i) the department or county mails, by certified mail, to the third party or the third party's insurer:
- (A) a statement of the medical assistance paid or that may be paid by the department or county on behalf of the recipient; and
 - (B) a claim for reimbursement;
- (ii) the recipient or the recipient's legal representative mails, by certified mail, to the third party or the third party's insurer:
 - (A) a copy of the notice required by subsection (4)(a); or
- (B) a statement stating that the recipient has applied for or has received medical assistance from the department or county in connection with the same claim; or
- (iii) the recipient or the recipient's legal representative has commenced an action against the third party or the third party's insurer for damages or compensation for personal injury, disease, illness, or disability for which the department or county has paid or may pay medical assistance, in whole or in part, and the department or county files in the court in which the action is pending a notice of lien stating that a lien is claimed for medical assistance on

any money paid in satisfaction of any judgment in or settlement of the action and that:

- (A) medical assistance in a stated amount has been paid by the department or county on behalf of the recipient; or
 - (B) medical assistance may be paid on behalf of the recipient.
 - (6) As used in this section, the following definitions apply:
- (a) "County" means a county that has provided medical assistance to a recipient through an indigent assistance program operated at the option of the county.
- (b)(a) "Legal representative" means an attorney having or exercising authority on behalf of a recipient with respect to a claim or action to recover damages or compensation from a third party or a third party's insurer.
- (e)(b) "Recipient" means a person on whose behalf the department or a county has paid or may pay medical assistance for the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability. If the context allows, the term includes a recipient's legal representative.
- (d)(c) "Third party" means an individual, institution, corporation, or public or private agency that is or may be liable to pay all or part of the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability of a recipient of medical assistance from the department or a county and includes but is not limited to insurers, health service organizations, and parties liable or who may be liable in tort."
 - **Section 2.** Section 53-6-165, MCA, is amended to read:
- **"53-6-165. Definitions.** As used in this part, unless expressly provided otherwise, the following definitions apply:
- (1) "Department" means the department of public health and human services provided for in 2-15-2201.
- (2) "Financial institution" means any organization in the business of moving, investing, or lending money, dealing in financial instruments, or providing financial services, including but not limited to federally chartered and state-chartered banks, savings and loan associations, and credit unions.
- (2)(3) "Recipient" means an individual who has been determined by a medicaid agency to be eligible for medicaid benefits, whether or not the individual has actually received a benefit, or an individual who has received benefits, whether or not that person has been determined to be eligible.
- (3)(4) (a) "Recoverable medical assistance" means a payment pursuant to this part, including but not limited to a payment made for items or services provided to and insurance premiums, deductibles, and coinsurance paid on behalf of a recipient who:
- (a)(i) during the recipient's lifetime, was an inpatient in a nursing facility, intermediate care facility for the developmentally disabled, or institution for mental disease and, with respect to that institutionalization, the department determined under 53-6-171 that the person was not reasonably expected to be discharged and return home; or
- (b)(ii) was at least 55 years of age or younger if allowed by 42 U.S.C. 1396p, as may be amended, when the item or service was provided or when the insurance premium, deductible, or coinsurance was paid.

- (b) The term does not include medical assistance for medicare cost-sharing or for benefits described in 42 U.S.C. 1396a(a)(10)(E).
- (4)(5) "Recovery" means legal action brought for the payment or repayment of recoverable medical assistance or amounts of money paid for other purposes."

Section 3. Section 53-6-167, MCA, is amended to read:

- "53-6-167. Recovery of medicaid benefits after recipient's death.
 (1) After Except as provided in subsection (7) or (9)(b), after the death of a recipient, the department shall execute and present a claim:
- (a) against the recipient's estate, within the time specified in the published notice to creditors in the estate proceeding, for the total amount of recoverable medical assistance paid to or on behalf of the recipient; and. The department is not required to initiate probate proceedings in order to present a claim in a case in which no proceeding has been commenced to probate the estate of the deceased recipient.
- (b)(2) Except as prohibited by subsection (9)(b), after the death of a recipient, the department may execute and present a claim against a person who has received property of the recipient by distribution or survival for an amount equal to the recoverable medical assistance paid on behalf of the recipient or the value of the property received by the person from the recipient by distribution or survival, whichever is less. The amount recoverable from a person with respect to property of the recipient must be reduced by the value of any property transferred to the person for less than full market value for which a period of ineligibility was imposed under 53-6-166 against the recipient during the recipient's life. The department may bring an action in district court to collect upon a claim under this subsection (1)(b) (2).
- (2)(3) A department claim under subsection (1) or (2) must include notice of the right to seek an undue hardship exception under rules adopted by the department in accordance with subsection (7) (8).
- (3)(4) (a) Notwithstanding any statute of limitations or other claim presentation deadline provided by law, a department claim against an estate is not barred for lack of timely presentation if it is presented in the probate proceeding within the time specified in the published notice to creditors.
- (b) An action to collect a claim under subsection (1)(b) (2) must be commenced within 3 years of the later of the recipient's death or the closing of the recipient's estate.
- (4)(5) (a) For purposes of this section, property of a deceased recipient received by distribution or survival is any real or personal property or other assets in which the recipient had any right, title, or interest immediately prior to the time of death, including but not limited to assets passing to one or more survivors, heirs, assignees, or beneficiaries of the deceased recipient through joint tenancy, tenancy in common, right of survivorship, conveyance by the recipient subject to life estate, living trust, or other arrangement. For purposes of this section, property is not received by distribution or survival to the extent that the person received the property or property interest for consideration equal to the fair market value of the property or property interest received.
 - (b) Property received by distribution includes but is not limited to:
- (i) property from a deceased recipient's estate distributed to a person through a probated estate or a small estate administration procedure; and

- (ii) property from a deceased recipient's estate otherwise distributed to or in the possession of a person through any other procedure or when a legal procedure for distribution has not been followed.
- (c) Assets of a deceased recipient's estate and property of a deceased recipient received by distribution or survival are not exempt from recovery under this section because the assets or property were or may have been considered by the department as exempt income or resources for the purpose of determining eligibility for medical assistance during the recipient's lifetime.
- (5)(6) (a) The department may seek recovery under subsection (1)(a) or (1)(b) subsection (1) or (2), or both, with respect to a deceased recipient until its claim is satisfied in full. Upon full satisfaction of its claim, the department may not seek further recovery and shall provide appropriate releases to the deceased recipient's estate and to other affected persons.
- (b) An estate or other person is not entitled to a reduction or waiver of the department's claim on the grounds that there is or may be another person from whom recovery may be made under this section.
- (6)(7) The department may waive recovery under this section if it determines that recovery would not be cost-effective. In determining whether recovery would be cost-effective for purposes of this subsection, the department may consider but is not limited to consideration of the following factors:
 - (a) the estimated cost of recovery;
 - (b) the amount reasonably likely to be recovered;
- (c) the likelihood that recovery by the department will cause a person to become eligible for public assistance; and
- (d) the importance of the case or the issues in the case and the need for judicial interpretation of issues that may recur with respect to the administration or implementation of this section.
- (7)(8) (a) Upon presentation or assertion of a claim by the department under this section, the personal representative of the estate or another affected person may apply to the department, in accordance with procedures established by department rule, for a waiver of recovery based on undue hardship. The department shall waive its recovery under this section in whole or in part if it determines that recovery would result in undue hardship as defined by department rule.
- (b) The department shall adopt rules that are consistent with 42 U.S.C. 1396p, as may be amended, and that implement federal regulations and policies, establishing procedures and criteria for undue hardship exceptions. The rules adopted under this section must include but are not limited to rules addressing the following:
- (i) a description of the circumstances considered to constitute an undue hardship;
- (ii) the procedures by which an individual may seek an undue hardship exception;
 - (iii) the persons entitled to an undue hardship exception; and
- (iv) whether an exception is partial or temporary and the circumstances under which partial or temporary exceptions may be granted.
- (c) If a person is aggrieved by a department determination on an application for an undue hardship exception, the person may assert a claim of entitlement to an undue hardship exception in any court proceeding on a department petition

for allowance of an estate claim or for recovery of an amount due under this section. When a person claims entitlement to an undue hardship exception in the proceeding, the court shall make a determination on the claim for an exception based upon the department rules adopted in accordance with this section. Department denial of all or any part of the relief requested in an exception application under this section may be reviewed by a district court only as provided in this subsection (e) (8)(c). Denial does not grant a right to a contested case hearing or a right to judicial review under the Montana Administrative Procedure Act or the department's rules.

- (8)(9) (a) Except as provided in subsection (8)(b)(9)(b), if the requirements of this section are met, the department may collect upon its claim.
- (b) The department may not recover under this section while there is a surviving spouse of the recipient or while there is a surviving child of the recipient who is under 21 years of age, blind, or permanently and totally disabled. This subsection (b) (9)(b) does not preclude the department from recovering from the recipient's estate after the death of the surviving spouse or child.
- (9)(10) All money recovered under this section from any source must be distributed to the state general fund and to the United States as required by applicable state and federal laws and regulations."

Section 4. Section 53-6-168, MCA, is amended to read:

- "53-6-168. Payment of certain funds of deceased recipient to department. (1) (a) A nursing facility, a financial institution, or a person, other than a financial institution, holding personal funds of a deceased nursing facility resident who received medicaid benefits at any time shall, within 30 days following the resident's death, pay those funds to the department.
- (b) A nursing facility may satisfy a debt owed by the deceased resident to the facility from the deceased resident's personal funds that are held by the nursing facility and that would have been payable to the facility from the resident's funds. The facility shall pay the remaining funds to the department as required by this section.
- (c) Funds paid to the department under this section are not considered to be property of the deceased resident's estate, and 53-6-167 does not apply to recovery of the funds by the department.
- (2) For purposes of this section, a nursing facility is holding personal funds of a resident if the facility:
 - (a) maintains possession of the funds in the facility; or
- (b) as the recipient's trustee or representative, has deposited the resident's funds in an individual or shared account in a financial institution.
- (3) The department shall apply any funds received under this section proportionately to the federal and state shares of recoverable medical assistance and shall pay any remaining amount to a person entitled by law to the funds."

Section 5. Section 53-6-178, MCA, is amended to read:

- **"53-6-178. Department right of recovery limitations.** (1) Except as provided in 53-6-180, 53-6-182, and this section, the department may collect upon its lien as provided in 53-6-171 through 53-6-188.
- (2) The department may not recover upon a lien imposed on the recipient's home under 53-6-171 while the recipient's sibling or child who has resided lawfully and continuously in the home for at least 1 year 18 months immediately

before the recipient's institutionalization continues to lawfully reside in the home. This subsection does not preclude the department from recovering under 53-6-167, 53-6-168, or 53-6-169.

(3) The department may not recover on a lien imposed under 53-6-171 while there is a surviving spouse of the recipient or while there is a surviving child of the recipient who is under 21 years of age, blind, or permanently and totally disabled. This subsection does not preclude the department from later recovery in accordance with 53-6-181."

Section 6. Effective date. [This act] is effective July 1, 2009.

Approved April 3, 2009

CHAPTER NO. 154

[SB 197]

AN ACT DEFINING COURT TRANSCRIPTS; ESTABLISHING TRANSCRIPT COSTS AND PROVIDING FOR COST-OF-LIVING ADJUSTMENTS IN TRANSCRIPT COSTS; AMENDING SECTIONS 3-5-604 AND 40-6-119, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-604, MCA, is amended to read:

- "3-5-604. Court reporters transcript of district court proceedings costs. (1) Each court reporter shall furnish, upon request, with all reasonable diligence, to a party or a party's attorney in a case in which the court reporter has attended the trial or hearing a transcript from stenographic notes of the testimony and proceedings of the trial or hearing or a part of a trial or hearing upon payment by the person requiring the transcript of \$2 a page for the original transcript, 50 cents a page for the first copy, and 25 cents a page for each additional copy, except as otherwise provided in this section. (1) When a transcript of the testimony and proceedings of a trial or hearing or a part of a trial or hearing is requested, a court reporter shall furnish the transcript to the requester with all reasonable diligence. The court reporter shall submit an invoice with the transcript when it is furnished. The court reporter may withhold delivery of the transcript until the transcription fee is paid or satisfactory arrangement for payment is made.
 - (2) Compensation for transcripts under this section is as follows:
- (a) (i) Ordinary transcript \$2 per page for the original furnished to a state or local government agency, \$2.50 per page for the original furnished to any other party, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.
- (ii) Expedited transcript \$4 per page for the original, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.
- (iii) Daily transcript \$5 per page for the original, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.
- (b) (i) The transcript cost is subject to a cost-of-living adjustment as provided in subsection (2)(b)(ii).
- (ii) Prior to June 30 of each even-numbered year, the office of the court administrator shall determine whether an increase of the transcript amount

specified in subsections (2)(a)(i) through (2)(a)(iii) must be made based on the increase, if any, from June of the preceding year to May of the year in which the calculation is made in the consumer price index, U.S. city average, all urban consumers, for all items, as published by the bureau of labor statistics of the United States department of labor.

- (iii) The transcript amount established under subsection (2)(b)(ii) must be rounded to the nearest 5 cents and becomes effective as the new transcript cost, replacing the costs specified in subsections (2)(a)(i) through (2)(a)(iii), on July 1 of the year following the year the calculation was made. The office of the court administrator shall publish the adjusted costs on the judicial branch website prior to July 1 of each year.
- (2)(3) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees required by subsection (1)(2) must be paid to the clerk of district court, who shall forward the amount to the department of revenue for deposit in the state general fund.
- (3)(4) (a) If the county attorney, attorney general, or judge requires a transcript in a criminal case, the reporter shall furnish it. The transcription fee must be paid by the office of court administrator as provided in 3-5-901. The office of the court administrator may pay only for ordinary transcripts and may not pay for daily or expedited transcripts.
- (b) If the judge requires a copy in a civil case to assist in rendering a decision, the reporter shall furnish the copy without charge.
- (c) In civil cases, all transcripts required by the county must be furnished and only the reporter's actual costs of preparation may must be paid for by the county pursuant to subsection (2).
- (4)(5) (a) If a public defender, as defined in 47-1-103, requests a transcript, the transcript must be furnished to the public defender and paid for by the state office of *state* public defender, as provided in 47-1-201.
- (b) If an indigent party is eligible for a public defender but is acting pro se and requests a transcript, the transcript must be furnished to the party and paid for by the office of court administrator, as provided in 3-5-901.
 - (6) As used in this section, the following definitions apply:
- (a) "Copy" means any replication of the original transcript regardless of the medium.
- (b) "Daily transcript" means a transcript of all or part of the proceedings to be delivered the following day.
- (c) "Expedited transcript" means a transcript of all or part of the proceedings to be delivered within 7 calendar days.
- (d) "Ordinary transcript" means a transcript of all or part of the proceedings."
 - Section 2. Section 40-6-119, MCA, is amended to read:
- **"40-6-119. Right to counsel transcript on appeal.** (1) At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall order the office of state public defender, pursuant to the Montana Public Defender Act, Title 47, chapter 1, to assign counsel for a party who is financially unable to obtain counsel.
- (2) The court may order reasonable fees for experts and the child's guardian ad litem and other costs of the action and pretrial proceedings, including blood

test costs, to be paid by the parties in proportions and at times determined by the court

(3) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal. Transcript fees must be paid as provided in 3-5-604(4)."

Section 3. Effective date. [This act] is effective July 1, 2009.

Approved April 3, 2009

CHAPTER NO. 155

[SB 319]

AN ACT ELIMINATING VIOLATIONS OF SIZE, WEIGHT, AND LOAD RESTRICTIONS AS VIOLATIONS THAT RESULT IN AN OFFENDER ACCUMULATING POINTS TOWARDS A HABITUAL OFFENDER DESIGNATION; AND AMENDING SECTION 61-11-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-11-203, MCA, is amended to read:

"61-11-203. Definitions. As used in this part, the following definitions apply:

- (1) "Conviction" has the meaning provided in 61-5-213.
- (2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:
- (a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;
- (b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;
- (c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;
- (d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, 10 points;
- (e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;
- (f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as described in 61-7-105, 8 points;
- (g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;
 - (h) reckless driving, 5 points;
- (i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;
- (j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;

- (k) operating a motor vehicle without a license to do so, 2 points. However, this subsection (2)(k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired.
 - (l) speeding, except as provided in 61-8-725(2), 3 points;
 - (m) all other moving violations, 2 points.
- (3) There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.
 - (4) "License" means any type of license or permit to operate a motor vehicle.
- (5) "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway.
- (6) A traffic regulation includes any provision governing motor vehicle operation, equipment, safety, size, weight, and load restrictions or driver licensing. A traffic regulation does not include provisions governing vehicle registration or local parking."

Approved April 3, 2009

CHAPTER NO. 156

[SB 325]

AN ACT CLARIFYING THAT A PERSON WHO IS A DESIGNATED CAREGIVER UNDER THE MEDICAL MARIJUANA ACT MAY NOT USE MARIJUANA AND MAY USE DRUG PARAPHERNALIA ONLY IN LIMITED CIRCUMSTANCES; AND AMENDING SECTIONS 45-10-103, 50-46-102, 50-46-103, 50-46-201, 50-46-205, AND 50-46-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-10-103, MCA, is amended to read:

"45-10-103. Criminal possession of drug paraphernalia. It Except as provided in Title 50, chapter 46, it is unlawful for a person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. A person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined an amount of not more than \$500, or both. A person convicted of a first violation of this section is presumed to be entitled to a deferred imposition of sentence of imprisonment."

Section 2. Section 50-46-102, MCA, is amended to read:

"50-46-102. Definitions. As used in this chapter, the following definitions apply:

- (1) (a) "Caregiver" means an individual, 18 years of age or older who has agreed to undertake responsibility for managing the well-being of a person with respect to the medical use of marijuana. A qualifying patient may have only one caregiver at any one time.
 - (b) The term does not include the qualifying patient's physician.

- (2) "Debilitating medical condition" means:
- (a) cancer, glaucoma, or positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;
- (b) a chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:
 - (i) cachexia or wasting syndrome;
 - (ii) severe or chronic pain;
 - (iii) severe nausea;
 - (iv) seizures, including but not limited to seizures caused by epilepsy; or
- (v) severe or persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis or Crohn's disease; or
- (c) any other medical condition or treatment for a medical condition adopted by the department by rule.
- (3) "Department" means the department of public health and human services.
 - (4) "Marijuana" has the meaning provided in 50-32-101.
 - (5) "Medical use" means:
- (a) the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marijuana or paraphernalia by a qualifying patient or a caregiver relating to the consumption of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition;
- (b) the use of marijuana or paraphernalia by a qualifying patient to alleviate the symptoms or effects of the patient's debilitating medical condition; or
- (c) the use of paraphernalia by a caregiver for the cultivation, manufacture, delivery, transfer, or transportation of marijuana for use by a qualifying patient.
 - (6) "Paraphernalia" has the meaning provided in 45-10-101.
 - (6)(7) "Physician" means a person who is licensed under Title 37, chapter 3.
- (7)(8) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.
- (8)(9) "Registry identification card" means a document issued by the department that identifies a person as a qualifying patient or caregiver.
- (9)(10) (a) "Usable marijuana" means the dried leaves and flowers of marijuana and any mixture or preparation of marijuana.
 - (b) The term does not include the seeds, stalks, and roots of the plant.
- (10)(11) "Written certification" means a qualifying patient's medical records or a statement signed by a physician stating that in the physician's professional opinion, after having completed a full assessment of the qualifying patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient."
 - Section 3. Section 50-46-103, MCA, is amended to read:
- "50-46-103. Procedures minors confidentiality report to legislature. (1) The department shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this chapter.

- (2) Except as provided in subsection (3), the department shall issue a registry identification card to a qualifying patient who submits the following, in accordance with department rules:
 - (a) written certification that the person is a qualifying patient;
 - (b) an application or renewal fee;
 - (c) the name, address, and date of birth of the qualifying patient;
- (d) the name, address, and telephone number of the qualifying patient's physician; and
- (e) the name, address, and date of birth of the qualifying patient's caregiver, if any.
- (3) The department shall issue a registry identification card to a minor if the materials required under subsection (2) are submitted and the *minor's* custodial parent or legal guardian with responsibility for health care decisions for the minor signs and submits a written statement that:
- (a) the minor's physician has explained to that the minor and to the minor's custodial parent or legal guardian with responsibility for health care decisions for the minor the potential risks and benefits of the medical use of marijuana; and
- (b) the *minor's* custodial parent or legal guardian with responsibility for health care decisions for the minor:
 - (i) consents to the medical use of marijuana by the minor;
 - (ii) agrees to serve as the minor's caregiver; and
- (iii) agrees to control the acquisition of marijuana and the dosage and frequency of the medical use of marijuana by the minor.
- (4) (a) The department shall issue a registry identification card to the caregiver who is named in a qualifying patient's approved application if the caregiver signs a statement:
- (i) agreeing to provide marijuana only to qualifying patients who have named the applicant as caregiver; and
- (ii) acknowledging that possession of the registry identification card does not allow the caregiver to engage in the use of marijuana or to use paraphernalia for any purpose other than cultivating, manufacturing, delivering, transferring, or transporting marijuana for medical use by a qualifying patient.
- (b) The department may not issue a registry identification card to a proposed caregiver who has previously been convicted of a felony drug offense.
- (c) A caregiver may receive reasonable compensation for services provided to assist with a qualifying patient's medical use of marijuana.
- (5) (a) The department shall verify the information contained in an application or renewal submitted pursuant to this section and shall approve or deny an application or renewal within 15 days of receipt of the application or renewal
- (b) The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, the department determines that the information was falsified, or the applicant is not qualified to receive a registry identification card under the provisions of this chapter. Rejection of an application or renewal is considered a final department action, subject to judicial review.

- (6) The department shall issue a registry identification card within 5 days of approving an application or renewal. Registry identification cards expire 1 year after the date of issuance. Registry identification cards must state:
 - (a) the name, address, and date of birth of the qualifying patient;
- (b) the name, address, and date of birth of the qualifying patient's caregiver, if any;
- (c) the date of issuance and expiration date of the registry identification card; and
 - (d) other information that the department may specify by rule.
- (7) A person who has been issued a registry identification card shall notify the department of any change in the qualifying patient's name, address, physician, or caregiver or change in status of the qualifying patient's debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the department, the registry identification card is void.
- (8) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list must be confidential and are not subject to disclosure, except to:
- (a) authorized employees of the department as necessary to perform official duties of the department; or
- (b) authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card.
- (9) The department shall report annually to the legislature the number of applications for registry identification cards, the number of qualifying patients and caregivers approved, the nature of the debilitating medical conditions of the qualifying patients, the number of registry identification cards revoked, and the number of physicians providing written certification for qualifying patients. The department may not provide any identifying information of qualifying patients, caregivers, or physicians."
 - Section 4. Section 50-46-201, MCA, is amended to read:
- "50-46-201. Medical use of marijuana—legal protections—limits on amount presumption of medical use. (1) A qualifying patient or earegiver person who possesses a registry identification card issued pursuant to 50-46-103 may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, for the medical use of marijuana or for assisting in the medical use of marijuana if:
- (a) the qualifying patient or caregiver acquires, possesses, cultivates, manufactures, delivers, transfers, or transports marijuana not in excess of the amounts allowed in subsection (2); or
 - (b) the qualifying patient uses marijuana for medical use.
- (2) A qualifying patient and that qualifying patient's caregiver may not possess more than six marijuana plants and 1 ounce of usable marijuana each.
- (3) (a) A qualifying patient or caregiver is presumed to be engaged in the medical use of marijuana if the qualifying patient or caregiver:
 - (i) is in possession of a registry identification card; and

- (ii) is in possession of an amount of marijuana that does not exceed the amount permitted under subsection (2).
- (b) The presumption may be rebutted by evidence that the possession of marijuana was not for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.
- (4) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor and industry, for providing written certification for the medical use of marijuana to qualifying patients.
- (5) An interest in or right to property that is possessed, owned, or used in connection with the medical use of marijuana or acts incidental to medical use may not be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense.
- (6) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as provided in 45-4-102, or other provisions of law or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under this chapter.
- (7) Possession of or application for a registry identification card does not alone constitute probable cause to search the person or property of the person possessing or applying for the registry identification card or otherwise subject the person or property of the person possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.
- (8) A registry identification card or its equivalent issued by another state government to permit the medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical use of marijuana has the same force and effect as a registry identification card issued by the department."

Section 5. Section 50-46-205, MCA, is amended to read:

- **"50-46-205. Limitations of Medical Marijuana Act.** (1) This chapter does not permit:
- (a) any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana; or
 - (b) the use of marijuana by a caregiver; or
 - (b)(c) the smoking of marijuana by a qualifying patient:
 - (i) in a school bus or other form of public transportation;
 - (ii) on any school grounds;
 - (iii) in any correctional facility; or
- (iv) at any public park, public beach, public recreation center, or youth center.
 - (2) Nothing in this chapter may be construed to require:
- (a) a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or
- (b) an employer to accommodate the medical use of marijuana in any workplace.

(3) Nothing in this chapter may be construed to allow a caregiver to use marijuana or to prevent criminal prosecution of a caregiver who uses marijuana or paraphernalia for the caregiver's personal use."

Section 6. Section 50-46-206, MCA, is amended to read:

- **"50-46-206. Affirmative defense.** Except as provided in 50-46-205, it is an affirmative defense to any criminal offense involving marijuana that the person charged with the offense:
- (1) (a) has a physician who states that or has medical records that indicate that, in the physician's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the potential benefits of medical marijuana would likely outweigh the health risks for the person; or
- (b) provides marijuana to a person described in subsection (1)(a) if the person does not provide marijuana to anyone for uses that are not medical;
- (2) (a) is engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate the symptoms or effects of the medical condition of the person identified in subsection (1)(a) if the person charged with the offense is a qualifying patient or a caregiver; or
- (b) is engaged in the use of marijuana if the person charged with the offense is a qualifying patient; and
- (3) possesses marijuana only in an amount that is reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of the medical condition of the person identified in subsection (1)(a)."

Approved April 3, 2009

CHAPTER NO. 157

[SB 368]

AN ACT EXTENDING THE LIABILITY LIMITS ON MEDICAL PRACTITIONERS AND DENTAL HYGIENISTS WHO PROVIDE SERVICES WITHOUT COMPENSATION TO COMMUNITY-BASED PROGRAMS; AMENDING SECTION 27-1-736, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-736, MCA, is amended to read:

"27-1-736. Limits on liability of medical practitioner or dental hygienist who provides services without compensation. (1) A medical practitioner, as defined in 37-2-101, or a dental hygienist licensed under Title 37, chapter 4, who renders, at any site, any health care within the scope of the provider's license, voluntarily and without compensation, to a patient of a clinic, or to a patient referred by a clinic, or in a community-based program to provide access to health care services for uninsured persons is not liable to a person for civil damages resulting from the rendering of the care; unless the damages were the result of gross negligence or willful or wanton acts or omissions by the medical practitioner or dental hygienist. Each patient must be given notice that under state law the medical practitioner or dental hygienist cannot be held

legally liable for ordinary negligence if the medical practitioner or dental hygienist does not have malpractice insurance.

- (2) For purposes of this section:
- (a) "clinic" means a place for the provision of health care to patients that is organized for the delivery of health care without compensation or that is operated as a health center under 42 U.S.C. 254b;
- (b) "community-based program to provide access to health care services for uninsured persons" means a local program in which care is provided without compensation to individuals who have been referred through that community-based program and in which the medical practitioner or dental hygienist has entered into a written agreement to provide the service;
 - (b)(c) "health care" has the meaning provided in 50-16-504;
- (e)(d) "without compensation" means that the medical practitioner or dental hygienist voluntarily rendered health care without receiving any reimbursement or compensation, except for reimbursement for supplies.
- (3) Subsection (1) applies only to a medical practitioner or dental hygienist who:
- (a) does not have malpractice insurance coverage because the medical practitioner or dental hygienist is retired or is otherwise not engaged in active practice; or
- (b) has malpractice insurance coverage that has a rider or exclusion that excludes coverage for services provided under this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2009

CHAPTER NO. 158

[SB 432]

AN ACT CLARIFYING THAT FAILURE OF AN OSTENSIBLE AGENT TO COMPLY WITH A HEALTH CARE PROVIDER'S POLICY OR PRACTICE REQUIRING THE AGENT TO SECURE PROFESSIONAL LIABILITY INSURANCE CONSTITUTES PROFESSIONAL MISCONDUCT; AMENDING SECTIONS 28-10-103 AND 37-1-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 28-10-103, MCA, is amended to read:

- **"28-10-103.** Actual versus ostensible agency limitation. (1) An agency is either actual or ostensible. An agency is actual when the agent is really employed by the principal. An agency is ostensible when the principal intentionally or by want of ordinary care causes a third person to believe another to be the principal's agent when that person is not really employed by the principal.
- (2) Except as provided in subsection (3), for purposes of a malpractice claim, as defined in 27-6-103, liability may not be imposed on a health care provider, as defined in 27-6-103, for an act or omission by a person or entity alleged to have been an ostensible agent of the health care provider at the time that the act or omission occurred.

- (3) (a) Subsection (2) is not applicable unless the health care provider has, by instituted a policy or practice, ensured requiring that those persons providing independent professional services to have insurance of a type and in the amount required by the rules and regulations of the medical staff, by the medical staff bylaws, or by other similar health care facility rules or regulations. The insurance provided for in this subsection must be in effect for the period of time during which a medical malpractice action must be brought as provided in 27-2-205.
- (b) Failure of a health care provider providing independent professional services to comply with a policy or practice implementing subsection (3)(a) constitutes unprofessional conduct pursuant to 37-1-316(18) and [section 3]."

Section 2. Section 37-1-316, MCA, is amended to read:

- "37-1-316. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this chapter:
- (1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;
- (2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;
- (3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure:
- (4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;
- (5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;
- (6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;
- (7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied.
- (8) failure to comply with a term, condition, or limitation of a license by final order of a board;
- (9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;
- (10) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, chapter 32, as a result of illegal use of the drug or controlled substance:
- (11) use of a habit-forming drug or controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;
- (12) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

- (13) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;
- (14) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;
- (15) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;
- (16) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;
- (17) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:
 - (a) peer review committee;
 - (b) professional association; or
 - (c) local, state, federal, territorial, provincial, or Indian tribal government;
- (18) failure of a health care provider, as defined in 27-6-103, to comply with a policy or practice implementing 28-10-103(3)(a);
- (18)(19) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards."
- Section 3. Failure of health care provider to obtain insurance as unprofessional conduct. In addition to the conduct described in 37-1-316, failure of a health care provider, as defined in 27-6-103, to comply with a policy or practice implementing 28-10-103(3)(a) requiring insurance constitutes unprofessional conduct.
- **Section 4. Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 37, chapter 2, part 3, and the provisions of Title 37, chapter 2, part 3, apply to [section 3].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 3, 2009

CHAPTER NO. 159

[HB 21]

AN ACT REPEALING THE TERMINATION DATE FOR CREDIT AGAINST AIR QUALITY PERMITTING FEES FOR CERTAIN USES OF POSTCONSUMER GLASS IN RECYCLED MATERIAL; REPEALING THE

TERMINATION DATE FOR THE TAX CREDIT FOR INVESTMENT IN PROPERTY USED TO COLLECT OR PROCESS RECLAIMABLE MATERIALS; REPEALING THE TERMINATION DATE FOR THE TAX DEDUCTION FOR THE PURCHASE OF RECYCLED MATERIALS; AMENDING SECTIONS 75-2-225 AND 75-2-226, MCA; REPEALING SECTION 9, CHAPTER 712, LAWS OF 1991, SECTIONS 4 AND 5, CHAPTER 542, LAWS OF 1995, SECTION 1, CHAPTER 411, LAWS OF 1997, SECTIONS 4, 5, 6, AND 7, CHAPTER 398, LAWS OF 2001, SECTION 8, CHAPTER 516, LAWS OF 2001, SECTIONS 3 AND 5, CHAPTER 129, LAWS OF 2005, AND SECTIONS 1, 2, 3, 4, 5, 6, 7, AND 8, CHAPTER 569, LAWS OF 2005; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-225, MCA, is amended to read:

- "75-2-225. (Temporary) Amount and duration of credit how claimed. (1) An applicant may receive a credit against the fees imposed in 75-2-220 for using postconsumer glass in recycled material if the applicant qualifies under 75-2-226.
- (2) Subject to 75-2-226(2), an An applicant qualifying for a credit under 75-2-226 is entitled to claim a credit, as provided in subsection (3) of this section, for using postconsumer glass in recycled material in the calendar year subsequent to the calendar year in which the postconsumer glass was used in recycled material.
- (3) (a) The amount of the credit that may be claimed under this section is \$8 for each ton of postconsumer glass that was used as a substitute for nonrecycled material in the calendar year prior to the calendar year for which the applicant is paying fees for permits under 75-2-220.
- (b) The maximum credit allowable in any calendar year for fees payable under 75-2-220 is \$2,000 or the total amount of fees due, whichever is less. (Terminates December 31, 2009—secs. 3, 5, Ch. 129, L. 2005.)"
 - **Section 2.** Section 75-2-226, MCA, is amended to read:
- "75-2-226. *(Temporary)* Credit for use of postconsumer glass. (1) The following requirements must be met for an applicant to be entitled to a credit for the use of postconsumer glass:
- (a) The postconsumer glass must have been used in recycled material in the calendar year prior to the calendar year in which the applicant is applying for and paying for permits under 75-2-220.
- (b) (i) The applicant claiming a credit must be a person who, as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that uses postconsumer glass in recycled materials. The use of postconsumer glass as recycled material may be a minor or nonprofit part of a business otherwise engaged in a business activity.
- (ii) The applicant may but need not operate or conduct a business that uses postconsumer glass as recycled material. If more than one person has an interest in a business with qualifying uses of postconsumer glass, they may allocate all or any part of the allowable credit among themselves and their successors or assigns.
- (c) The business must have been owned or leased by the applicant claiming the credit during the calendar year prior to the calendar year for which the permit fees are due under 75-2-220, except as otherwise provided in subsection

- (1)(b), and must have used postconsumer glass in recycled material during the calendar year prior to the calendar year for which the credit is claimed.
- (d) The postconsumer glass used in recycled material may not be an industrial waste generated by the person claiming the credit unless:
- (i) the person generating the waste historically has disposed of the waste onsite or in a licensed landfill; and
- (ii) standard industrial practice has not generally included the reuse of the waste in the manufacturing process.
- (2) A credit under this section may be claimed by an applicant for a business only if the qualifying postconsumer glass was used in recycled material before January 1, 2010.
- (3)(2) The credit provided by this section is not in lieu of any other incentive to which the applicant otherwise may be entitled under Title 15 or this chapter.
- (4)(3) A credit otherwise allowable under this section that is not used by the applicant in the calendar year for which the permits are applied may not be:
- (a) carried forward to offset an applicant's permit fees for any succeeding calendar year; or
- (b) carried back to offset an applicant's permit fees for any preceding calendar year. (Terminates December 31, 2009—secs. 3, 5, Ch. 129, L. 2005.)"
- **Section 3. Repealer.** Section 9, Chapter 712, Laws of 1991, sections 4 and 5, Chapter 542, Laws of 1995, section 1, Chapter 411, Laws of 1997, sections 4, 5, 6, and 7, Chapter 398, Laws of 2001, section 8, Chapter 516, Laws of 2001, sections 3 and 5, Chapter 129, Laws of 2005, and sections 1, 2, 3, 4, 5, 6, 7, and 8, Chapter 569, Laws of 2005, are repealed.

Section 4. Effective date. [This act] is effective July 1, 2009.

Approved April 6, 2009

CHAPTER NO. 160

[HB 54]

AN ACT REQUIRING THE PREPARATION AND PUBLICATION OF A SEPARATE INDEX FOR THE MONTANA CONSTITUTION AS PART OF THE MONTANA CODE ANNOTATED; AMENDING SECTION 1-11-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-11-204, MCA, is amended to read:

- **"1-11-204. Duties of code commissioner.** (1) Prior to November 1 immediately preceding each regular legislative session, the code commissioner shall prepare and submit to the legislative council a report, in tabular or other form, indicating the commissioner's recommendations for legislation that will:
 - (a) eliminate archaic or outdated laws;
 - (b) eliminate obsolete or redundant wording of laws;
- (c) eliminate duplications in law and any laws repealed directly or by implication;
 - (d) clarify existing laws;
 - (e) correct errors and inconsistencies within the laws.

- (2) The commissioner shall cause to be prepared for publication with the Montana Code Annotated the following material:
 - (a) the statutory history of each code section;
- (b) annotations of state and federal court decisions relating to the subject matter of the code;
- (c) editorial notes, cross-references, and other matter the commissioner considers desirable or advantageous;
 - (d) the Declaration of Independence;
- (e) the Constitution of the United States of America and amendments to the constitution;
 - (f) acts of congress relating to the authentication of laws and records;
 - (g) the Organic Act of the Territory of Montana;
 - (h) The Enabling Act;
- (i) The 1972 Constitution of the State of Montana and any amendments to the constitution;
 - (j) ordinances relating to federal relations and elections;
- (k) rules of civil, criminal, and appellate procedure and other rules of procedure the Montana supreme court may adopt; and
- (l) a complete subject index, a separate index for the constitution, a popular name index, and comparative disposition tables or cross-reference indexes relating sections of the Montana Code Annotated to prior compilations and session laws.
- (3) (a) After publication of the Montana Code Annotated, the code commissioner shall:
- (i) annotate, arrange, and prepare for publication all laws of a general and permanent nature enacted at each legislative session and assign catchlines and code section numbers to each new section;
- (ii) continue to codify, index, arrange, rearrange, and generally update the Montana Code Annotated to maintain an orderly and logical arrangement of the laws in order to avoid future need for bulk revision;
- (iii) prepare and publish a report entitled "Official Report of the Montana Code Commissioner—(year)" that indicates, in tabular or other form, all changes made during the continuous recodification, other than punctuation, spelling, and capitalization, to clearly indicate the character of each change made since the last report.
- (b) In carrying out the duty imposed by subsection (3)(a)(ii), the commissioner shall recodify the Montana Code Annotated on a title-by-title basis. The recodification is intended to be secondary to the completion of other interim duties.
- (4) From time to time, the commissioner shall confer with members of the judiciary and the state bar relative to recodification procedures."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 6, 2009

CHAPTER NO. 161

[HB 58]

AN ACT ELIMINATING THE SOCIAL SECURITY CONTRIBUTION ACCOUNT AND RELATED PROVISIONS FROM STATE LAW; AMENDING SECTIONS 19-1-402, 19-1-503, 19-1-813, AND 19-1-825, MCA; REPEALING SECTIONS 19-1-601, 19-1-602, 19-1-603, 19-1-604, 19-1-701, 19-1-703, 19-1-706, 19-1-801, AND 19-1-814, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-1-402, MCA, is amended to read:

- "19-1-402. Contents of federal-state agreement. The agreement authorized by 19-1-401 may contain provisions relating to coverage, benefits, contributions, effective date, and modification and termination of the agreement, administration, and other appropriate provisions as the state agency and secretary of health and human services shall agree upon, but, except Except as may be otherwise required or permitted by or under the Social Security Act as to regarding the services to be covered, the agreement must provide in effect that:
- (1) benefits will be provided for employees whose services are covered by the agreement (and *for* their dependents and survivors) on the same basis as though the services constituted employment within the meaning of Title II of the Social Security Act;
- (2) the state will pay to the secretary of the treasury of the United States, at a time or times as may be prescribed under the Social Security Act, contributions with respect to wages equal to the sum of the taxes that would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act;
- (3)(2) the agreement must be effective with respect to services in employment covered by the agreement performed after a date specified in the agreement, but may not be effective with respect to services performed prior to the first day of the calendar year in which the agreement is entered into or in which the modification of the agreement making it applicable to services is entered into, except that the effective date may be made retroactive to the extent permitted by section 218(e) of the Social Security Act, (42 U.S.C. 418(e));
- (4)(3) all services that constitute employment and are performed in the employ of the state by employees of the state must be covered by the agreement; and
- (5)(4) all services that constitute employment, are performed in the employ by employees of a political subdivision of the state, and are covered by a plan that is in conformity with the terms of the agreement and that has been approved by the state agency under *Title 19*, *chapter 1*, part 5 must be covered by the agreement."

Section 2. Section 19-1-503, MCA, is amended to read:

- **"19-1-503. Required provisions of plan.** A plan may not be approved unless:
- (1) it is in conformity with the requirements of the Social Security Act and with the agreement entered into under 19-1-401 and 19-1-402;
- (2) it provides that all services that constitute employment and that are performed in the employ of the political subdivisions by employees of the

political subdivisions will be covered by the plan, except that it may exclude services performed by individuals to whom section 218(c)(3)(B) of the Social Security Act, (42 U.S.C. 418(c)(3)(B)), is applicable;

- (3) it specifies the sources from which the funds necessary to make the payments required by 19-1-704 and 19-1-706 are expected to be derived and contains reasonable assurance that the sources will be adequate to make the payments:
- (4) it provides for methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;
- (5) it provides that the political subdivision will make reports, in a form and containing information, as the state agency may require and will comply with the provisions that the state agency or the secretary of health and human services finds necessary to ensure the correctness and verification of the reports;
- (6) it authorizes the state agency, in its discretion, to terminate the plan in its entirety if it finds that there has been a failure to comply substantially with any provision contained in the plan. The termination is to take effect at the expiration of any notice and on conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the Social Security Act."
 - **Section 3.** Section 19-1-813, MCA, is amended to read:
- "19-1-813. Collection of contributions. The fiscal officer of the school district shall thereafter collect the contributions required under section 218 of the federal Social Security Act, section 218 (42 U.S.C. 418), from the staff and teachers by payroll deduction and from the school district as the employer. The funds collected shall be deposited with the department of administration and held in the contribution account as provided by parts 1 through 7 of this chapter."
 - **Section 4.** Section 19-1-825, MCA, is amended to read:
- **"19-1-825.** Collection of contributions. (1) The fiscal officer for an institution for whose retirement system an agreement has been made shall collect the contributions required by section 218, as follows of the Social Security Act, 42 U.S.C. 418,:
- $\stackrel{\hbox{\scriptsize (a)}}{}$ from the teachers in the retirement system of that institution, by payroll deductions; and
- (b) from the state, from any appropriations to the institution involved for salaries or other purposes.
- (2) In the absence of a specific provision in the appropriations for or budget of an institution for such contributions, the board of regents of higher education shall designate the funds from which the required contributions will be made and the budgetary items to which they will be allocated."
- **Section 5. Repealer.** Sections 19-1-601, 19-1-602, 19-1-603, 19-1-604, 19-1-701, 19-1-703, 19-1-706, 19-1-801, and 19-1-814, MCA, are repealed.

Approved April 6, 2009

CHAPTER NO. 162

[HB 146]

AN ACT REQUIRING THE ITEMIZATION OF EXPENDITURES MADE TO CONSULTANTS, ADVERTISING AGENCIES, POLLING FIRMS, OR OTHER PERSONS; AND AMENDING SECTION 13-37-230, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-230, MCA, is amended to read:

- "13-37-230. Disclosure of expenditures made. (1) Each Except as provided in subsection (3), each report required by this chapter shall must disclose the following information, except that a candidate shall only be required to report the information specified in this section if the transactions involved were undertaken for the purpose of influencing an election:
- (1)(a) the full name and mailing address (occupation and the principal place of business, if any) of each person to whom expenditures have been made by the committee or candidate during the reporting period, including the amount, date, and purpose of each expenditure and the total amount of expenditures made to each person;
- (2)(b) the full name and mailing addresses (occupation and the principal place of business, if any) of each person to whom an expenditure for personal services, salaries, and reimbursed expenses have been made, including the amount, date, and purpose of that expenditure and the total amount of expenditures made to each person;
- (3)(c) the total sum of expenditures made by a political committee or candidate during the reporting period;
- (4)(d) the name and address of each political committee or candidate to which the reporting committee or candidate made any transfer of funds, together with the amount and dates of all transfers;
- (5)(e) the name of any person to whom a loan was made during the reporting period, including the full name and mailing address (occupation and principal place of business, if any) of that person, and the full name and mailing address (occupation and principal place of business, if any) of the endorsers, if any, and the date and amount of each loan;
- (6)(f) the amount and nature of debts and obligations owed by a political committee or candidate in the form prescribed by the commissioner; and
- (7)(g) other information that may be required by the commissioner to fully disclose the disposition of funds used to support or oppose candidates or issues.
- (2) Reports of expenditures made to a consultant, advertising agency, polling firm, or other person that performs services for or on behalf of a candidate or political committee must be itemized and described in sufficient detail to disclose the specific services performed by the entity to which payment or reimbursement was made.
- (3) A candidate is required to report the information specified in this section only if the transactions involved were undertaken for the purpose of influencing an election."

Approved April 6, 2009

CHAPTER NO. 163

[HB 155]

AN ACT REQUIRING STATE AGENCIES TO PROTECT CERTAIN PERSONAL INFORMATION; REQUIRING STATE AGENCIES TO DEVELOP PROCEDURES TO PROTECT SOCIAL SECURITY NUMBERS; AND PROVIDING A NOTIFICATION PROCEDURE FOR STATE AGENCIES OR THIRD PARTIES REGARDING A BREACH SUSPECTED OF COMPROMISING CERTAIN PERSONAL INFORMATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 4], the following definitions apply:

- (1) "Breach of the security of a data system" or "breach" means unauthorized acquisition of computerized data that:
- (a) materially compromises the security, confidentiality, or integrity of the personal information maintained by a state agency or by a third party on behalf of the state agency; and
 - (b) causes or is reasonably believed to cause loss or injury to a person.
 - (2) "Individual" means a human being.
- (3) "Person" means an individual, a partnership, a corporation, an association, or a public organization of any character.
- (4) (a) "Personal information" means a first name or first initial and last name in combination with any one or more of the following data elements when the name and the data elements are not encrypted:
 - (i) a social security number or tax identification number;
- (ii) a driver's license number, an identification number issued pursuant to 61-12-501, a tribal identification number or enrollment number, or a similar identification number issued by any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, or American Samoa; or
- (iii) an account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to a person's financial account.
- (b) The term does not include publicly available information that is lawfully made available to the general public from federal, state, local, or tribal government records.
- (5) "Redaction" means the alteration of personal information contained within data to make all or a significant part of the data unreadable. The term includes truncation, which means that no more than the last four digits of an identification number are accessible as part of the data.
- (6) (a) "State agency" means an agency, authority, board, bureau, college, commission, committee, council, department, hospital, institution, office, university, or other instrumentality of the legislative or executive branch of state government. The term includes an employee of a state agency acting within the course and scope of employment.
 - (b) The term does not include an entity of the judicial branch.
 - (7) "Third party" means:

- (a) a person with a contractual obligation to perform a function for a state agency; or
- (b) a state agency with a contractual or other obligation to perform a function for another state agency.
- Section 2. Protection of social security numbers compliance. (1) Each state agency that maintains the social security number of an individual shall develop procedures to protect the social security number while enabling the state agency to use the social security number as necessary for the performance of its duties under federal or state law.
 - (2) The procedures must include measures to:
 - (a) eliminate the unnecessary use of social security numbers;
- (b) identify the person or state agency authorized to have access to a social security number;
- (c) restrict access to social security numbers by unauthorized persons or state agencies;
- (d) identify circumstances when redaction of social security numbers is appropriate;
- (e) dispose of documents that contain social security numbers in a manner consistent with other record retention requirements applicable to the state agency;
- (f) eliminate the unnecessary storage of social security numbers on portable devices; and
- (g) protect data containing social security numbers if that data is on a portable device.
- (3) Except as provided in [section 3], each state agency in existence on [the effective date of this act] shall complete the requirements of this section by September 1, 2012. A state agency that is created after [the effective date of this act] shall complete the requirements of this section within 1 year of its creation.
- **Section 3. Extensions.** The chief information officer provided for in 2-17-511 may grant an extension to any state agency subject to the provisions of the Montana Information Technology Act provided for in Title 2, chapter 17, part 5. The chief information officer shall inform the information technology board, the office of budget and program planning, and the legislative finance committee of all extensions that are granted and of the rationale for granting the extensions. The chief information officer shall maintain written documentation that identifies the terms and conditions of each extension and the rationale for the extension.
- Section 4. Notification of breach of security of data system. (1) (a) Upon discovery or notification of a breach of the security of a data system, a state agency that maintains computerized data containing personal information in the data system shall make reasonable efforts to notify any person whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person.
- (b) The notification must be made without unreasonable delay, consistent with the legitimate needs of law enforcement as provided in subsection (3) or with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the data system.

- (2) (a) A third party that receives personal information from a state agency and maintains that information in a computerized data system in order to perform a state agency function shall:
- (i) notify the state agency immediately following discovery of the breach of the security of a data system if the personal information is reasonably believed to have been acquired by an unauthorized person; and
- (ii) make reasonable efforts upon discovery or notification of a breach of the security of a data system to notify any person whose unencrypted personal information is reasonably believed to have been acquired by an unauthorized person as part of the breach of the security of a data system. This notification must be provided in the same manner as the notification required in subsection (1).
- (b) A state agency notified of a breach by a third party has no independent duty to provide notification of the breach if the third party has provided notification of the breach in the manner required by subsection (2)(a) but shall provide notification if the third party fails to do so in a reasonable time and may recover from the third party its reasonable costs for providing the notice.
- (3) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation and requests a delay of notification. The notification required by this section must be made after the law enforcement agency determines that the notification will not compromise the investigation.
- (4) All state agencies and third parties to whom personal information is disclosed by a state agency shall develop and maintain:
- (a) an information security policy designed to safeguard personal information; and
- (b) breach notification procedures that provide reasonable notice to individuals as provided in subsections (1) and (2).

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 2, and the provisions of Title 2 apply to [sections 1 through 4].

Approved April 6, 2009

CHAPTER NO. 164

[HB 193]

AN ACT CHANGING THE NAME OF THE STATE COORDINATOR OF INDIAN AFFAIRS TO STATE DIRECTOR OF INDIAN AFFAIRS; AMENDING SECTIONS 2-15-102, 2-15-149, 2-15-217, 2-15-225, 2-15-1205, 22-2-602, 90-1-104, 90-1-131, 90-1-132, 90-1-133, 90-11-101, AND 90-11-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-102, MCA, is amended to read:

- "2-15-102. **Definitions.** As used in this chapter, the following definitions apply:
- (1) "Advisory capacity" means furnishing advice, gathering information, making recommendations, and performing other activities that may be

necessary to comply with federal funding requirements and does not mean administering a program or function or setting policy.

- (2) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive branch of state government.
- (3) "Data" means any information stored on information technology resources.
- (4) "Department" means a principal functional and administrative entity that:
- (a) is created by this chapter within the executive branch of state government;
- (b) is one of the 20 principal departments permitted under the constitution; and $\,$
 - (c) includes its units.
- (5) "Department head" means a director, commission, board, commissioner, or constitutional officer in charge of a department created by this chapter.
- (6) (a) "Director" means a department head specifically referred to as a director in this chapter and does not mean a commission, board, commissioner, or constitutional officer.
- (b) The term does not include the state director of Indian affairs provided for in 2-15-217.
- (7) "Executive branch" means the executive branch of state government referred to in Article III, section 1, and Article VI of the Montana constitution.
- (8) "Function" means a duty, power, or program, exercised by or assigned to an agency, whether or not specifically provided for by law.
- (9) "Information technology resources" means hardware, software, and associated services and infrastructure used to store or transmit information in any form, including voice, video, and electronic data.
- (10) "Quasi-judicial function" means an adjudicatory function exercised by an agency, involving the exercise of judgment and discretion in making determinations in controversies. The term includes but is not limited to the functions of:
 - (a) interpreting, applying, and enforcing existing rules and laws;
 - (b) granting or denying privileges, rights, or benefits;
 - (c) issuing, suspending, or revoking licenses, permits, and certificates;
 - (d) determining rights and interests of adverse parties;
 - (e) evaluating and passing on facts;
 - (f) awarding compensation;
 - (g) fixing prices;
 - (h) ordering action or abatement of action;
 - (i) adopting procedural rules;
 - (j) holding hearings; and
 - (k) any other act necessary to the performance of a quasi-judicial function.
- (11) "Quasi-legislative function" generally means making or having the power to make rules or set rates and all other acts connected with or essential to the proper exercise of a quasi-legislative function.

(12) "Unit" means an internal subdivision of an agency, created by law or by administrative action, including a division, bureau, section, or department, and an agency allocated to a department for administrative purposes only by this chapter."

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

- "2-15-149. Naming of sites and geographic features replacement of word "squaw" advisory group. (1) The ecordinator state director of Indian affairs shall appoint an advisory group that will serve on a volunteer basis to consult with local agencies, organizations, and individuals in developing names to replace present site or geographic names that contain the word "squaw".
- (2) Each agency of state government that owns or manages public land in the state shall identify any features or places under its jurisdiction that contain the word "squaw" and inform the advisory group of the agency's identification of features or places containing that word. The agency shall ensure that whenever the agency updates a map or replaces a sign, interpretive marker, or any other marker because of wear or vandalism, the word "squaw" is removed and replaced with the name chosen by the advisory group.
 - (3) The advisory group shall:
- (a) notify the U.S. forest service, the Montana departments of commerce and natural resources and conservation, and any other entity that compiles information for and develops maps for the state or for public use of the name change so that it may be reflected on subsequent editions of any maps or informational literature produced by those entities; and
- (b) place a formal request with the United States board on geographic names to render a decision on the proposed name change so that the new name will be reflected on all United States board on geographic names maps."
 - **Section 3.** Section 2-15-217, MCA, is amended to read:
- **"2-15-217. Office of state eoordinator** director of Indian affairs. (1) There is an office of state eoordinator director of Indian affairs. The office is allocated to the governor's office for administrative purposes only as prescribed in 2-15-121.
- (2) The eoordinator state director must be appointed by the governor from a list of five qualified Indian applicants agreed upon by the tribal councils of the respective Indian tribes of the state. The eoordinator state director shall serve at the pleasure of the governor.
- (3) Except as provided in subsection (4), the qualifications for applicants must include but are not limited to:
- (a) a bachelor's degree in a relevant public policy field, as determined by the governor;
- (b) not less than 3 years experience in a professional administrative capacity; and
- (c) demonstrated skills in conducting policy research and obtaining grant funds from federal, state, or private sector sources.
- (4) The governor may appoint an applicant agreed upon by the tribal councils as provided in subsection (2) whose skills and experience are commensurate with the qualifications set forth in subsection (3)."
 - Section 4. Section 2-15-225, MCA, is amended to read:

- "2-15-225. Interagency coordinating council for state prevention programs. (1) There is an interagency coordinating council for state prevention programs consisting of the following members:
 - (a) the attorney general provided for in 2-15-501;
- (b) the director of the department of public health and human services provided for in 2-15-2201;
 - (c) the superintendent of public instruction provided for in 2-15-701;
 - (d) the presiding officer of the Montana children's trust fund board;
- (e) two persons appointed by the governor who have experiences related to the private or nonprofit provision of prevention programs and services;
 - (f) the administrator of the board of crime control provided for in 2-15-2006;
 - (g) the commissioner of labor and industry provided for in 2-15-1701;
 - (h) the director of the department of corrections provided for in 2-15-2301;
 - (i) the state coordinator director of Indian affairs provided for in 2-15-217;
- (j) the adjutant general of the department of military affairs provided for in 2-15-1202;
- (k) the director of the department of transportation provided for in 2-15-2501;
 - (l) the commissioner of higher education provided for in 2-15-1506; and
- (m) the designated representative of a state agency desiring to participate who is accepted as a member by a majority of the current coordinating council members.
 - (2) The coordinating council shall perform the following duties:
- (a) develop, through interagency planning efforts, a comprehensive and coordinated prevention program delivery system that will strengthen the healthy development, well-being, and safety of children, families, individuals, and communities;
- (b) develop appropriate interagency prevention programs and services that address the problems of at-risk children and families and that can be provided in a flexible manner to meet the needs of those children and families;
 - (c) study various financing options for prevention programs and services;
- (d) ensure that a balanced and comprehensive range of prevention services is available to children and families with specific or multiagency needs;
- (e) assist in development of cooperative partnerships among state agencies and community-based public and private providers of prevention programs; and
- (f) develop, maintain, and implement benchmarks for state prevention programs. As used in this subsection, "benchmark" means a specified reference point in the future that is used to measure the state of affairs at that point in time and to determine progress toward or the attainment of an ultimate goal, which is an outcome reflecting the desired state of affairs.
- (3) The coordinating council shall cooperate with and report to any standing or interim legislative committee that is assigned to study the policies and funding for prevention programs or other state programs and policies related to children and families.
- (4) The coordinating council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.

- (5) The coordinating council is attached for administrative purposes only to the governor's office, which may assist the council by providing staff and budgetary, administrative, and clerical services that the council or its presiding officer requests.
- (6) Staffing and other resources may be provided to the coordinating council only from state and nonstate resources donated to the council and from direct appropriations by each legislature."
 - Section 5. Section 2-15-1205, MCA, is amended to read:
- "2-15-1205. Board of veterans' affairs composition quorum voting compensation allocation. (1) There is a board of veterans' affairs.
- (2) (a) The board consists of 20 members. All members must be residents of this state. Eleven members are voting members, who must be confirmed by the senate, and nine members are nonvoting, ex officio members.
- (b) The governor shall appoint 19 members in a manner that provides for staggered terms. The members are:
- (i) five regional representatives, who must be voting members and who must have been honorably discharged from service in the military forces of the United States. Each must be appointed to represent a different geographic region of the state and must be a resident of that geographic region. The board shall establish the geographic regions by rule. A member who represents a geographic region and who changes residence to a different geographic region may no longer serve on the board unless appointed as a representative for the new location or as a representative meeting other criteria.
- (ii) one honorably discharged veteran, who must be a voting member and serve as a representative of veterans at large;
- (iii) one tribal member, who must be an honorably discharged veteran and who is a voting member; $\,$
- (iv) three members who must have training, education, or experience related to veterans' issues, including but not limited to health and medical care, mental health care, chemical or drug dependency, homelessness, or job training and placement. These three members are voting members.
- (v) a representative of the office of state ecordinator director of Indian affairs, who is a nonvoting member;
- (vi) a representative from the department of public health and human services, who is a nonvoting member;
- (vii) a representative of the United States department of veterans affairs, who is a nonvoting member;
- (viii) a representative of the veterans' employment and training service office in the United States department of labor, who is a nonvoting member;
- (ix) a representative of the state administration and veterans' affairs interim committee, who is a nonvoting member;
- (x) three members, one representing each house and senate member of Montana's congressional delegation, who are nonvoting members; and
- (xi) the director of the department of military affairs, who is a nonvoting member.
- (c) The tribal leaders of the eight tribal councils in Montana may appoint one voting member who is affiliated with a Montana tribe and is an honorably

discharged veteran. If a tribal member is not appointed by the Montana tribal leaders, the governor shall choose this member by lot from a pool of names submitted by the eight tribal councils in the state, with each tribal council submitting one name.

- (3) A vacancy occurring on the board must be filled by the governor, subject to the conditions of subsection (2).
 - (4) A quorum is six voting members.
 - (5) A vote resulting in a tie is the same as a negative vote.
- (6) Each voting member must receive meals, lodging, and travel expenses as provided for in 2-18-501 through 2-18-503. Compensation for the legislator who represents the state administration and veterans' affairs interim committee must be paid from the board of veterans' affairs budget.
- (7) The board shall meet at least three times a year. Special meetings may be called by the administrator or by a majority of voting members. Meetings may be held at different locations around the state to give local veterans an opportunity to attend. Advance notice of meetings must be provided to all veterans' groups and to any individual who requests notification.
- (8) Each voting member may serve for a maximum of two terms. Each term is for 4 years.
- (9) A member may be removed by the governor only for incompetence, malfeasance, or neglect of duty.
- (10) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, including an administrator. The administrator shall serve as the secretary of the board and may represent the board in communications with the governor and with other state agencies, notwithstanding the provisions of 2-15-121(3)(a)."

Section 6. Section 22-2-602, MCA, is amended to read:

- **"22-2-602. Advisory committee composition duties.** (1) To coordinate the project provided for in 22-2-601, the governor shall appoint an advisory committee composed of the following 11 members:
 - (a) a representative from the Montana arts council:
 - (b) a representative from each of the state's seven Indian reservations;
- (c) a representative from the architecture and engineering division of the department of administration;
- (d) the governor's state coordinator director of Indian affairs or the coordinator's state director's designee; and
 - (e) a representative of the Montana historical society.
- (2) The advisory committee shall review the proposals submitted in the design competition for the monument and flag circle and select an appropriate design.
- (3) The advisory committee shall make recommendations to the department of administration for an appropriate site for the monument and the flag circle on the grounds of the capitol complex. The monument and flag circle may be located separately on the grounds.
- (4) The advisory committee shall solicit and accept private contributions to finance the monument and the placement of the monument and the flag circle on the grounds of the capitol complex."

Section 7. Section 90-1-104, MCA, is amended to read:

"90-1-104. Functions of department of commerce — recreational development. The department of commerce shall:

- (1) exercise state responsibility for that part of recreational planning and development that is directly related to private investment in recreational facilities:
- (2) assemble and correlate information that may influence the development of recreational enterprises and disseminate it to persons, firms, or corporations interested in constructing or maintaining recreational facilities open to the public; and
- (3) coordinate the promotion of Indian tourism activities in the state in cooperation with the seven tribal governments and the coordinator state director of Indian affairs."

Section 8. Section 90-1-131, MCA, is amended to read:

- "90-1-131. State-tribal economic development commission composition compensation for members. (1) There is a state-tribal economic development commission administratively attached to the department of commerce as prescribed in 2-15-121.
- (2) The commission is composed of 11 members, each appointed by the governor to 3-year staggered terms commencing on July 1 of each year of appointment, and must include:
 - (a) the state coordinator director of Indian affairs;
 - (b) one member from the department of commerce;
 - (c) one member from the governor's office of economic development;
- (d) one member from each of the seven federally recognized tribes in Montana and one member from the Little Shell band of Chippewa Indians. A tribal government may advertise for individuals interested in serving on the commission and develop a list of applicants from which it may choose its nominee to recommend to the governor. In place of choosing from a list of applicants, a tribal government may select an elected tribal official to recommend for membership on the commission. If a tribal government nominates or otherwise recommends more than one person for membership on the commission, the governor shall select one individual from among those recommended persons.
- (3) The members of the commission shall elect a presiding officer from among the members.
- (4) Six members of the commission constitute a quorum, and the affirmative vote of the majority of the members present is sufficient for any action taken by the commission.
- (5) Any vacancy on the commission must be filled in the same manner as the original appointment.
- (6) Each member of the commission is entitled to reimbursement for expenses as provided in 2-18-501 through 2-18-503."

Section 9. Section 90-1-132, MCA, is amended to read:

"90-1-132. Commission purposes — **duties and responsibilities.** (1) The general purposes of the *state-tribal economic development* commission include:

- (a) assisting, promoting, encouraging, developing, and advancing economic prosperity and employment on Indian reservations in Montana by fostering the expansion of business, manufacturing, tourism, agriculture, and community development programs;
- (b) cooperating and acting in conjunction with other organizations, public and private, to benefit tribal communities;
- (c) recruiting business enterprises to locate on or invest in enterprises on the reservations; and
- (d) identifying, obtaining, and coordinating federal, state, and private sector gifts, grants, loans, and donations to further economic development on the Indian reservations in Montana.
 - (2) The state-tribal economic development commission shall:
- (a) determine, with assistance from the tribal business center coordinator and the federal grants coordinator in the office of the *state director of* Indian affairs ecordinator, the availability of federal, state, and private sector gifts, grants, loans, and donations to tribal governments, Indian business enterprises, and communities located on Indian reservations in Montana:
- (b) apply for grants listed in the Catalog of Federal Domestic Assistance for which the commission is eligible and which would, if awarded, supply identifiable economic benefits to any or all of the Indian reservations in Montana;
- (c) in cooperation with a tribal government, and when allowed by federal law and regulation, assist the tribe in applying for grants listed in the Catalog of Federal Domestic Assistance for which an appropriate tribal entity is eligible and which would, if awarded, supply identifiable economic benefits to any or all of the Indian reservations in Montana;
- (d) evaluate the apportionment of current spending of federal funds by state agencies in areas including but not limited to economic development, housing, community infrastructure, business finance, tourism promotion, transportation, and agriculture;
- (e) conduct or commission and oversee a comprehensive assessment of the economic development needs and priorities of each Indian reservation in the state:
- (f) notify tribal governments, the governor, the *state director of* Indian affairs coordinator, and the directors of the departments of commerce, agriculture, and transportation, of the availability of specific federal, state, or private sector funding programs or opportunities that would directly benefit Indian communities in Montana;
- (g) assist tribal governments and other tribal entities that are eligible for federal assistance programs as provided in the most recent published edition in the Catalog of Federal Domestic Assistance in applying for funds that would contribute to the respective tribes' economic development;
- (h) work cooperatively with tribal government officials, the state coordinator *director* of Indian affairs, and other appropriate state officials to help foster state-tribal cooperative agreements pursuant to Title 18, chapter 11, part 1, that will:
- (i) enhance economic development on the Indian reservations in Montana; and

- (ii) help the department of commerce to fully implement and comply with the provisions of 90-1-105; and
- (i) provide to the governor, the legislative council, the legislative auditor, and to each of the presiding officers of the tribal governments in Montana a biennial report that summarizes the activities of the commission."

Section 10. Section 90-1-133, MCA, is amended to read:

- **"90-1-133. Comprehensive assessment on reservations.** (1) The state-tribal economic development commission shall conduct an accurate, comprehensive, detailed, and objective assessment of economic conditions on each of the Indian reservations in the state. In addition to an initial assessment, the commission may also require periodic updates of the data and analysis contained in the assessment, mainly for the purpose of monitoring progress toward goals and objectives set forth by the commission.
- (2) The commission, the coordinator state director of Indian affairs, or the governor may issue a request for proposals and, on the basis of a competitive bidding process, select a qualified researcher or research team from the private sector or a college or university to conduct the assessment and report findings and conclusions to the commission.
- (3) If the commission has adequate financial resources, the commission may, at its discretion, conduct or commission subsequent followup studies or assessments to obtain updated information.
- (4) An assessment of economic conditions on the Indian reservations in Montana must include the consideration of multiple dimensions of economic development, including reservation demographics, economic development strengths and weaknesses, salient factors relating to economic development, natural resources, conditions in the natural environment, human resources, financial resources, business assistance programs, job training programs, education curriculum, the availability of technical training and assistance, and relevant tribal, state, and federal policies."

Section 11. Section 90-11-101, MCA, is amended to read:

"90-11-101. Legislative policy. The legislature finds and declares that:

- (1) a considerable portion of the citizens of the state of Montana are American Indians;
- (2) since statehood, Indian citizens of the state of Montana have lived on reservations set apart for those purposes by the United States of America, and by virtue of their isolation and supervision by the federal government, great problems of economic and social significance have arisen and presently exist;
- (3) the best interests of Montana Indian tribes will be served by engaging in government-to-government relationships designed to recognize the rights, duties, and privileges of full citizenship that Indians are entitled to as citizens of this state;
- (4) because the tribes are domestic dependent nations, agencies of the federal government retain jurisdiction and a fiduciary duty throughout the state of Montana for the administration of economic, social, health, education, and welfare programs for Indians;
- (5) unique differences exist between the tribes, their reservations, customs, and treaties, and their respective relationships with the federal government, all of which influence the relationships among tribes and between the tribes and the state;

- (6) there are sizeable numbers of off-reservation enrolled and unenrolled Indians residing in our state whose needs for social, environmental, educational, and economic assistance are borne in part by state and local agencies;
- (7) programs of the state of Montana should not duplicate those supported by agencies of the federal government or tribal governments with regard to jurisdiction of Indian people, because state responsibility includes off-reservation Indians and because those Indians require assistance to coordinate their affairs with various tribal groups and federal agencies where they have no official recognition;
- (8) the state and the tribes working together in a government-to-government relationship and engaging in compacts and other cooperative agreements for the benefit of Indian and non-Indian residents will promote economic development, environmental protection, education, social services support, and enduring good will;
- (9) to facilitate the discussion and resolution of issues and concerns that Indian tribes have in relation to the state, the federal government, and among themselves, the coordinator state director of Indian affairs shall:
 - (a) maintain effective tribal-state communications;
- (b) assess tribal and individual Indian concerns and interests to seek ways and means of communicating these concerns and interests to relevant state agencies and to the legislature and actively assist in organizing these efforts; and
- (c) act as a liaison for tribes and Indian people, whether the Indian people reside on or off reservations, whenever assistance is required;
- (10) the coordinator state director of Indian affairs shall endeavor to assist tribes to seek agreements between the state and tribes and to work toward a consensus among the tribes and other parties on shared goals and principles."
 - Section 12. Section 90-11-102, MCA, is amended to read:
- **"90-11-102. Duties and assistance.** (1) It is the duty of the state ecoordinator *director* of Indian affairs to carry out the legislative policy set forth in 90-11-101.
 - (2) The state coordinator director shall:
- (a) meet at least quarterly with tribal governments and become acquainted with the problems confronting the Indians of Montana;
- (b) meet with executive branch directors on issues arising between Montana's Indian citizens, tribes, and state agency personnel and programs;
- (c) report to the governor's cabinet meeting concerning issues confronting Indian people and tribal governments;
- (d) advise the legislative and executive branches of the state of Montana of those problems and issues;
 - (e) make recommendations for the alleviation of those problems and issues;
- (f) serve the Montana delegation in the federal congress as an adviser and intermediary in the field of Indian affairs;
- (g) act as a liaison for representative Indian organizations and groups, public and private, whenever the state coordinator's director's support is solicited by tribal governmental entities;

- (h) serve on the state-tribal economic development commission established in 90-1-131:
- (i) report in detail at every meeting of the interim committee of the legislature responsible for acting as a liaison between the legislature and the tribal governments those actions taken by the state-tribal economic development commission established by 90-1-131 to carry out its duties; and
- (j) hire, with the concurrence of the other members of the state-tribal economic development commission, a tribal business center coordinator and a federal grants coordinator, and subsequently provide administrative support for both positions.
- (3) All executive and legislative agencies of state government may within the area of their expertise and authority provide assistance to tribal councils or their official designees requesting assistance on any matter relating to education, health, natural resources, and economic development on Indian reservation lands."
- Section 13. Name change directions to code commissioner. In any legislation enacted by the 2009 legislature that refers to the state coordinator of Indian affairs, the code commissioner is directed to change the term to state director of Indian affairs.

Section 14. Effective date. [This act] is effective on passage and approval. Approved April 6, 2009

CHAPTER NO. 165

[HB 214]

AN ACT REVISING MEDICAID ELIGIBILITY REQUIREMENTS FOR PREGNANT WOMEN, INFANTS AND CHILDREN, AND CARETAKERS; AMENDING SECTION 53-6-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-131, MCA, is amended to read:

- **"53-6-131. Eligibility requirements.** (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of public health and human services, in its discretion, to be eligible as follows:
- (a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., and does not have income or resources in excess of the applicable medical assistance limits.
- (b) The person would be eligible for assistance under the program described in subsection (1)(a) if that person were to apply for that assistance.
- (c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the person would be receiving assistance under the program in subsection (1)(a).
- (d) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a child with special needs.

- (e) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(d) and:
- (i) the person's income does not exceed the income level specified for federally aided categories of assistance and the person's resources are within the resource standards of the federal supplemental security income program; or
- (ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance:
- (A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for federally aided categories of assistance; and
- (B) (I) in the case of a person who meets the nonfinancial criteria for medical assistance because the person is aged, blind, or disabled, has resources that are within do not exceed the resource standards of the federal supplemental security income program.; or
- (II) in the case of a person who meets the nonfinancial criteria for medical assistance because the person is pregnant, is an infant or child, or is the caretaker of an infant or child, has resources that do not exceed the resource standards adopted by the department.
- (f) The person is a qualified pregnant woman or a child as defined in 42 U.S.C. 1396d(n).
- (g) The person is under 19 years of age and lives with a family having a combined income that does not exceed 185% of the federal poverty level. The department may establish lower income levels to the extent necessary to maximize federal matching funds provided for in 53-4-1104.
- (2) The department may establish income and resource limitations. Limitations of income and resources must be within the amounts permitted by federal law for the medicaid program. Any otherwise applicable eligibility resource test prescribed by the department does not apply to enrollees in the healthy Montana kids plan provided for in 53-4-1104.
- (3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for medicaid-eligible persons participating in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:
- (a) has income that does not exceed income standards as may be required by the Social Security Act; and
- (b) has resources that do not exceed standards that the department determines reasonable for purposes of the program. $\,$
- (4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).
- (5) In accordance with waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may grant eligibility for basic medicaid benefits as described in 53-6-101 to an individual receiving section 1931 medicaid benefits, as defined in 53-4-602, as the specified caretaker relative of a

dependent child under the section 1931 medicaid program. A recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage, as provided in 53-6-101.

- (6) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.
- (7) Notwithstanding any other provision of this chapter, medical assistance must be provided to infants and pregnant women whose family income does not exceed 133% of the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and income standards adopted by the department that comply with the requirements of 42 U.S.C. 1396a(l)(2)(A)(i), and whose family resources do not exceed standards that the department determines reasonable for purposes of the program.
- (8) Subject to appropriations, the department may cooperate with and make grants to a nonprofit corporation that uses donated funds to provide basic preventive and primary health care medical benefits to children whose families are ineligible for the Montana medicaid program and who are ineligible for any other health care coverage, are under 19 years of age, and are enrolled in school if of school age.
- (9) A person described in subsection (7) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7).
- (10) Full medical assistance under the Montana medicaid program may be granted to an individual during the period in which the individual requires treatment of breast or cervical cancer, or both, or of a precancerous condition of the breast or cervix, if the individual:
- (a) has been screened for breast and cervical cancer under the Montana breast and cervical health program funded by the centers for disease control and prevention program established under Title XV of the Public Health Service Act, 42 U.S.C. 300k, or in accordance with federal requirements;
- (b) needs treatment for breast or cervical cancer, or both, or a precancerous condition of the breast or cervix;
- (c) is not otherwise covered under creditable coverage, as provided by federal law or regulation;
- (d) is not eligible for medical assistance under any mandatory categorically needy eligibility group; and
 - (e) has not attained 65 years of age."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 6, 2009

CHAPTER NO. 166

[HB 307]

AN ACT ALLOWING A MEDICAL PRACTITIONER TO DISPENSE DRUGS THAT ARE NOT AVAILABLE FROM A COMMUNITY PHARMACY; AND AMENDING SECTION 37-2-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-2-104, MCA, is amended to read:

- "37-2-104. Dispensing of drugs by medical practitioners unlawful exceptions. (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.
 - (2) This section does not prohibit:
- (a) a medical practitioner from furnishing a patient any drug in an emergency;
- (b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;
- (c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;
- (d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;
 - (e) a medical practitioner from dispensing drug samples;
- (f) the dispensing of factory prepackaged contraceptives, other than mifepristone, by a registered nurse employed by a family planning clinic under contract with the department of public health and human services if the dispensing is in accordance with:
- (i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and
- (ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;
- (g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or any controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353(b).
- (h) a medical practitioner from dispensing a drug if the medical practitioner has prescribed the drug and verified that the drug is not otherwise available from a community pharmacy. A drug dispensed pursuant to this subsection (2)(h) must meet the labeling requirements of the board of pharmacy."

Approved April 6, 2009

CHAPTER NO. 167

[HB 372]

AN ACT REVISING EXEMPTIONS FROM JURY DUTY; PROVIDING THAT THE UNDUE HARDSHIP EXEMPTION APPLIES TO BREASTFEEDING MOTHERS AND OTHER PROSPECTIVE JURORS WHO ARE PRIMARY CAREGIVERS TO DEPENDENT PERSONS; AND AMENDING SECTION 3-15-313, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-15-313, MCA, is amended to read:

"3-15-313. Who may be excused — affidavit to claim excuse — permanent exclusion for chronically incapacitated. (1) The court or *the* jury commissioner with the approval of the court shall excuse a person from jury

service upon finding that jury service would entail undue hardship for the person, a dependent of the person, or the public served by the person. An excuse may be granted if the prospective juror is a breastfeeding mother or otherwise has a personal obligation to provide actual and necessary care to another, including a sick, aged, or special needs dependent who requires the prospective juror's personal care and attention, and comparable substitute care is either unavailable or impractical without imposing an undue economic hardship on the prospective juror or dependent person.

- (2) If a person believes jury service would entail undue hardship for the person, a dependent of the person, or the public served by the person, the person may make and transmit an affidavit to the jury commissioner for which the person is summoned, stating the person's occupation or other facts that the person believes will excuse the person from jury service. The affidavit must be filed with the jury commissioner, who shall transmit it to the court. The court or the jury commissioner with the approval of the court may shall excuse a prospective juror from jury service if the prospective juror satisfies the provisions of subsection (1).
- (3) A person who is chronically incapacitated by illness or injury may request a permanent exclusion from jury service by making and transmitting an affidavit to the jury commissioner of the person's place of residence. The affidavit must include a certification by the person's physician that the person is chronically incapacitated by illness or injury. The affidavit must be filed with the jury commissioner, who shall transmit it to the court. The court or jury commissioner with the approval of the court may permanently excuse a prospective juror from jury service if the prospective juror satisfies the provisions of this subsection (3).
- (4) For purposes of subsection (3), a person is chronically incapacitated if the person has a condition due to an illness or injury that restricts the person's ability to leave the person's place of residence without the aid of supportive devices, such as crutches, a cane, a wheelchair, or a walker, that restricts the person's ability to leave home without the use of special transportation or the assistance of another person, or that causes leaving home to be medically contraindicated. Examples of factors to be taken into account in determining whether chronic incapacitation exists include but are not limited to the following:
 - (a) paralysis by a stroke or other cause;
 - (b) blindness;
 - (c) senility;
- (d) loss of the use of a person's extremities requiring the assistance of another in leaving the person's place of residence;
- (e) arteriosclerotic heart disease of such severity that a person must is required to avoid all stress and physical activity; or
- (f) a psychiatric problem if the illness is manifested in part by a refusal to leave home or is of such a nature that it would not be considered safe for the person to leave home unattended, even if there are no physical limitations."

Approved April 6, 2009

CHAPTER NO. 168

[HB 387]

AN ACT REVISING THE DEFINITION OF "INVENTORY" WITH RESPECT TO CANCELED DEALERSHIP CONTRACT REPURCHASE REQUIREMENTS; AMENDING SECTION 30-11-701, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-11-701, MCA, is amended to read:

"30-11-701. Definitions. As used in this part, the following definitions apply:

- (1) "Current net price" means:
- (a) with respect to a dealership contract, the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed; and
- (b) with respect to a distribution contract, the price listed in the manufacturer's or distributor's price list or catalog in effect at the time a distribution contract is discontinued or, if none is then in effect, the last available price so listed.
- (2) "Dealership contract" means a written contract between a retailer and a wholesaler, manufacturer, or distributor in which the retailer becomes a dealer in goods sold by the wholesaler, manufacturer, or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.
- (3) "Distribution contract" means a written contract between a wholesaler and a manufacturer or distributor in which the wholesaler becomes a dealer in goods sold by the manufacturer or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.
 - (4) "Inventory" means:
 - (a) farm implements, machinery, attachments, and repair parts;
 - (b) industrial and construction equipment and repair parts:
- (c) automobiles, trucks new motor vehicles, trucks, trailers, semitrailers, pole trailers, travel trailers, and repair parts sold by an automobile or truck a dealer as defined in 61-1-101;
- (d) motorcycles, motor-driven cycles, recreational vehicles, and quadricycles, as those terms are defined in 61-1-101, and repair parts;
 - (e) snowmobiles, as defined in 23-2-601, and repair parts;
 - (f) off-highway vehicles, as defined in 23-2-801, and repair parts; and
- (g) vessels, as defined in 23-2-502, detachable motors or engines used to propel vessels, and repair parts.
 - (5) "Net cost" means:
- (a) with respect to a dealership contract, the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer; and

- (b) with respect to a distribution contract, the price actually paid for an inventory item by the wholesaler to a manufacturer or distributor, plus applicable freight costs paid by or charged to the wholesaler.
- (6) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.
- (7) "Wholesaler" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to retailers."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to dealership contracts entered into or renewed on or after [the effective date of this act].

Approved April 6, 2009

CHAPTER NO. 169

[HB 621]

AN ACT PROVIDING THAT AN EXISTING RETAIL BEER OR BEER AND WINE LICENSE FOR A FAIRGROUNDS COMPLEX MAY BE TRANSFERRED TO A POLITICAL SUBDIVISION OF THE STATE UNDER CERTAIN CIRCUMSTANCES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF REVENUE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Transfer of existing license to political subdivision of state rulemaking. (1) A political subdivision of the state of Montana may apply to the department for the transfer of an existing retail beer or beer and wine license and, upon approval by the department, the political subdivision may own and operate the license or lease the license to a person, firm, corporation, or other entity approved by the department.
 - (2) A license that is transferred to a political subdivision of the state:
- (a) may be transferred only to another political subdivision of the state and not to any other person, firm, corporation, or entity;
- (b) does not authorize and may not be used in conjunction with gambling activities except for horseracing as authorized in Title 23, chapter 4;
- (c) may be authorized only for a fairgrounds complex owned by the political subdivision;
- (d) is authorized for use in all facilities contained in the fairgrounds complex;
- (e) is not, with respect to the facilities, subject to the provisions of 16-4-204(2);
- (f) must be taken into account in determining the license quota restrictions of 16-4-105; and
- (g) is subject to all license fees, laws, and rules applicable to retail beer or beer and wine licenses.
- (3) The department may adopt rules to implement the provisions of this section.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, part 3, and the provisions of Title 16, chapter 4, part 3, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 6, 2009

CHAPTER NO. 170

[HB 623]

AN ACT CLARIFYING THE AUTHORITY OF A COUNTY, CITY, OR TOWN TO DONATE REAL PROPERTY OR SELL REAL PROPERTY AT A REDUCED PRICE TO A CORPORATION FOR LOW-INCOME HOUSING; AMENDING SECTIONS 7-8-2219, 7-8-2301, 7-8-2308, 7-8-2402, 7-8-2504, 7-8-4201, AND 7-15-4262, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2219, MCA, is amended to read:

- "7-8-2219. Exchange or donation of county land in case of failure to make sale. (1) If within 1 year no immediate sale be had of real estate attempted to be sold under the provisions of 7-8-2211 through 7-8-2220 is not sold, the board of county commissioners may make trades or exchanges of such the real estate owned by the county for any other lands land or real estate of equal value located within the same county.
- (2) In lieu of the procedure in subsection (1), the board of county commissioners may donate the land or sell the land at a reduced price to a corporation for the purpose of constructing:
- (a) a multifamily housing development operated by the corporation for low-income housing;
- (b) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.
- (c) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.
- (3) Land that is transferred pursuant to subsection (2) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition."
 - **Section 2.** Section 7-8-2301, MCA, is amended to read:
- **"7-8-2301. Disposal of county tax-deed land.** (1) Whenever the county acquires land by tax deed, it is the duty of the board of county commissioners, within 6 months after acquiring title, to enter an order to:
 - (a) sell the land at public auction;
- (b) donate the land to a municipality, as provided in subsection (3), if the land is within the incorporated boundaries of the municipality;

- (c) donate the land or sell the land at a reduced price to a nonprofit corporation as provided in subsection (3); or
 - (d) retain the land for the county as provided in subsection (3).
- (2) When tax-deed land is to be sold, the sale may not be made for a price less than the sales price determined and fixed by the board prior to making the order of sale. The sales price may be set in an amount sufficient to recover the full amount of taxes, assessments, penalties, and interest due at the time the tax deed was issued to the county plus the county's costs in taking the tax deed and in conducting the sale and additional taxes due, if any, at the time of the sale.
- (3) A board of county commissioners may, upon expiration of the repurchase period provided for in 7-8-2303:
 - (a) sell the land as provided in subsections (2) and (4);
 - (b) donate the land to a municipality with the consent of the municipality;
- (c) donate the land or sell the land at a reduced price to a nonprofit corporation for the purpose of constructing:
- a multifamily housing development operated by the corporation for low-income housing;
- (ii) single-family houses. Upon completion of a house, the nonprofit corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.
- (iii) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the nonprofit corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the nonprofit corporation, including the sale, lease, rental, or other use of the donated land and improvements;
 - (d) retain the land for the county pursuant to 7-8-2501.
- (4) If bids are not received at a sale of tax-deed land, the board shall order another auction sale of the land under this part within 6 months and may, if required by the circumstances, redetermine the sales price of the land determined under subsection (2). In the period of time between the auction conducted under subsection (1), in which there were not any qualifying bids for the land, and an auction held pursuant to this subsection, the board may sell the land by negotiated sale at a price that is not less than the sales price that was fixed for the original auction under subsection (1)(a).
- (5) If a bid is not received at the sale conducted under subsection (4), the board may dispose of the land as provided in 7-8-2218.
- (6) Notwithstanding the amount of the sales price fixed by the board prior to the auction conducted under subsection (1)(a), if the successful sale bidder is the delinquent taxpayer or the taxpayer's successor in interest, the taxpayer's agent, or a member of the taxpayer's immediate family, the purchase price may not be less than the amount necessary to pay, in full, the taxes, assessments, penalties, and interest due on the land at the time of taking the tax deed plus interest on the full amount at the rate provided for in 15-16-102 from the date of the tax deed to the date of the repurchase as well as the costs of the county in taking the tax deed and additional taxes or assessments due, if any, at the time of repurchase.

- (7) Land that is transferred pursuant to subsection (3)(c) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition."
 - **Section 3.** Section 7-8-2308, MCA, is amended to read:
- "7-8-2308. Sale *or donation* of lands land of less than fifty dollar valuation and other than tax-deed lands land. (1) Property belonging to the county of the value of less than \$50 and property of the county acquired by means other than by tax deed may be:
- (a) sold as provided by 7-8-2211 through 7-8-2220 and, except so far as they. Except to the extent that those sections may conflict with the provisions of this part, 7-8-2211 through 7-8-2220 shall remain in force and effect. Nothing herein contained shall This section may not be construed as repealing 7-8-2401 through 7-8-2403.
- (b) donated or sold at a reduced price to a corporation for the purpose of constructing:
- (i) a multifamily housing development operated by the corporation for low-income housing;
- (ii) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.
- (iii) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.
- (2) Land that is transferred pursuant to subsection (1)(b) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition."
 - **Section 4.** Section 7-8-2402, MCA, is amended to read:
- "7-8-2402. Disposal of land and timber acquired by county pursuant to exchange agreement with United States. (1) Any timber acquired from the United States in any exchange may be disposed of by the county commissioners by agreement with the United States department of agriculture that such the timber shall must be cut and removed by any agency selected by the United States department of agriculture, with the understanding that the stumpage payments for timber so cut will be paid over to the county in cash as full compensation for the county land exchanged to the United States. The amount of such the stumpage payments, so paid over, shall must equal the appraised value of the county land exchanged for same timber, and such the cash payments shall must be deposited in the county treasury for the use of the county.
- (2) All land and all timber not subject to the arrangement authorized in subsection (1) and acquired by the county under the provisions of this part may be:
- (a) sold by the board of county commissioners in the manner provided by law for the sale of county property, and the proceeds of such the sale shall must be deposited in the county treasury for the use of the county; or

- (b) donated or sold at a reduced price to a corporation for the purpose of constructing:
- (i) a multifamily housing development operated by the corporation for low-income housing;
- (ii) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.
- (iii) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.
- (3) Land that is transferred pursuant to subsection (2)(b) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition."

Section 5. Section 7-8-2502, MCA, is amended to read:

- **"7-8-2502. Application of part.** (1) Any lands land offered for sale by the county commissioners of any county pursuant to 7-8-2301 and not sold at the sale, any lands land classified for retention by the county, any lands land concerning which the preferential right to purchase has been terminated and barred pursuant to the provisions of 7-8-2303, and any other lands land owned by the county, however acquired, may, in the discretion and at the election of the board, be:
 - (a) administered by the board under this part; or
- (b) donated or sold at a reduced price to a corporation for the purpose of constructing:
- (i) a multifamily housing development operated by the corporation for low-income housing;
- (ii) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.
- (iii) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.
- (2) The board may in its discretion elect to exercise any of the powers and authority granted to it by this part, and to the extent that the board elects, the provisions of this part are controlling and supersede all conflicting provisions of other laws.
- (3) The sale, exchange, lease, *donation*, or issuance of licenses and permits of county lands land as provided in this part extends only to those lands land not necessary to the conduct of the county's business.
- (4) Land that is transferred pursuant to subsection (1)(b) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition."

Section 6. Section 7-8-2504. MCA, is amended to read:

"7-8-2504. Classification of county lands land. The board may:

- (1) establish criteria for the classification of the lands land referred to in 7-8-2502(1)(a);
- (2) classify such lands the land, surface and subsurface, for retention or disposal and for such purposes and uses as that the board may determine are in the best interests of the county and for the public benefit and welfare, and in so doing In classifying the land, the board shall consider the multiple-use potential of said lands the land and the potential of said lands the land as access to other intermingled or adjacent multiple-use lands land or areas."

Section 7. Section 7-8-4201, MCA, is amended to read:

- **"7-8-4201. Disposal or lease of municipal property.** (1) Subject to the provisions of subsection (2), the city or town council may sell, dispose of, *donate*, or lease any property belonging to the city or town.
- (2) (a) Except for property described in subsection (3), the lease, *donation*, or transfer must be made by an ordinance or resolution passed by a two-thirds vote of all the members of the council.
- (b) Except for property acquired by tax deed or property described in subsection (3), if the property is held in trust for a specific purpose, the sale or lease must be approved by a majority vote of the electors of the municipality voting at an election called for that purpose. The election must be held in conjunction with a regular or primary election.
- (3) If a city or town owns property containing a historically significant building or monument, the city or town may sell or give the property to nonprofit organizations or groups that agree to restore or preserve the property. The contract for the transfer of the property must contain a provision that:
- (a) requires the property to be preserved in its present or restored state upon any subsequent transfer; and
- (b) provides for the reversion of the property to the city or town for noncompliance with conditions attached to the transfer.
- (4) This section may not be construed to abrogate the power of the board of park commissioners to lease all lands owned by the city that were acquired for parks within the limitations prescribed by 7-16-4223.
- (5) A city or town may donate land or sell the land at a reduced price to a corporation for the purpose of constructing:
- (a) a multifamily housing development operated by the corporation for low-income housing;
- (b) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.
- (c) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.
- (6) Land that is transferred pursuant to subsection (5) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition."

Section 8. Section 7-15-4262, MCA, is amended to read:

"7-15-4262. Disposal of municipal property in urban renewal areas. (1) A municipality may:

- (a) sell, lease, or otherwise transfer real property in an urban renewal area or any interest therein in real property acquired by it for an urban renewal project for residential, recreational, commercial, industrial, or other uses or for public use and enter into contracts with respect thereto to the real property; or
- (b) retain such the property or interest only for parks and recreation, education, public transportation, public safety, health, highways, streets and alleys, administrative buildings, or civic centers, in accordance with the urban renewal project plan and subject to such any covenants, conditions, and restrictions, including covenants running with the land, as that it may deem to be considers necessary or desirable to assist in preventing the development or spread of blighted areas or otherwise to carry out the purposes of this part.
- (2) Such *The* sale, lease, other transfer, or retention and any agreement relating thereto the real property may be made only after the approval of the urban renewal plan by the local governing body.
- (3) Such Except as provided in subsection (5), the real property or interest shall must be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account and give consideration to the:
 - (a) uses provided in such the plan;
- (b) the restrictions upon and the covenants, conditions, and obligations assumed by the purchaser or lessee or by the municipality retaining the property; and
- (c) the objectives of such the plan for the prevention of the recurrence of blighted areas.
- (4) Real property acquired by a municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred shall must be transferred as rapidly as feasible, in the public interest, consistent with the carrying out of the provisions of the urban renewal plan.
- (5) A transfer under this section may include a donation of the land or a sale of the land at a reduced price to a corporation for the purpose of constructing:
- (a) a multifamily housing development operated by the corporation for low-income housing;
- (b) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to targetion
- (c) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.
- (6) Land that is transferred pursuant to subsection (5) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition."

Section 9. Effective date. [This act] is effective July 1, 2009.

Approved April 6, 2009

CHAPTER NO. 171

[SB 74]

AN ACT REVISING THE DUTIES OF A GOVERNMENTAL FIRE AGENCY; REVISING REQUIREMENTS FOR PROVISION AND MANAGEMENT OF EMERGENCY SERVICES BY A FIRE CHIEF; REVISING THE ENTITY UNDER WHICH A FIRE CHIEF SERVES; AND AMENDING SECTION 7-33-2001, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2001, MCA, is amended to read:

"7-33-2001. Fire chief — **powers and duties.** (1) A fire chief of a governmental fire agency organized under this chapter must be considered the highest ranking officer in the agency and is responsible for the operation of the agency, including but not limited to:

- (a) development and implementation of agency programs and procedures;
- (b) performance of agency personnel;
- (c) preventing outbreak of fires;
- (d) minimizing danger to persons and damage to property caused by fires; and
- (e) ensuring the provision and management of any providing and managing emergency services that are established by the agency and that are consistent with national and other appropriate standards. These services may include but are not limited to:
 - (i) fire suppression;
 - (ii) medical aid;
 - (iii) hazardous materials response;
 - (iv) ambulance service; and
 - (v) extrication from vehicles.
- (2) In development of agency regulations, programs, and procedures, the fire chief is subject to applicable laws and ordinances.
- (3) The fire chief serves under the direction of the governing body that has ereated the governmental fire agency trustees, if trustees have been designated to manage the fire agency under the provisions of this chapter. If the governing body retains management, then the fire chief serves under the direction of the governing body.
- (4) The fire chief shall develop organizational and operational procedures and shall implement those procedures by issuing written administrative regulations and operational guidelines.
- (5) In the event of a fire or other emergency involving the protection of life or property, the fire chief has the authority to direct any operation necessary to extinguish or control the fire or perform a rescue in coordination with other authorities having jurisdiction.
- (6) The fire chief may investigate suspected or reported fires, gas leaks, or other hazardous conditions and may take any action necessary to protect public

health and safety and protect property or mitigate damage to property in the exercise of the chief's duties.

- (7) In the exercise of the authority provided in subsections (5) and (6), the fire chief may:
 - (a) enter any property;
 - (b) prohibit any person, vehicle, or thing from approaching the scene;
- (c) remove or cause to be removed from the scene of the fire or other emergency any person, vehicle, or thing that the chief determines may interfere with the operations of the agency.
- (8) (a) Subject to 50-3-102(1)(c), the fire chief may investigate the cause, origin, and circumstances of every fire that occurs in the chief's jurisdiction that involves the loss of life, injury to a person, destruction of property, or damage to property.
- (b) Subject to 50-3-102(1)(c), as part of the investigation, the fire chief may take immediate charge of all physical evidence relating to the cause of the fire and may pursue the investigation to its conclusion.
- (c) The fire chief may investigate the cause, origin, and circumstances of unauthorized releases of hazardous materials.
- (9) (a) The fire chief may establish and maintain a program applicable to every community in the chief's jurisdiction that provides for:
 - (i) regular examination of fire hazards; and
- (ii) regular inspection of commercial property, after the property has been approved for occupancy by a certified city, county, or town building code jurisdiction or the department of labor and industry's bureau of building and measurement standards, with particular emphasis on occupancies identified as high risk to life and property.
- (b) The fire chief may establish a formal fire inspection program as authorized by the department of justice under 50-61-102.
- (10) The fire chief shall report all fires to the department of justice and shall use the national fire incident reporting system or other reporting method approved by the department of justice's fire prevention and investigation section.
- (11) The fire chief is responsible for establishing and maintaining a training program for the agency and may use existing federal, regional, state, and local training resources. The agency's program must include training in all areas of emergency response in which the agency provides services.
- (12) For the purposes of this section, "governmental fire agency" does not include municipal fire departments."

Approved April 6, 2009

CHAPTER NO. 172

[SB 111]

AN ACT CLARIFYING THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MAY ENGAGE IN WILDFIRE INITIAL ATTACK; AMENDING SECTION 76-13-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-104, MCA, is amended to read:

- **"76-13-104. Functions of department rulemaking.** (1) (a) The department has the duty to ensure the protection of land under state and private ownership and to suppress wildfires on land under state and private ownership. No fees Fees may not be collected for this purpose except fees provided for in 76-13-201.
- (b) The department may engage in wildfire initial attack on all lands if the fire threatens to move onto state or private land.
- (2) (a) The department shall adopt rules to protect the natural resources of the state, especially the natural resources owned by the state, from destruction by fire and for that purpose, in declared emergencies, may employ personnel and incur other expenses when necessary.
- (b) The department may adopt and enforce reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of part 2 and this part.
- (3) The duty imposed on the department under this section is not exclusive to the department and does not absolve private property owners or local governmental fire agencies organized under Title 7, chapter 33, from any fire protection or suppression responsibilities.
- (4) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and fire protection.
- (5) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.
- (6) The department shall establish and maintain wildland fire control training programs.
- (7) The department shall appoint firewardens in the number and localities that it considers necessary, subject to confirmation by the local county government, and shall adopt rules prescribing the qualifications and duties of firewardens that are in addition to those provided in 76-13-116.
- (8) By October 1, 2008, the *The* department shall adopt rules addressing development within the wildland-urban interface, including but not limited to:
 - (a) best practices for development within the wildland-urban interface; and
- (b) criteria for providing grant and loan assistance to local government entities to encourage adoption of best practices for development within the wildland-urban interface."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 6, 2009

CHAPTER NO. 173

[SB 143]

AN ACT ESTABLISHING A MINIMUM AMOUNT OF ASSESSMENT FEES FOR FIRE PROTECTION FOR PEOPLE WHO OWN A SHARE OF PROPERTY AND AN INDIVIDUAL UNIT ON THE PROPERTY; AMENDING SECTION 76-13-213, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-213, MCA, is amended to read:

- "76-13-213. Formula to set landowner assessments for fire protection. (1) The department shall, pursuant to 76-13-207, set the annual fire assessment fee due from landowners pursuant to Title 76, chapter 13, parts 1 and 2. The total of all statewide landowner assessments may be no greater than one-third of the amount appropriated by the legislature to fund the protection costs.
- (2) The individual assessments must be established using the following criteria:
- (a) Each person or corporation who is responsible for fire protection pursuant to 76-13-108 and 76-13-201 and for whom the department provides fire protection must be assessed a per capita landowner fee. The total per capita landowner assessments statewide from persons or corporations who own 20 acres or less of land for which the department provides protection must be as close as administratively possible to 60% of the total private landowner assessments.
- (b) A person or corporation who owns more than 20 acres of land for which the department provides protection shall, in addition to the fee assessed pursuant to subsection (2)(a), pay a per-acre fee for each whole acre that the person owns in excess of 20 acres. The total of all assessments statewide from persons or corporations that own more than 20 acres must be as close as administratively possible to 40% of the total private landowner assessments.
- (c) A person who owns a share of property and has full ownership of a unit on the property must be assessed an amount not less than one-half of the amount established to be assessed for the property under subsection (2)(a).
- (3) (a) Except as provided in subsection (3)(b), the per capita and per-acre fees must remain in effect for subsequent years.
- (b) The department shall reset the per capita and per-acre fees whenever it is necessary to obtain up to one-third of the amount appropriated by the legislature.
- (c) Whenever the department resets the fees pursuant to subsection (3)(b), it shall do so in accordance with 76-13-201(2)."

Section 2. Effective date. [This act] is effective May 1, 2009.

Approved April 6, 2009

CHAPTER NO. 174

[SB 185]

AN ACT CREATING A NONRESIDENT COLLEGE STUDENT BIG GAME COMBINATION LICENSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Class B-14—nonresident college student big game combination license. (1) A student who is not a resident, as defined in 87-2-102, may purchase a Class B-14 nonresident college student big game combination license for the same price as a Class AAA combination sports license if that student:

- (a) is currently enrolled as a full-time student at a postsecondary educational institution in Montana, with 12 credits or more being considered full-time; or
- (b) (i) has a natural or adoptive parent who currently is a Montana resident, as defined in 87-2-102:
- (ii) has a high school diploma from a Montana public, private, or home school or can provide certified verification that the applicant has passed the general educational development test in Montana; and
- (iii) is currently enrolled as a full-time student at a postsecondary educational institution in another state.
- (2) The holder of a Class B-14 license is entitled to all the privileges of a Class B license, a Class B-1 license, a Class B-7 license, an elk tag, and a nonresident wildlife conservation license.
- (3) Application for a Class B-14 nonresident college student big game combination license may be made after the second Monday in September at any department regional office or at the department headquarters in Helena. To qualify, the applicant shall present a valid student identification card and verification of current full-time enrollment at a postsecondary educational institution as required by the department.
- **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 5, and the provisions of Title 87, chapter 2, part 5, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval. Approved April 6, 2009

CHAPTER NO. 175

[SB 188]

AN ACT PROVIDING THAT IN A HUNTING DISTRICT OR PORTION OF A DISTRICT WHERE THE HOLDER OF A GENERAL ELK LICENSE IS ALLOWED TO HUNT ANTLERLESS ELK DURING CERTAIN TIMES, THE HOLDER OF A SPECIAL ELK PERMIT TO HUNT ANTLERLESS ELK IN THAT DISTRICT OR PORTION OF A DISTRICT MAY ALSO HUNT ANY ELK AUTHORIZED UNDER THE REGULATIONS FOR A GENERAL ELK LICENSE DURING THOSE SAME TIMES; AMENDING SECTION 87-2-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-704, MCA, is amended to read:

"87-2-704. Regulation of special elk permits. (1) The department may:

- (a) provide for the refund of resident elk tag license fees to persons applying for special elk permits in hunting districts where there is no general elk hunting and set time limits and describe area restrictions; and
- (b) designate special elk permit areas where priority will be given to applicants who have not held special elk permits for a period of years to be determined by the department.
- (2) The department shall provide that a person who is issued a special elk permit to hunt antlerless elk during the regular hunting season is:

- (a) limited to the hunting and taking of only an antlerless elk in the hunting district or portion of a hunting district where the permit is valid, except that in a hunting district or portion of a district where the holder of a general elk license is allowed to hunt antlerless elk during certain times, the holder of a special elk permit to hunt antlerless elk in that district or portion of a district may also hunt any elk authorized under the regulations for a general elk license during those same times; and
- (b) entitled to the general elk hunting privileges for a holder of a Class A-5 license in all other hunting districts.
- (3) The commission may establish a waiting period during which a person who has received a special elk permit that is valid for an antlered bull may not receive another special elk permit that is valid for an antlered bull. The commission may specify which special elk permits are subject to the waiting period, by hunting district or portion of a hunting district.
 - (4) The fee for a special elk permit is \$4.
 - (5) The department may adopt rules necessary to implement this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 6, 2009

CHAPTER NO. 176

[SB 209]

AN ACT REPLACING THE UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT WITH THE UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT; AMENDING SECTIONS 25-9-601, 25-9-602, 25-9-603, 25-9-605, 25-9-606, AND 25-9-607, MCA; REPEALING SECTION 25-9-604, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-9-601, MCA, is amended to read:

"25-9-601. Short title. This part may be cited as the "Uniform Foreign Money-Judgments Foreign-Country Money Judgments Recognition Act"."

Section 2. Section 25-9-602, MCA, is amended to read:

- **"25-9-602. Definitions.** As used in this part, the following definitions apply:
 - (1) "Foreign country" means a government other than:
 - (a) the United States;
- (b) a state, district, commonwealth, territory, or insular possession of the United States; or
- (c) any other government with regard to which the decision in this state as to whether to recognize a judgment of that government's courts is initially subject to determination under the full faith and credit clause of the United States constitution.
- (1)(2) "Foreign Foreign-country judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters country.

- (2) "Foreign state" means any governmental unit other than the United States or any state, district, commonwealth, territory, or insular possession thereof or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands."
 - Section 3. Section 25-9-603, MCA, is amended to read:
- **"25-9-603. Applicability.** (1) This Except as provided in subsection (2), this part applies to a any foreign foreign-country judgment to the extent that the judgment:
 - (a) grants or denies recovery of a sum of money; and
- (b) under the law of the foreign country where rendered, that is final, and conclusive, and enforceable where rendered even though an appeal from the judgment is pending or it is subject to appeal.
- (2) This part does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:
 - (a) a judgment for taxes;
 - (b) a fine or other penalty; or
- (c) a judgment for dissolution of marriage, support, or maintenance, or other judgment rendered in connection with domestic relations.
- (3) A party seeking recognition of a foreign-country judgment has the burden of establishing that this part applies to the foreign-country judgment."
 - Section 4. Section 25-9-605, MCA, is amended to read:
- "25-9-605. Grounds for nonrecognition Standards for recognition of foreign-country judgment. (1) Except as provided in subsections (2) and (3), a court of this state shall recognize a foreign-country judgment to which this part applies.
- (1)(2) A foreign court of this state may not recognize a foreign-country judgment is not conclusive if:
- (a) the judgment was rendered under a *judicial* system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
 - (b) the foreign court did not have personal jurisdiction over the defendant; or
 - (c) the foreign court did not have jurisdiction over the subject matter.
- (2)(3) A foreign judgment court of this state need not be recognized a foreign-country judgment if:
- (a) the defendant in the proceedings proceeding in the foreign court did not receive notice of the proceedings proceeding in sufficient time to enable the defendant to defend;
- (b) the judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;
- (c) the *judgment or the* cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state *or of the United States*;
 - (d) the judgment conflicts with another final and conclusive judgment;
- (e) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled determined otherwise than by proceedings in that court; or

- (f) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;
- (g) the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or
- (h) the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.
- (4) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (2) or (3) exists."
 - Section 5. Section 25-9-606, MCA, is amended to read:
- **"25-9-606. Personal jurisdiction.** (1) Except as provided in 25-9-605, the foreign *A foreign-country* judgment may not be refused recognition for lack of personal jurisdiction if:
- (a) the defendant was served with process personally in the foreign state country;
- (b) the defendant voluntarily appeared in the proceedings proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceedings proceeding or of contesting the jurisdiction of the court over the defendant;
- (c) the defendant, prior to before the commencement of the proceedings proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;
- (d) the defendant was domiciled in the foreign state country when the proceedings were proceeding was instituted or, being a body corporate, was a corporation or other form of business organization that had its principal place of business in, or was incorporated, or had otherwise acquired corporate status in organized under the laws of, the foreign state country;
- (e) the defendant had a business office in the foreign state country and the proceedings proceeding in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign state country; or
- (f) the defendant operated a motor vehicle or airplane in the foreign state *country* and the proceedings involved a cause of action or claim for relief arising out of the *that* operation.
- (2) The list of bases for personal jurisdiction in subsection (1) is not exclusive. The courts of this state may recognize other bases of personal jurisdiction other than those listed in subsection (1) as sufficient to support a foreign-country judgment."
 - **Section 6.** Section 25-9-607, MCA, is amended to read:
- "25-9-607. Stay in ease of proceedings pending appeal of foreign-country judgment. If the defendant satisfies the court either a party establishes that an appeal from a foreign-country judgment is pending or that the defendant is entitled and intends to appeal from the foreign judgment will be taken, the court may stay the any proceedings with regard to the foreign-country judgment until the appeal has been determined or until the expiration of a period of time sufficient to enable the defendant is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so."

- Section 7. Procedure for recognition of foreign-country judgment. (1) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition must be raised by filing an action seeking recognition of the foreign-country judgment.
- (2) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.
- Section 8. Effect of recognition of foreign-country judgment. If the court in a proceeding under [section 7] finds that the foreign-country judgment is entitled to recognition under this part then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:
- (1) conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive; and
- (2) enforceable in the same manner and to the same extent as a judgment rendered in this state.
- **Section 9. Statute of limitations.** An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 10 years from the date that the foreign-country judgment became effective in the foreign country.
 - Section 10. Repealer. Section 25-9-604, MCA, is repealed.
- **Section 11. Codification instruction.** [Sections 7 through 9] are intended to be codified as an integral part of Title 25, chapter 9, part 6, and the provisions of Title 25, chapter 9, part 6, apply to [sections 7 through 9].
- Section 12. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].
- **Section 13. Applicability.** [This act] applies to all actions commenced on or after [the effective date of this act] in which the issue of recognition of a foreign-country judgment is raised.

Approved April 6, 2009

CHAPTER NO. 177

[SB 250]

AN ACT ESTABLISHING THE OFFENSE OF TRADEMARK COUNTERFEITING; PROVIDING CRIMINAL PENALTIES FOR TRADEMARK COUNTERFEITING; PROVIDING FOR RESTITUTION FOR PERSONS HARMED BY TRADEMARK COUNTERFEITING; PROVIDING FOR SEIZURE OF GOODS USED IN TRADEMARK COUNTERFEITING; AMENDING SECTIONS 30-13-301 AND 30-13-333, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-13-301, MCA, is amended to read:

"30-13-301. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

- (1) "Abandoned" with respect to a mark, means the occurrence of either of the following:
- (a) when a mark's use has been discontinued with intent not to resume use. Intent not to resume may be inferred from circumstances. Nonuse for 2 consecutive years constitutes prima facie evidence of abandonment.
- (b) when any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark.
- (2) "Applicant" means the person filing an application for registration of a mark under this part or the person's legal representatives, successors, or assigns.
 - (3) "Counterfeit mark" means a spurious mark:
- (a) that is applied to or used in connection with any goods, services, labels, patches, fabric, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, packaging, or any other components of any type or nature that are designed, marketed, or otherwise intended to be used on or in connection with any goods or services;
- (b) that is identical with or substantially indistinguishable from a mark that is in use and is registered in this state or any other state or on the principal register in the United States patent and trademark office, whether or not the person employing the mark knew the mark was registered; and
 - (c) the application or use of which is:
 - (i) likely to deceive or cause confusion or mistake; or
- (ii) otherwise intended to be used on or in connection with the goods or services for which a registered mark is registered.
 - (4) "Counterfeiter" means a person employing a counterfeit mark.
- (3)(5) "Dilution" means the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of:
 - (a) competition between the owner of the famous mark and other parties; or
 - (b) likelihood of confusion, mistake, or deception.
- (4)(6) "Mark" means any trademark or service mark entitled to registration under this part whether registered or not.
- (5)(7) "Person" means any individual, firm, partnership, limited liability company, corporation, association, union, or other organization capable of suing and being sued in a court of law.
- (6)(8) "Registrant" means the person to whom the registration of a mark under this part is issued or the person's legal representatives, successors, or assigns.
 - (9) "Retail value" means:
- (a) the counterfeiter's regular selling price for goods or services unless the goods or services bearing a counterfeit mark or the items and components described in subsection (9)(b) would appear to a reasonably prudent person to be authentic, in which case the retail value is the price of the authentic counterpart; or
- (b) in the case of items bearing a counterfeit mark that are components of a finished product and in the case of labels, patches, fabric, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags,

documentation, packaging, or any other components of any type or nature that are designed, marketed, or otherwise intended to be used on or in connection with any goods or services, the counterfeiter's regular selling price of the finished product on or in which the items or component would be utilized.

- (7)(10) "Service mark" means any word, name, symbol, or device or any combination of words, names, symbols, or devices used by a person to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they or the programs may advertise the goods of the sponsor.
- (8)(11) "Trade name" means any name used by a person to identify a business or vocation of that person.
- (9)(12) "Trademark" means any word, name, symbol, device, or any combination of words, names, symbols, or devices used by a person to identify and distinguish the goods of that person, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.
- (10)(13) "Use" means the bona fide use of a mark in the ordinary course of trade and not a use merely to reserve a right in a mark. For the purposes of this part, a mark is considered to be in use:
 - (a) on goods when:
- (i) it is placed in any manner on the goods or other containers or the displays associated with the goods or on the tags or labels affixed to the goods; or
- (ii) if the nature of the goods makes placement on the goods or containers impracticable, it is placed on documents associated with the goods or their sale; and
 - (iii) the goods are sold or transported in commerce in this state; and
- (b) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state."
- Section 2. Trademark counterfeiting presumption penalties restitution forfeiture. (1) (a) A person commits the offense of trademark counterfeiting if the person knowingly manufactures, distributes, transports, offers for sale, sells, or possesses with intent to sell or distribute any goods, services, labels, patches, fabric, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, packaging, or any other components of any type or nature that are designed, marketed, or otherwise intended to be used on or in connection with any goods or services bearing a counterfeit mark.
- (b) A person having possession, custody, or control of more than 25 goods, labels, patches, fabric, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, packaging, or any other components of any type or nature bearing a counterfeit mark must be presumed to possess the items with intent to offer for sale, sell, or distribute the items.
- (2) (a) A person convicted of the offense of trademark counterfeiting shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both, if the offense involves less than 100 items bearing one or more counterfeit marks or the total retail value is less than

- \$1,000. A person convicted of a second offense shall be fined \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined \$1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.
- (b) If the offense involves 100 items or more bearing one or more counterfeit marks and the retail value is \$1,000 or more, the person shall be fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 1 year, or both.
- (3) When imposing sentence on a person convicted of a violation of this section, the court may order restitution as provided in 30-13-335 to any person harmed by the trademark counterfeiting.
- (4) (a) Any items bearing a counterfeit mark and all personal property employed or used in connection with counterfeiting, including but not limited to any items, objects, tools, machines, equipment, instruments, or vehicles of any kind, must be seized by law enforcement officials who have the opportunity to take possession of the items or personal property.
- (b) All seized items and personal property referenced in this subsection (4) must be forfeited and may, upon request of the registrant, be released to the registrant for destruction or destroyed by an officer of the court as provided in 30-13-335 unless the registrant agrees to another disposition of the seized items or personal property.

Section 3. Section 30-13-333, MCA, is amended to read:

- **"30-13-333. Infringement.** (1) Subject In addition to the penalties and remedies provided for in [section 2] and subject to the provisions of 30-13-336 and subsection (2) of this section, a person is liable in a civil action brought by the registrant under 30-13-335 if the person:
- (a) uses, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this part in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which the use is likely to cause confusion or mistake or to deceive as to the source of origin of the goods or services; or
- (b) reproduces, counterfeits, copies, or colorably imitates any registered mark and applies the reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in conjunction with the sale or other distribution in this state of the goods or services.
- (2) However, the registrant is not entitled to recover under subsection (1)(b) any profits or damages unless the acts have been committed with knowledge that the mark is intended to be used to cause confusion or mistake or to deceive."
- **Section 4. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 30, chapter 13, part 3, and the provisions of Title 30, chapter 13, part 3, apply to [section 2].

Section 5. Effective date. [This act] is effective July 1, 2009.

Approved April 6, 2009

CHAPTER NO. 178

[SB 273]

AN ACT REVISING THE CONFLICTS OF INTERESTS LAWS RELATIVE TO SCHOOL TRUSTEES; AND AMENDING SECTION 20-9-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-204, MCA, is amended to read:

"20-9-204. Conflicts of interests, letting contracts, and calling for bids. (1) It is unlawful for a trustee to:

- (a) have any pecuniary interest, either directly or indirectly, in any contract made by the trustee while acting in that official capacity or by the board of trustees of which the trustee is a member; or
- (b) be employed in any capacity by the trustee's own school district, with the exception of officiating at athletic competitions under the auspices of the Montana officials association.
 - (2) For the purposes of subsection (1):
- (a) "pecuniary interest" does not include holding an interest of 10% or less in a corporation; and
 - (b) "contract" does not include:
 - (i) merchandise sold to the highest bidder at public auctions;
- (ii) investments or deposits in financial institutions that are in the business of loaning or receiving money when the investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or
- (iii) contracts for professional services, other than salaried services, or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of the lack of availability are entered in the minutes of the board meeting at which the contract is considered.
- (3) (a) Except for district needs that must be met because of an unforeseen emergency, as defined in 20-3-322(5), or as provided in subsections (4) and (7) of this section, whenever any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district is necessary, the work done or the purchase made must be by contract if the sum exceeds \$50,000.
- (b) Except as provided in Title 18, chapter 2, part 5, each contract must be let to the lowest responsible bidder after advertisement for bids. The advertisement must be published in the newspaper that will give notice to the largest number of people of the district as determined by the trustees. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section is void. The bidding requirements applicable to services performed for the benefit of the district under this section do not apply to:
- (i) a registered professional engineer, surveyor, real estate appraiser, or registered architect:
- (ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;
 - (iii) an attorney;

- (iv) a consulting actuary;
- (v) a private investigator licensed by any jurisdiction;
- (vi) a claims adjuster;
- (vii) an accountant licensed under Title 37, chapter 50; or
- (viii) a project, as defined in 18-2-501, for which a governing body, as defined in 18-2-501, enters into an alternative project delivery contract pursuant to Title 18, chapter 2, part 5.
- (4) A district may enter into a cooperative purchasing contract for the procurement of supplies or services with one or more districts. The award of a contract to a successful bidder must comply with the requirements of subsection (5). The request for bids must be advertised in a daily newspaper of general circulation in each county in which a district participating in the cooperative purchasing contract is located. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids.
- (5) Except as provided in Title 18, chapter 2, part 5, whenever bidding is required, the contract must be awarded to the lowest responsible bidder, except that any or all bids may be rejected.
- (6) This section may not require the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service that can be accomplished by district staff whose regular employment with the school district is related to the routine performance of maintenance for the district.
- (7) Subsection (3) does not apply to the solicitation or award of a contract for an investment grade energy audit or an energy performance contract pursuant to Title 90, chapter 4, part 11, including construction and installation of conservation measures pursuant to the energy performance contract."

Approved April 6, 2009

CHAPTER NO. 179

[SB 340]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE LIMITED EMANCIPATION OF MINORS; PROVIDING FOR NOTICE; MAKING TECHNICAL REVISIONS; AND AMENDING SECTIONS 41-1-306, 41-1-501, 41-3-102, AND 41-3-438, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-1-306, MCA, is amended to read:

"41-1-306. Minor cannot disaffirm certain obligations. A minor cannot disaffirm an obligation, otherwise valid, entered into by him the minor under the express authority or direction of a statute or when he the minor has been granted limited emancipation, including a specific right to enter into contracts, under 41-1-501 [section 4] and 41-3-438."

Section 2. Section 41-1-501, MCA, is amended to read:

"41-1-501. Limited Petition for limited emancipation. (1) The court may, upon the request of a A youth who is 16 years of age or older, the youth's parent, or the department of public health and human services, enter may petition the court for an order granting limited emancipation to the youth.

- (2) Limited emancipation may be granted only if the court has found The petition for limited emancipation must be in writing and must set forth:
 - (a) the name, age, and address of the youth;
 - (b) the names and addresses of:
 - (i) the parents of the youth;
 - (ii) any legal guardian of the youth; or
- (iii) if no parent or guardian can be found, the last-known address of the youth's parent or guardian and the name and address of the youth's nearest known relative residing in the state;
 - $\frac{(a)}{(c)}$ that limited emancipation is in the youth's best interests;
 - (b)(d) that the youth desires limited emancipation;
- (e)(e) that there exists no public interest compelling denial of limited emancipation;
- (d)(f) that the youth has, or will reasonably obtain, money sufficient to pay for financial obligations incurred as a result of limited emancipation;
- (e)(g) that the youth, as shown by prior conduct and preparation, understands and may be expected to responsibly exercise those rights and responsibilities incurred as a result of limited emancipation;
- (f)(h) that the youth has graduated or will continue to diligently pursue graduation from high school, unless circumstances clearly compel deferral of education; and
- (g)(i) that, if it is considered necessary by the court, the youth will undergo periodic counseling with an appropriate advisor.
- (3) An order of limited emancipation must specifically set forth the rights and responsibilities that are being conferred upon the youth. These may include but are not limited to one or more of the following:
 - (a) the right to live independently of in-house supervision;
 - (b) the right to live in housing of the youth's choice;
- (c) the right to directly receive and expend money to which the youth is entitled and to conduct the youth's own financial affairs;
 - (d) the right to enter into contractual agreements and incur debts;
- (e) the right to obtain access to medical treatment and records upon the youth's own authorization; and
 - (f) the right to obtain a license to operate equipment or perform a service.
- (4) An order of limited emancipation must include a provision requiring that the youth make periodic reports to the court upon terms prescribed by the court.
- (5) The court, on its own motion or on the motion of the county attorney or any parties to the dispositional hearing, may modify or revoke the order upon a showing that:
 - (a) the youth has committed a material violation of the law;
 - (b) the youth has violated a condition of the limited emancipation order; or
- (c) the best interests of the youth are no longer served by limited emancipation."
- **Section 3. Hearing and notice.** (1) At least 10 days before the petition for limited emancipation is heard, notice that the court determines is reasonable must be given to the youth's parent, guardian, or other person identified in

- 41-1-501(2)(b). Service must be waived if proof is made to the court that the address of the parents or legal guardian is unavailable or unascertainable.
- (2) The notice must include the date and place of hearing and a form on which the youth's parents, legal guardian, or other person entitled to the custody of the youth may give the person's written consent to the limited emancipation.
- Section 4. Order of limited emancipation. (1) Limited emancipation may be granted only if the court has found that the youth satisfies the requirements of 41-1-501(2)(c) through (2)(i).
- (2) An order of limited emancipation must specifically set forth the rights and responsibilities that are being conferred upon the youth. These may include but are not limited to one or more of the following:
 - (a) the right to live independently of in-house supervision;
 - (b) the right to live in housing of the youth's choice;
- (c) the right to directly receive and expend money to which the youth is entitled and to conduct the youth's own financial affairs;
 - (d) the right to enter into contractual agreements and incur debts;
- (e) the right to obtain access to medical treatment and records upon the youth's own authorization; and
 - (f) the right to obtain a license to operate equipment or perform a service.
- (3) An order of limited emancipation must include a provision requiring that the youth make periodic reports to the court subject to terms prescribed by the court.
- (4) The court, on its own motion or on the motion of the county attorney or any parties to the dispositional hearing, may modify or revoke the order upon a showing that:
 - (a) the youth has committed a material violation of the law;
 - (b) the youth has violated a condition of the limited emancipation order; or
- (c) the best interests of the youth are no longer served by limited emancipation.

Section 5. Section 41-3-102, MCA, is amended to read:

- **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:
 - (1) (a) "Abandon", "abandoned", and "abandonment" mean:
- (i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;
- (ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;
- (iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or
- (iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

- (b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.
 - (2) "A person responsible for a child's welfare" means:
- (a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;
 - (b) a person providing care in a day-care facility;
- (c) an employee of a public or private residential institution, facility, home, or agency; or
- (d) any other person responsible for the child's welfare in a residential setting.
- (3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.
- (4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.
- (b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.
- (5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.
 - (6) "Child" or "youth" means any person under 18 years of age.
 - (7) (a) "Child abuse or neglect" means:
 - (i) actual physical or psychological harm to a child;
 - (ii) substantial risk of physical or psychological harm to a child; or
 - (iii) abandonment.
 - (b) (i) The term includes:
- (A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare; or
- (B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by 45-9-132.
- (ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.
- (c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

- (d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.
- (8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.
- (9) "Department" means the department of public health and human services provided for in 2-15-2201.
- (10) "Family group decisionmaking meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.
- (11) "Indian child" means any unmarried person who is under $18\,\mathrm{years}$ of age and who is either:
 - (a) a member of an Indian tribe; or
- (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.
 - (12) "Indian child's tribe" means:
- (a) the Indian tribe in which an Indian child is a member or eligible for membership; or
- (b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian tribe, the Indian tribe with which the Indian child has the more significant contacts.
- (13) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the child's parent.
- (14) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized by:
 - (a) the state of Montana; or
- (b) the United States secretary of the interior as being eligible for the services provided to Indians or because of the group's status as Indians, including any Alaskan native village as defined in federal law.
- (15) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-1-501 [section 4] under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.
 - (16) "Parent" means a biological or adoptive parent or stepparent.
- (17) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.
- (18) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.
- (19) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme

pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

- (20) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.
- (21) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or other person responsible for the child's welfare:
- (i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;
 - (ii) commits or allows sexual abuse or exploitation of the child;
- (iii) induces or attempts to induce a child to give untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child's welfare;
- (iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;
- (v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or
 - (vi) abandons the child.
- (b) The term does not include a youth not receiving supervision solely because of parental inability to control the youth's behavior.
 - (22) (a) "Protective services" means services provided by the department:
- (i) to enable a child alleged to have been abused or neglected to remain safely in the home;
- (ii) to enable a child alleged to have been abused or neglected who has been removed from the home to safely return to the home; or
- (iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and the best interests of the child prevent reunification with parents or a return to the home.
- (b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and 6 of this chapter.
- (23) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child's home.
- (b) The term may not be construed to hold a victim responsible for failing to prevent the crime against the victim.
- (24) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to the federal Indian Child Welfare Act means:
- (a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;

- (b) a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; or
- (c) a professional person who has substantial education and experience in providing services to children and families and who possesses significant knowledge of and experience with Indian culture, family structure, and child-rearing practices in general.
- (25) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.
- (26) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.
- (27) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.
- (b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.
- (28) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.
- (29) (a) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment.
- (b) This definition does not apply to any provision of this code that is not in this chapter.
- (30) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.
- (31) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.
- (32) "Unsubstantiated" means that after an investigation, the investigator was unable to determine by a preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.
- (33) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

- (b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:
 - (i) the infant is chronically and irreversibly comatose;
 - (ii) the provision of treatment would:
 - (A) merely prolong dying;
- (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or
 - (C) otherwise be futile in terms of the survival of the infant; or
- (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (33), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.
- (34) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 6. Section 41-3-438, MCA, is amended to read:

- **"41-3-438. Disposition hearing order.** (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.
- (2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.
- (b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:
- (i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and
 - (ii) the judge has an opportunity to review the reports after the adjudication.
- (c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.
- (3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:
- (a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions and limitations the court may prescribe;

- (b) order the department to evaluate the noncustodial parent as a possible caretaker:
- (c) order the temporary placement of the child with the noncustodial parent, superseding any existing custodial order, and keep the proceeding open pending completion by the custodial parent of any treatment plan ordered pursuant to 41-3-443:
- (d) order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding;
- (e) grant an order of limited emancipation to a child who is 16 years of age or older, as provided in 41-1-501 [section 4];
 - (f) transfer temporary legal custody to any of the following:
 - (i) the department;
- (ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of the child; or
- (iii) a nonparent relative or other individual who has been evaluated and recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the child:
- (g) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.
- (h) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for the proposed care and treatment. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-446.
- (4) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:
- (i) placement of the abandoned child with the extended family member is in the best interests of the child;
- (ii) the extended family member requests that the child be placed with the family member; and
- (iii) the extended family member is found by the court to be qualified to receive and care for the child.

- (b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court may award custody to the extended family member who can best meet the child's needs.
- (c) If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member, the department shall investigate and determine if awarding custody to the family member is in the best interests of the child. The department shall provide the reasons for any denial to the court. If the court accepts the department's custody recommendation, the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality laws allow. The court shall include the reasons for denial in the court order if the family member who is denied temporary legal custody requests it to be included
- (5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.
- (6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection (5) of this section, a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.
- (7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."
- **Section 7. Codification instruction.** [Sections 3 and 4] are intended to be codified as an integral part of Title 41, chapter 1, part 5, and the provisions of Title 41, chapter 1, part 5, apply to [sections 3 and 4].

Approved April 6, 2009

CHAPTER NO. 180

[SB 341]

AN ACT REVISING THE LAW RELATING TO THE RECOVERY FROM DEFENDANTS OF PROSECUTION COSTS; AMENDING SECTION 46-18-232, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings — cost of criminal proceedings. With respect to the cost of criminal proceedings, the legislature finds that:

- (1) the vast majority of the cost of the criminal proceedings in the state is borne by the general taxpaying public;
- (2) it is in the state's best interest to attempt to recover as much as possible of the cost of criminal proceedings from individuals who have been convicted of violating state laws;
- (3) various courts in the state of Montana have recently held that certain reasonable fees imposed upon defendants in criminal proceedings in the state,

such as fees for general cost of prosecution, pretrial supervision, and community service supervision, were unlawful because there was no specific statutory authorization for the imposition of the costs on the defendant; and

(4) the costs of prosecution and supervision of criminal defendants is a shared responsibility of the state and the counties.

Section 2. Section 46-18-232, MCA, is amended to read:

- "46-18-232. Payment of costs by defendant. (1) A court may require a convicted defendant in a felony or misdemeanor case to pay costs, as defined in 25-10-201, plus costs of jury service, costs of prosecution, and the cost of pretrial, probation, or community service supervision as a part of his the defendant's sentence. Such The costs, in addition to those allowable under 25-10-201, shall must be limited to expenses specifically incurred by the prosecution or other agency in connection with the proceedings against the defendant or \$100 per felony case or \$50 per misdemeanor case, whichever is greater.
- (2) The court may not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant, the future ability of the defendant to pay costs, and the nature of the burden that payment of costs will impose.
- (3) A defendant who has been sentenced to pay costs and who is not in default in the payment thereof may at any time petition the court that sentenced him the defendant for remission of the payment of costs or of any unpaid portion thereof of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his the defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of payment."
- **Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 46, chapter 18, part 2, and the provisions of Title 46, chapter 18, part 2, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2009.

Approved April 6, 2009

CHAPTER NO. 181

[SB 395]

AN ACT CLARIFYING AMBIGUITIES IN THE BEER FRANCHISE LAW; REAFFIRMING THE CORE PURPOSES OF THE ALCOHOLIC BEVERAGE CODE IN RELATION TO THE TWENTY-FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION; CLARIFYING THE NONWAIVER NATURE OF THE PROVISIONS OF THE BEER FRANCHISE LAW; CLARIFYING THAT JUST CAUSE REQUIRES THAT THE WHOLESALER FAILED TO COMPLY WITH THE REASONABLE CONTRACTUAL REQUIREMENTS OF THE BREWER; CLARIFYING THAT THE APPOINTMENT OF A WHOLESALER TO A BRAND IN AN EXCLUSIVE TERRITORY IS NOT AFFECTED BY A TRANSFER OF OWNERSHIP OF THE MANUFACTURER OF THAT BRAND; PROVIDING THAT THE BEER FRANCHISE LAW MUST BE LIBERALLY CONSTRUED; AMENDING SECTIONS 16-1-101, 16-3-221, AND 16-3-222, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-101, MCA, is amended to read:

- "16-1-101. Citation declaration of policy subject matters of regulation. (1) Chapters 1 through 4 and 6 of this title may be cited as the "Montana Alcoholic Beverage Code".
- (2) It is the policy of the state of Montana to effectuate and ensure the entire control of the manufacture, sale, importation, and distribution of alcoholic beverages within the state subject to the authority of the state acting through the department.
- (3) This code is an exercise of the police power of the state for the protection of the welfare, health, peace, morals, and safety of the people of the state and of the state's power under the 21st amendment to the United States constitution to control the transportation and importation of alcoholic beverages into the state. The overall purposes of this code under the 21st amendment to the United States constitution are to promote temperance, create orderly markets, and aid in the collection of taxes. The provisions of this code must be broadly construed to accomplish these purposes."
 - Section 2. Section 16-3-221, MCA, is amended to read:
- "16-3-221. Illegal acts by brewers or beer importers. (1) It is unlawful for any brewer or beer importer or any officer, agent, or representative of any brewer or beer importer to:
- (1)(a) coerce, attempt to coerce, or persuade any person licensed to sell beer at wholesale to enter into any agreement or to take any action that would violate or tend to violate any of the laws of this state or any rules promulgated by the department:
- (2)(b) sell its products in the state without a written contract, which conforms to the provisions of 16-3-221 through 16-3-226, with each appointed licensed wholesale distributor;
- (3)(c) designate or allow more than one wholesale distributor to sell or distribute a specific brand of the brewer's or beer importer's products to retail licensees in the same area, provided that nothing in this part prohibits the brewer or beer importer from designating more than one wholesale distributor to sell or distribute different brands of the same manufacturer to retail licensees in the same area;
- (4)(d) fix or maintain the price at which a wholesale distributor resells the brewer's or beer importer's products. Without limitation, it is a violation of this section if:
- (a)(i) after a wholesale distributor has exceeded a resale price increase recommended by a brewer or beer importer, the brewer or beer importer raises the price that it charges the wholesale distributor for those products within 60 days;
- (b)(ii) after a wholesale distributor has exceeded a resale price increase recommended by a brewer or beer importer, the brewer or beer importer raises the price that it charges the wholesale distributor in an amount proportionately larger than the amount that it raised the wholesale distributor's prices initially when compared to the increase in the resale price that it recommended to the wholesale distributor; or
- (e)(iii) the brewer or beer importer links or ties its participation in promotional discounts to the wholesale distributor's compliance with any recommended resale price.

- (5)(e) cancel, or terminate, discontinue, or fail to renew, except for just cause or and in accordance with the current terms and standards established by the brewer or beer importer then equally applicable to all wholesalers, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1, 1974, or entered into after that date to sell beer manufactured by the brewer or imported by the beer importer. A brewer or beer importer may, notwithstanding the preceding sentence, make reasonable classifications among wholesalers. If a brewer or beer importer cancels or terminates a wholesaler's franchise, the brewer or beer importer has the burden of proving that the classification was reasonable and not arbitrary. After July 1, 1974, the The provisions of 16-3-221 through 16-3-226 must be a part of any franchise, contract, agreement, or understanding, whether written or oral, between any wholesaler of beer licensed to do business in this state and any manufacturer or beer importer doing business with the licensed wholesaler just as though the provisions had been specifically agreed upon between the wholesaler and the manufacturer or beer importer. A wholesaler of beer licensed to conduct business in the state may not waive any of the protections or agree to any provision contrary to 16-3-221 through 16-3-226, by any conduct, including but not limited to the signing of any contract or agreement with terms contrary to those provisions.
- (2) (a) Just cause as used in subsection (1)(e) means that the wholesaler failed to comply with the reasonable requirements placed on the wholesaler by the brewer or beer importer as a part of any written franchise, contract, or agreement between the parties.
- (b) The sale or purchase or other restructuring of the brewer or beer importer by a successor in the manufacturing tier of the beer industry does not constitute just cause as that term is used in subsection (1)(e).
- (c) For the purposes of this subsection (2), a successor means a person or entity who replaces a brewer or beer importer with regard to the right to manufacture, sell, distribute, or import a brand or brands of beer regardless of the character or form of the succession. A successor is obligated to all of the terms and conditions of any franchise, contract, agreement, or understanding, whether written or oral, in effect on the date of succession. A successor has the right to contractually require its wholesalers to comply with operational standards of performance if the standards are uniformly established for all of the successor's wholesalers and conform to the requirements of this section."

Section 3. Section 16-3-222, MCA, is amended to read:

- "16-3-222. Mandatory provisions of brewer-wholesaler or beer importer-wholesaler contracts, agreements, and franchises. All contracts, agreements, or franchises between a brewer and a wholesaler or a beer importer and a wholesaler must specifically set forth or contain the following:
- (1) that the brewer or beer importer or any officer, agent, or representative of any brewer or beer importer and the wholesaler involved mutually shall determine the size or extent of the area in which the wholesaler may sell or distribute the products of the brewer or beer importer to the retail licensees. The territory must be the territory agreed upon between the wholesaler and brewer or the wholesaler and beer importer and may not be changed without the mutual consent of both the wholesaler and brewer or the wholesaler and beer importer.
- (2) the agreed-upon brands of the brewer or beer importer to be sold by the wholesaler;

- (3) that the brewer or beer importer recognizes that the wholesaler is free to manage the wholesaler's business in the manner that the wholesaler considers best and that this prerogative vests in the wholesaler the exclusive right to establish selling prices, to select the brands that the wholesaler wishes to handle, and to determine the effort and resources that the wholesaler will exert to develop and promote the sale of the brewer's or beer importer's products handled by the wholesaler;
- (4) a procedure for the review of alleged wholesaler deficiencies asserted by the brewer or beer importer to constitute just cause as provided in 16-3-221, including the submission in writing to the wholesaler by the brewer or beer importer of the deficiencies, if the deficiencies are susceptible of correction and if the wholesaler desires to correct the deficiencies, and that a reasonable period of time must be given the wholesaler for rectification of the deficiencies prior to any notice of intent to terminate;
- (5) a termination clause providing that the brewer or beer importer shall deliver, in writing, to the wholesaler a 60-day notice of intent to terminate the agreement, contract, or franchise;
- (6) that all agreements between a brewer and a wholesaler are interpreted and governed by the laws of Montana and that those laws must be liberally construed to effectuate the remedial purpose of the protections of the beer franchise law contained in 16-3-221 through 16-3-226;
- (7) that in any dispute resulting in litigation between a brewer or a beer importer and a wholesaler, the litigation must occur in a Montana court, either federal or state, unless that forum would create an unreasonable burden on any party, as determined by the court in which the litigation is commenced;
- (8) that all agreements between a brewer or a beer importer and a wholesaler must recognize the constitutional right to a jury trial as set forth in Article II, section 26, of the Montana constitution."
- **Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.
- **Section 5.** Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 6, 2009

CHAPTER NO. 182

[HB 326]

AN ACT PROVIDING THAT A NOTICE OF THE RIGHT TO CLAIM A LIEN AND A RELEASE OF A NOTICE OF THE RIGHT TO CLAIM A LIEN MUST BE FILED WITH THE CLERK AND RECORDER AND MUST BE SIGNED BY THE PERSON OR THE PERSON'S AGENT WHO FILED THE NOTICE OF THE RIGHT TO CLAIM A LIEN OR THE RELEASE OF A NOTICE OF THE RIGHT TO CLAIM A LIEN; AND AMENDING SECTION 71-3-531, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-531, MCA, is amended to read:

- "71-3-531. Notice of right to claim lien required exceptions. (1) The following are not required to give notice of a *the* right to claim a lien as required by this section:
- (a) an original contractor who furnishes services or materials directly to the owner at the owner's request;
- (b) a wage earner or laborer who performs personal labor services for a person furnishing any service or material pursuant to a real estate improvement contract;
- (c) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to a dwelling for five or more families; and
- (d) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to an improvement that is partly or wholly commercial in character.
- (2) A person who may claim a construction lien pursuant to this part shall give notice of the right to claim a lien to the contracting owner in order to claim a lien
- (3) Except as provided in subsection (4), the notice may not be given later than 20 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 20-day period before the date on which notice is given.
- (4) When payment for services or materials furnished pursuant to a real estate improvement contract, excluding a contract on an owner-occupied residence, is made by or on behalf of the contracting owner from funds provided by a regulated lender and secured by an interest, lien, mortgage, or encumbrance for the purpose of paying the particular real estate improvement being liened, the notice required by this section may not be given later than 45 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 45-day period before the date on which notice is given.
- (5) The notice of the right to claim a lien must be sent to the contracting owner by certified mail or delivered personally to the owner. Notice by certified mail is effective on the date on which the notice is mailed. If the notice is delivered personally to the contracting owner, written acknowledgment of receipt must be obtained from the contracting owner. A person may not claim a construction lien unless the person has complied with this subsection.
- (6) (a) A person who may claim a lien shall also file with the clerk and recorder of the county in which the improved real estate is located a copy of the notice of the right to claim a lien, in the form required by 71-3-532. This copy may not be filed later than 5 business days after the date on which the notice of the right to claim a lien is given to the contracting owner. The notice filed with the clerk and recorder must be signed by the person filing the notice or by a person authorized to sign for the person filing the notice.
- (b) The county clerk and recorder may allow the notice of the right to claim a lien to be electronically filed. A notice filed electronically with the clerk and recorder must be electronically signed by the person filing the notice or by a person authorized to sign for the person filing the notice.
- (c) The notice filed with the clerk and recorder for the purpose of public notice is effective for 1 year from the date of filing. The notice lapses upon the

expiration of the 1-year period unless the person who may claim a lien files with the clerk and recorder a 1-year continuation of the notice prior to the date on which the notice lapses. The clerk and recorder may remove the notice from the public record when it lapses.

- (d) The A continuation statement of the notice must be signed by the person who filed the original notice of the right to claim a lien or by a person authorized to sign for the person who filed the original notice of the right to claim a lien and must include:
 - (i) the clerk and recorder's file number of the *original* notice;
 - (ii) the date on which the *original* notice originally was filed; and
 - (iii) the name of the person to whom the original notice was given.
- (e) If a notice of a *the* right to claim a lien is required under this section, a person may not claim a construction lien pursuant to this part unless there is an unexpired notice of right to claim a construction lien or an unexpired continuation notice filed with the clerk and recorder at the time that the person files the lien.
- (7) A contracting owner shall provide in the construction contract with the original contractor:
- (a) a street address or legal description that is sufficient to identify the real estate being improved; and
 - (b) the name and address of the contracting owner.
- (8) At the request of any subcontractor or material supplier who may claim a lien through an original contractor providing services or materials to a contracting owner, the original contractor shall furnish to the requestor within 5 business days:
- (a) a street address or legal description sufficient to identify the real estate being improved; and
 - (b) the name and address of the contracting owner."
- Section 2. Release of notice of right to claim lien. (1) A person who has filed a notice of the right to claim a lien shall file a release of the notice of the right to claim a lien when the person is paid for the services and materials that are the subject of the notice of the right to claim a lien.
- (2) If a person subject to the provisions of subsection (1) has been paid for the services and materials pursuant to a real estate improvement contract, the person shall file a release of the notice of the right to claim a lien within 5 business days of the contracting owner's request that the release be filed.
- (3) The release must be filed with the clerk and recorder of the county in which the improved real estate is located and must include:
- (a) the clerk and recorder's file number of the notice of the right to claim a lien;
 - (b) the date on which the notice of the right to claim a lien was filed; and
- (c) the name of the person to whom the notice of the right to claim a lien was given.
- (4) The release must be signed by the person who filed the notice of the right to claim a lien or by a person authorized to sign for the person who filed the notice of the right to claim a lien.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 71, chapter 3, part 5, and the provisions of Title 71, chapter 3, part 5, apply to [section 2].

Approved April 6, 2009

CHAPTER NO. 183

[SB 21]

AN ACT CLARIFYING THE DISTRIBUTION OF CERTAIN MOTOR VEHICLE REVENUE; CORRECTING THE BASE DISTRIBUTION AMOUNTS FOR THE ADOPTION SERVICES ACCOUNT AND THE DEPARTMENT OF TRANSPORTATION STATE SPECIAL REVENUE NONRESTRICTED ACCOUNT TO PROVIDE FOR FUNDING AS ORIGINALLY ENACTED FOR MOTOR VEHICLE FUND DISTRIBUTIONS; PROVIDING FOR A DISTRIBUTION TO THE ADOPTION SERVICES ACCOUNT FOR AN AMOUNT EQUAL TO THAT NOT PAID DUE TO THE USE OF THE ERRONEOUS BASE AMOUNT FOR COMPUTING THE DISTRIBUTION; AMENDING SECTION 15-1-122, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-122, MCA, is amended to read:

- "15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, a base amount of \$36,764 \$59,209, and the amount of the transfer must be increased by 10% in each succeeding fiscal year.
- (2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account a base amount of \$3,050,205 \$3,142,397, increased by 1.5% in each succeeding fiscal year.
- (3) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:
- (a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5, 1.48% of the motor vehicle revenue deposited in the state general fund in each fiscal year. The amount of 9.48% of the allocation in each fiscal year must be used for the purpose of reimbursing the hired removal of abandoned vehicles. Any portion of the allocation not used for abandoned vehicle removal reimbursement must be used as provided in 75-10-532.
- (b) to the noxious weed state special revenue account provided for in 80-7-816, 1.50% of the motor vehicle revenue deposited in the state general fund in each fiscal year;
 - (c) to the department of fish, wildlife, and parks:
- (i) 0.46% of the motor vehicle revenue deposited in the state general fund, with the applicable percentage to be:
 - (A) used to:
- (I) acquire and maintain pumpout equipment and other boat facilities, 4.8% in each fiscal year;
- (II) administer and enforce the provisions of Title 23, chapter 2, part 5, 19.1% in each fiscal year;
 - (III) enforce the provisions of 23-2-804, 11.1% in each fiscal year; and

- (IV) develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use, 16.7% in each fiscal year; and
- (B) deposited in the state special revenue fund established in 23-1-105 in an amount equal to 48.3% in each fiscal year;
- (ii) 0.10% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities; and
- (iii) 0.16% of the motor vehicle revenue deposited in the state general fund in each fiscal year to be deposited in the motorboat account to be used as provided in 23-2-533;
- (d) 0.64% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 24.55% to be deposited in the state veterans' cemetery account provided for in 10-2-603 and with 75.45% to be deposited in the veterans' services account provided for in 10-2-112(1);
- (e) 0.30% of the motor vehicle revenue deposited in the state general fund in each fiscal year for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112; and
- (f) to the search and rescue account provided for in 10-3-801, 0.04% of the motor vehicle revenue deposited in the state general fund in each fiscal year.
- (4) For the purposes of this section, "motor vehicle revenue deposited in the state general fund" means revenue received from:
 - (a) fees for issuing a motor vehicle title paid pursuant to 61-3-203;
- (b) fees, fees in lieu of taxes, and taxes for vehicles, vessels, and snowmobiles registered or reregistered pursuant to 61-3-321 and 61-3-562;
- (c) GVW fees for vehicles registered for licensing pursuant to Title 61, chapter 3, part 3; and
 - (d) all money collected pursuant to 15-1-504(3).
- (5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."
- Section 2. Transfer to adoption services account. There is transferred \$11,223 from the state general fund to the adoption services account provided in 42-2-105.

Section 3. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 1] is effective July 1, 2009.

Approved April 3, 2009

CHAPTER NO. 184

[HB 133]

AN ACT REVISING LAWS RELATING TO THE ADMINISTRATION OF CHILD SUPPORT ENFORCEMENT; ALLOWING ALTERNATIVE

METHODS OF PAYMENT IN LIEU OF INCOME WITHHOLDING; CONFORMING CHILD SUPPORT ASSIGNMENT PROVISIONS TO THE FEDERAL DEFICIT REDUCTION ACT OF 2005; AMENDING SECTIONS 17-4-105, 40-5-225, 40-5-403, 40-5-601, 40-5-907, 53-2-110, AND 53-2-613, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-4-105, MCA, is amended to read:

- "17-4-105. Authority to collect debt offsets. (1) Once a debt of an agency has been transferred to the department, the department may collect it. The department may contract with commercial collection agents for recovery of debts owed to agencies.
- (2) The department shall, when appropriate, offset any amount due an agency from a person or entity against any amount, including refunds of taxes, owing the person or entity by an agency. The department may not exercise this right of offset until the debtor has first been notified by the department and been given an opportunity for a hearing pursuant to 15-1-211. An offset may not be made against any amount paid out as child support collected by the department of public health and human services. The department shall deduct from the claim and draw warrants for the amounts offset in favor of the respective agencies to which the debt is due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due the agencies, the amount available must be applied first to debts owed by reason of the nonpayment of child support and then in the manner determined appropriate by the department.
- (3) (a) The department may enter into an agreement with the federal government to offset against tax refunds payable by the federal government and pay to this the state those any taxes or other debts owed to an agency of this the state.
- (b) (i) The department may enter into an agreement with another state or an agency of another state to offset against tax refunds payable by the other state or agency of the other state and pay to this state those any taxes or other debts owed to this state or an agency of this state.
- (ii) To facilitate an agreement of the kind authorized by subsection (3)(b)(i), the department may enter into an agreement that allows the other state or agency of the other state to offset against tax refunds payable by this state the whole or part of an amount owed for taxes to the other state or agency of the other state. However, the department may enter into an agreement of the type authorized by this subsection (3)(b)(ii) only if the other state or agency of the other state allows this state or an agency of this state to offset against tax refunds owed by the other state or agency of the other state any taxes or other debts owed to this state or an agency of this state.
- (c) A state or agency of another state entering into an agreement with the department pursuant to subsection (3)(b)(ii) may not exercise the offset against tax refunds unless the other state or agency of the other state has notified the taxpayer of the taxes due and has given the taxpayer an opportunity for review or appeal of the tax debt. Another state or agency of another state intending to offset taxes shall provide the department with proof of notification and opportunity for review or appeal before the offset is exercised.
- (4) (a) A debt owed to the department of public health and human services or being collected by the department of public health and human services on behalf of any person or agency may be offset by the department if the debt is being

enforced or collected by the department of public health and human services under Title IV-D of the Social Security Act.

- (b) The debt does not need not to be determined to be uncollectible as provided for in 17-4-104 before being transferred to the department for offset. The debt must have accrued through written contract, court judgment, or administrative order, or a distribution the recipient was not entitled to retain as described in 40-5-910.
- (c) Within 30 days following the notification provided for in subsection (2), the person owing a debt described in subsection (4)(a) may request a hearing. The request must be in writing and be mailed to the department. The person owing a debt is not entitled to a hearing if the amount of the debt has been the subject matter of any proceeding conducted for the purpose of determining the validity of the debt and a decision made as a result of that proceeding has become final. The hearing must initially be conducted by teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act. The department of public health and human services shall adopt rules governing the hearing procedures.
- (5) If the department determines that a person or entity has refused or neglected to file a claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of the person or entity. If the claim is approved by the department, the claim has the same force and effect as though *if it were* filed by the person or entity. The amount due any person or entity from the state or any agency of the state is the net amount otherwise owing the person or entity after any offset, as provided in this section.
- (6) A debt owed to a state agency by a local government may not be offset against a payment due to a local government pursuant to 15-1-121."

Section 2. Section 40-5-225, MCA, is amended to read:

- "40-5-225. Notice of financial responsibility temporary and final support obligations administrative procedure. (1) In the absence of an existing support order, when the requirements of this section are met, the department may enter an order requiring a child's parent or parents to pay an amount each month for the support of the child. An order issued under this section must include a medical support order as required by 40-5-208.
- (2) An *The department shall begin an* action to establish a support order must be commenced by serving a notice of financial responsibility on the parent or parents. The notice must include a statement:
- (a) of the names of the child, the obligee, and, if different than the obligee, the child's guardian or caretaker relative;
- (b) of the dollar amount of the support obligation to be paid each month for the child, if any;
- (c) that the monthly support obligation, if any, is effective on the date of service of the notice, unless an objection is made and a hearing is requested, and may be collected during the proceeding that establishes the support obligation by any remedy available to the department for the enforcement of child support obligations;
- (d) that in addition to or independent of child support, the parent or parents may be ordered to provide for the child's medical support needs;
- (e) that any party may request a hearing to contest the amount of child support shown in the notice or to contest the establishment of a medical support order;

- (f) that if a party does not timely file a request for a hearing in a timely manner, support, including medical support, will be ordered as declared in the notice or in accordance with the child support guidelines adopted under 40-5-209;
- (g) that if a party does request a hearing, the other parties may refuse to participate in the proceedings and that the child support and medical support order will be determined using the information available to the department or provided at the hearing;
- (h) that a party's refusal to participate is a consent equivalent to consenting to entry of a child support and medical support order consistent with the department's determination; and
 - (i) that the parties are entitled to a fair hearing under 40-5-226.
- (3) (a) If The department may enter an order requiring a child's parent or parents to pay an amount each month for the temporary support of the child pending entry of a support order by the district court if:
- (i) a support action is pending in district court and a temporary or permanent support obligation has not been ordered; or
- (ii) if a paternity action is pending and there is clear and convincing evidence of paternity based on paternity blood tests or other evidence, the department may enter an order requiring a child's parent or parents to pay an amount each month for the temporary support of the child pending entry of a support order by the district court.
- (b) The temporary support order must include a medical support order as required by 40-5-208.
- (c) A temporary support order may be modified by the department as provided in 40-5-272, 40-5-273, 40-5-277, and 40-5-278 but remains a temporary support order subject to the provisions of this section.
- (4) An The department shall begin an action to establish a temporary support order must be commenced by serving a notice of temporary support obligation on the parent or parents. In addition to the statements required in subsection (2), the notice must include a statement that:
- (a) a party may request a hearing to show that a temporary support obligation is inappropriate under the circumstances; and
- (b) the temporary support order will terminate upon the entry of a final support order or an order of nonpaternity. If the final order is retroactive, any amount paid for a particular period under the temporary support order must be credited against the amounts due under the final order for the same period, but excess amounts may not be refunded. If an order of nonpaternity is issued or if the final support order states that periodic support obligation is not proper, the obligee shall refund to the obligor any improper amounts paid under the temporary support order, plus any costs that the obligor incurs in recovering the amount to be refunded.
- (5) (a) If a temporary support order is entered or if proceedings are commenced under this section for a married obligor, the department shall vacate any support order or dismiss any proceeding under this part if it finds that the parties to the marriage have:
 - (i) reconciled without the marriage having been dissolved;
- (ii) made joint application to the department to vacate the order or dismiss the proceeding; and

- (iii) provided proof that the marriage has been resumed.
- (b) The department may not vacate a support order or dismiss a proceeding under this subsection (5) if it determines that the rights of a third person or the child are affected. The department may issue a new notice of temporary support obligation under this section if the parties subsequently separate.
- (6) A notice of financial responsibility and the notice of temporary support obligation may be served either by certified mail or in the manner prescribed for the service of a summons in a civil action in accordance with the Montana Rules of Civil Procedure.
- (7) If prior to service of a notice under this section the department has sufficient financial information, the department's allegation of the obligor's monthly support responsibility, whether temporary or final, must be based on the child support guidelines established under 40-5-214. If the information is unknown to the department, the allegations of the parent's or parents' monthly support responsibility must be based on the greater of:
- (a) the maximum amount of public assistance that could be payable to the child under Title 53 if the child was otherwise eligible for assistance; or
- (b) the child's actual need as alleged by the custodial parent, guardian, or caretaker of the child.
- (8) (a) A party who objects to a notice of financial responsibility or notice of temporary support obligation may file a written request for a hearing with the department:
- (i) within 20 days from the date of service of a notice of financial responsibility; and
- (ii) within 10 days from the date of service of a notice of temporary support obligation.
- (b) If the department receives a timely request for a hearing, it shall conduct one under 40-5-226.
- (c) If the department does not receive a timely request for a hearing, it shall order the parent or parents to pay child support, if any, and to provide for the child's medical needs as stated in the notice. The child support obligation must be the amount stated in the notice or determined in accordance with the child support guidelines adopted under 40-5-209.
- (9) If the department is unable to enter an obligation in accordance with the child support guidelines because of default of a party, the department may, upon notice to the parties to the original order, substitute a support order made in accordance with the guidelines for the defaulted order.
- (10) After establishment of an order under this section, the department may initiate a subsequent action on the original order to establish a child support or medical support obligation for another child of the same parents.
- (11) A child support and medical support order under subsection (1) is effective as of the date of service of a notice of financial responsibility on the parent or parents and may be collected by any remedy available to the department for the enforcement of child support obligations. A final order is retroactive to the date of service of the notice of financial responsibility as provided in this subsection, except that the final order may also determine child support for a prior period as provided in 40-5-226(3).
- (12) A child support and medical support order under subsection (1) continues until the child reaches 18 years of age or until the child's graduation

from high school, whichever occurs later, but not later than the child's 19th birthday, unless the child is sooner emancipated by court order at an earlier time. A temporary support obligation established under subsection (3) continues until terminated as provided in subsection (5) or until the temporary support order is superseded by a final order, judgment, or decree."

Section 3. Section 40-5-403, MCA, is amended to read:

- **"40-5-403. Definitions.** As used in this part, the following definitions apply:
- (1) "Alternative arrangement" means a written agreement between the obligor and obligee, and the department in the case of an assignment of rights under 53-2-613, that has been approved and entered in the record of the court or administrative authority issuing or modifying the support order.
- (2) "Department" means the department of public health and human services provided for in 2-15-2201.
 - (3) "Employer" includes a payor.
 - (4) "Financial institution" means:
- (a) a depository institution, as defined in section 3(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c);
- (b) an institution-affiliated party, as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1813(u);
- (c) any state credit union, as defined in 32-3-102, or federal credit union, as defined in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752, including an institution-affiliated party of a credit union, as defined in section 206(r) of the Federal Credit Union Act, 12 U.S.C. 1786(r); and
- (d) any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in the state.
- (4)(5) (a) "Income" means any form of periodic payment to a person, regardless of source, including commissions, bonuses, workers' compensation, disability payments, payments under a pension or retirement program, interest, and earnings and wages.
 - (b) However, income Income does not include:
- (a)(i) any amount required by law to be withheld, other than creditor claims, including federal, state, and local taxes, and social security, mandatory retirement and disability contributions, and union dues; and or
- (b)(ii) any amounts exempted from judgment, execution, or attachment by federal or state law.
- (5)(6) "Obligee" means either a person to whom a duty of support is owed or a public agency of this or another state or an Indian tribe to which a person has assigned the right to receive current and accrued support payments.
- (6)(7) "Obligor" means a person who owes a duty to make payments under a support order.
- (7)(8) "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure or any employer under the Uniform Interstate Family Support Act contained in part 1 of this chapter.

- (8)(9) "Support order" has the meaning provided in 40-5-201.
- (9)(10) "IV-D agency" or "Title IV-D agency" means the agency responsible for the provision of services under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq."
- Section 4. Alternative method of payment in lieu of income withholding. (1) If an obligor who would otherwise be subject to immediate income withholding under 40-5-411 demonstrates good cause not to require immediate income withholding and the department concurs, the department may enter into a written agreement with the obligor that provides for an alternative method of payment in lieu of and to satisfy immediate income withholding.
- (2) The agreement must allow funds to be deducted from a financial institution deposit account or to be paid by credit card.
- (3) To qualify for an alternative method of payment, an obligor must have paid the full amount of the child support obligation for the lesser of either the past 12 months or the time period since the support order was issued.

Section 5. Section 40-5-601, MCA, is amended to read:

- "40-5-601. Failure to pay support civil contempt. (1) For purposes of this section, "support" means child support; spousal support; health insurance, medical, dental, and optical payments; day-care expenses; and any other payments due as support under a court or administrative order. Submission of health insurance claims is a support obligation if health insurance coverage is ordered.
- (2) If a person obligated to provide support fails to pay as ordered, the payee or assignee of the payee of the support order may petition a district court to find the obligated person in contempt.
 - (3) The petition may be filed in the district court:
 - (a) that issued the support order;
 - (b) of the judicial district in which the obligated person resides; or
- (c) of the judicial district in which the payee or assignee of the payee resides or has an office.
- (4) Upon filing of a verified petition alleging facts constituting contempt of the support order, the district court shall issue an order requiring the obligated person to appear and show cause why the obligated person should not be held in contempt and punished under this section.
 - (5) The obligated person is presumed to be in contempt upon a showing that:
- (a) there is a support order issued by a court or administrative agency of this or another state, an Indian tribe, or a country with jurisdiction to enter the order;
- (b) the obligated person had actual or constructive knowledge of the order; and
 - (c) the obligated person failed to pay support as ordered.
- (6) Certified payment records maintained by a clerk of court or administrative agency authorized by law or by the support order to collect support are admissible in a proceeding under this section and are prima facie evidence of the amount of support paid and any arrearages under the support order.

- (7) Following a showing under subsection (5), the obligated person may move to be excused from the contempt by showing clear and convincing evidence that the obligated person:
 - (a) has insufficient income to pay the arrearages;
- (b) lacks personal or real property that can be sold, mortgaged, or pledged to raise the needed sum;
- (c) has unsuccessfully attempted to borrow the sum from a financial institution;
- (d) has no other source, including relatives, from which the sum can be borrowed or secured;
- (e) does not have has a valid out-of-court agreement with the payee waiving, deferring, or otherwise compromising the support obligation; or
 - (f) cannot, for some other reason, reasonably comply with the order.
- (8) In addition to the requirement of subsection (7), the obligated person shall also show by clear and convincing evidence that factors constituting the excuse were not eccasioned or caused by the obligated person voluntarily:
- (a) remaining unemployed or underemployed when there is employment suitable to the obligated person's skills and abilities available within a reasonable distance from the obligated person's residence;
- (b) selling, transferring, or encumbering real or personal property for fictitious or inadequate consideration within 6 months prior to a failure to pay support when due;
- (c) selling or transferring real property without delivery of possession within 6 months prior to a failure to pay support when due or, if the sale or transfer includes a reservation of a trust for the use of the obligated person, purchasing real or personal property in the name of another person or entity;
- (d) continuing to engage in an unprofitable business or contract unless the obligated person cannot reasonably be removed from the unprofitable situation; or
- (e) incurring debts subsequent to entry of the support order that impair the obligated person's ability to pay support.
- (9) If the obligated person is not excused under subsections (7) and (8), the district court shall find the obligated person in contempt of the support order. For each failure to pay support under the order, the district court shall order punishment as follows:
 - (a) not more than 5 days incarceration in the county jail;
 - (b) not more than 120 hours of community service work;
 - (c) not more than a \$500 fine; or
 - (d) any combination of the penalties in subsections (9)(a) through (9)(c).
- (10) An order under subsection (9) must include a provision allowing the obligated person to purge the contempt. The obligated person may purge the contempt by complying with an order requiring the obligated person to:
- (a) seek employment and periodically report to the district court all efforts to find employment;
 - (b) meet a repayment schedule;
- (c) compensate the payee for the payee's attorney fees, costs, and expenses for a proceeding under this section;

- (d) sell or transfer real or personal property or transfer real or personal property to the payee, even if the property is exempt from execution;
- (e) borrow the arrearage amount or report to the district court all efforts to borrow the sum;
- (f) meet any combination of the conditions in subsections (10)(a) through (10)(e); or
- (g) meet any other conditions that the district court in its discretion finds reasonable.
- (11) If the obligated person fails to comply with conditions for purging contempt, the district court shall immediately find the obligated person in contempt under this section and impose punishment.
- (12) A proceeding under this section must be brought within 3 years of the date of the last failure to comply with the support order."

Section 6. Section 40-5-907, MCA, is amended to read:

- "40-5-907. Case registry abstracts information required mandatory updating. (1) There must be registered in the case registry an abstract of:
- (a) each case, including interstate cases, receiving IV-D services provided by the department;
- (b) each support order entered and each modification of an existing support order made in this state after October 1, 1998; and
- (c) each subsequent order or action establishing, modifying, adjusting, granting relief from, terminating, or otherwise affecting a support order in a registered case.
 - (2) Each abstract must include:
- (a) the name, sex, [social security number, other] identification numbers, if any, date of birth, driver's license number, telephone number, and residential and mailing addresses of the parents;
- (b) the child's name, date of birth, sex, [social security number, if any,] and residential address if different from that of the child's custodian;
- (c) the name and location of the obligee if the obligee is a person or agency other than the child's parent;
- (d) the name, address, and telephone number of the obligor's employer or of another payor of income to the obligor; *and*
- (e) (i) if the child is covered by a health or medical insurance plan and the information is available in an electronic format, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage; or
- (ii) if the child is not covered, information as to the availability of coverage for the child through the obligor's and obligee's employers; and
- (f) any other information that the department considers relevant and requires by rule.
 - (3) The abstract of a support order must include:
- (a) the amount of the support payment and supplemental support payments, if any, for each child and the amount of spousal maintenance if ordered in the same case;
 - (b) the specific day or dates the payment is due;

- (c) the inclusive dates of the support obligation;
- (d) the terms of any condition that may affect the amount of the payment, the due date, or the obligation to pay support;
- (e) each subsequent judgment for support arrears and the amounts of any interest, late payment penalties, and fees included in the judgment;
- (f) any specific child support lien imposed against real or personal property of the obligor;
 - (g) the terms of any medical and health coverage provision for the child; and
- (h) the name and county of the judicial district or the name and address of the agency where the record of the case is located and the cause number or case identification number for the case.
- (4) (a) For each IV-D case with a support order registered in the case registry, there must be a record of the date and the amount of support payments made by the obligor, dates and amounts of support collected from other sources, dates of distribution of support payments, names and locations of persons or agencies to whom support payments and collections were distributed, and the balance of support owed by the obligor.
- (b) Except as provided in subsection (5), the department need not maintain payment records in a non IV-D case.
- (5) A copy of each non IV-D income-withholding order must be included in the case registry. For each registered income-withholding order, there must be a record of payments received by the department from the payor under the income-withholding order, the date and amount of each payment, the date the department distributed the payment, and the person or agency to whom the payment was distributed.
- (6) The statistical report required by the department under 50-15-302 may be combined with and made a part of the abstract of support order form.
- (7) (a) Each support order entered or modified in this state after October 1, 1998, must include a requirement that the obligor and obligee update, as necessary, the information included in the abstract under subsection (2).
- (b) The order must also provide that in a subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the obligor or obligee, the court or agency taking the enforcement action may consider the due process requirements for notice and service of process to be met with respect to the party upon delivery of written notice by regular mail to the most recent address or employer address reported to the case registry.
- (c) If the support order does not include the provisions required by subsections (7)(a) and (7)(b) or if the support order was entered or last modified in this state before October 1, 1998, the department may give written notice of the provisions to the obligor and obligee. Upon receipt of the notice, the provisions have the same force and effect on the obligor and obligee as if included in the support order. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)"
 - **Section 7.** Section 53-2-110, MCA, is amended to read:
- **"53-2-110. Payment of debts to department.** If money is due and owing the department, a payment due under Title 40, chapter 5, part 2 or 4 part 2, 4, 7, or 9, or under this chapter that is accompanied by or bears any notation by the debtor that the payment represents payment in full is not full payment,

notwithstanding the department's acceptance of the payment, unless there is additional the department signs a written agreement, signed by the department, that the payment is payment in full."

Section 8. Section 53-2-613, MCA, is amended to read:

- "53-2-613. Application for assistance assignment of support rights. (1) Applications for public assistance, including but not limited to financial assistance or nonfinancial assistance, as defined in 53-2-902, and medical assistance, may be made in any local office of public assistance. The application must be submitted, in the manner and form prescribed by the department, and must contain information required by the department.
- (2) A person who signs an application for financial assistance, as defined in 53-2-902, or for related medical assistance assigns to the state, to the department, and to the county, if county funds were used to pay for services, all rights that the applicant may have to monetary and medical support from any other person in the applicant's own behalf or in behalf of any other family member for whom application is made. A person who signs an application for public assistance other than financial assistance, as defined in 53-2-902, or for related medical assistance may, in accordance with rules adopted by the department, be required to assign to the state, to the department, and to the county all rights that the applicant may have to monetary and medical support from any other person in the applicant's own behalf or on behalf of any other family member for whom application is made.
 - (3) The assignment:
- (a) is effective for both current and accrued support, including unpaid support that accrued before the applicant received public assistance, and medical obligations;
- (b) takes effect upon a determination that the applicant is eligible for public assistance; and $\,$
- (c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient.
- (4) If a person who is the legal custodian and child support obligee under a support order relinquishes physical custody of a child to a caretaker relative without obtaining a modification of legal custody and the caretaker relative is determined eligible for public assistance on behalf of the child, the child support obligation is transferred by operation of law to the caretaker relative and may be assigned as provided in subsection (2). The transfer and assignment terminate when the caretaker relative no longer has physical custody of the child, except for any unpaid support still owing under the assignment at that time.
- (5) Whenever a child support or spousal support obligation is assigned to the department pursuant to this section, the following provisions apply:
- (a) If the support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse the cumulative total of public assistance money expended.
- (b) A recipient or former recipient of public assistance may not commence or maintain an action to recover or enforce a delinquent support obligation or make any agreements with any other person or agency concerning the support obligation, except as provided in 40-5-202.

- (c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay ever or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department's child support enforcement division has filed a written notice that:
 - (i) the assignment of current support amounts has been terminated; and
 - (ii) all assigned support delinquencies, if any, are satisfied or released.
- (d) A recipient or former recipient of public assistance may not take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department's child support enforcement division is given written notice under the provisions of 40-5-202. Any modifications or agreements entered into without the participation of the department are void with respect to the state, the department, and the local office of public assistance.
- (e) A support obligation assigned under this section may not be terminated, invalidated, waived, set aside, or considered uncollectible by the conduct, misconduct, or failure of a recipient or former recipient of public assistance to take any action or to cease any action required under a decree, judgment, support order, custody order, visitation order, restraining order, or other similar order."
- **Section 9. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 40, chapter 5, part 4, and the provisions of Title 40, chapter 5 apply to [section 4].
- **Section 10. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].
- **Section 11. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective October 1, 2009.
 - (2) [Section 4 and this section] are effective on passage and approval. Approved April 9, 2009

CHAPTER NO. 185

[HB 144]

AN ACT CLARIFYING AND RECODIFYING THE MANDATORY LEAVE OF ABSENCE FOR EMPLOYEES HOLDING PUBLIC OFFICE; AMENDING SECTION 2-18-601, MCA; REPEALING SECTION 2-18-620, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Mandatory leave of absence for employees holding public office. (1) Employers of employees elected or appointed to a public office in the city, county, or state shall grant the employees leaves of absence, not to exceed 180 days per year, while they are performing public service. Employees of an employer who employs 10 or more persons must, upon complying with the requirements of subsection (2), be restored to their positions, with the same seniority, status, compensation, hours, locality, and benefits as existed immediately prior to their leaves of absence for public service under this section.
- (2) An employee granted a leave of absence shall make arrangements to return to work within 10 days following the completion of the service for which

the leave was granted unless the employee is unable to do so because of illness or disabling injury certified to by a licensed physician.

(3) Unemployment benefits paid to a person by application of this section may not be charged against an employer under the unemployment insurance law.

Section 2. Section 2-18-601, MCA, is amended to read:

- **"2-18-601. Definitions.** For the purpose of this part, except 2-18-620, the following definitions apply:
- (1) (a) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state.
 - (b) The term does not mean the state compensation insurance fund.
- (2) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.
- (3) "Common association" means an association of employees established pursuant to 2-18-1310 for the purposes of employer and employee participation in the plan.
- (4) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.
- (5) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with the department of administration to participate in the plan.
- (6) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, persons contracted as independent contractors or hired under personal services contracts, and student interns.
- (7) "Full-time employee" means an employee who normally works $40 \ \mathrm{hours} \ \mathrm{a}$ week.
- (8) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.
- (9) "Member" means an employee who belongs to a voluntary employees' beneficiary association established under 2-18-1310.
- (10) "Part-time employee" means an employee who normally works less than $40\ \mathrm{hours}\ \mathrm{a}$ week.
- (11) "Permanent employee" means a permanent employee as defined in 2-18-101.
- (12) "Plan" means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to 2-18-1304.
 - (13) "Seasonal employee" means a seasonal employee as defined in 2-18-101.
 - (14) "Short-term worker" means:
- (a) for the executive and judicial branches, a short-term worker as defined in 2-18-101; or
 - (b) for the legislative branch, an individual who:
- (i) is hired by a legislative agency for an hourly wage established by the agency;
- (ii) may not work for the agency for more than 6 months in a continuous 12-month period;

- (iii) is not eligible for permanent status;
- (iv) may not be hired into another position by the agency without a competitive selection process; and
- (v) is not eligible to earn the leave and holiday benefits provided in this part or the group insurance benefits provided in part 7.
 - (15) "Sick leave" means a leave of absence with pay for:
- (a) a sickness suffered by an employee or a member of the employee's immediate family; or
 - (b) the time that an employee is unable to perform job duties because of:
 - (i) a physical or mental illness, injury, or disability;
- (ii) maternity or pregnancy-related disability or treatment, including prenatal care, birth, or medical care for the employee or the employee's child;
 - (iii) parental leave for a permanent employee as provided in 2-18-606;
 - (iv) quarantine resulting from exposure to a contagious disease;
 - (v) examination or treatment by a licensed health care provider;
- (vi) short-term attendance, in an agency's discretion, to care for a relative or household member not covered by subsection (15)(a) until other care can reasonably be obtained;
- (vii) necessary care for a spouse, child, or parent with a serious health condition, as defined in the Family and Medical Leave Act of 1993; or
- (viii) death or funeral attendance of an immediate family member or, at an agency's discretion, another person.
 - (16) "Student intern" means a student intern as defined in 2-18-101.
- (17) "Temporary employee" means a temporary employee as defined in 2-18-101.
- (18) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.
- (19) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."
 - Section 3. Repealer. Section 2-18-620, MCA, is repealed.
- Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 39, chapter 2, part 1, and the provisions of Title 39, chapter 2, part 1, apply to [section 1].
- **Section 5.** Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 9, 2009

CHAPTER NO. 186

[HB 163]

AN ACT EXTENDING THE AVAILABILITY AND USE OF TAX CREDITS UNDER THE BIG SKY ON THE BIG SCREEN ACT; AMENDING SECTION

17, CHAPTER 593, LAWS OF 2005, AND SECTION 9, CHAPTER 367, LAWS OF 2007: AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17, Chapter 593, Laws of 2005, is amended to read:

"Section 17. Termination — carryforward. [This act] terminates January 1, 2010 2015, but an unused credit under [section 7] may be carried forward for use on returns for tax years beginning before January 1, 2014 2019, subject to use, limitations on the amount of the credit, carryforward, and recapture provisions of the credit effective on December 31, 2009 2014."

Section 2. Section 9, Chapter 367, Laws of 2007, is amended to read:

"Section 9. Termination — carryforward. [Sections 1 through 4] terminate January 1, 2010 2015, but an unused credit under 15-31-907 may be carried forward for use on returns for tax years beginning before January 1, 2014 2019, subject to use, limitations on the amount of the credit, carryforward, and recapture provisions of the credit effective on December 31, 2009 2014."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 9, 2009

CHAPTER NO. 187

[HB 195]

AN ACT REVISING THE LAWS RELATED TO THE QUALIFICATIONS AND CONDITIONS FOR OBTAINING A RESTAURANT BEER AND WINE LICENSE; CLARIFYING THE DEFINITION OF A FULL-SERVICE RESTAURANT; ELIMINATING THE REQUIREMENT THAT AN UNSUCCESSFUL LOTTERY APPLICANT BE GIVEN A PREFERENCE IN FUTURE LOTTERIES; AMENDING SECTION 16-4-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-420, MCA, is amended to read:

- **"16-4-420. Restaurant beer and wine license.** (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:
 - (a) in the case of an individual applicant:
- (i) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and
 - (ii) the applicant is not under 19 years of age;
 - (b) in the case of a corporate applicant:
- (i) in the case of a corporation listed on a national stock exchange, the corporate officers and the board of directors must meet the requirements of subsection (1)(a);
- (ii) in the case of a corporation not listed on a national stock exchange, each owner of 10% or more of the outstanding stock must meet the requirements for an individual listed in subsection (1)(a); and

- (iii) the corporation is authorized to do business in Montana;
- (c) in the case of any other business entity, including but not limited to partnerships, including limited liability partnerships, limited partnerships, and limited liability companies, but not including any form of a trust:
- (i) if the applicant consists of more than one individual, all individuals must meet the requirements of subsection (1)(a); and
- (ii) if the applicant consists of more than one corporation, all corporations listed on a national stock exchange must meet the requirements of subsection (1)(b)(i) and corporations not listed on a national stock exchange must meet the requirements of subsection (1)(b)(ii); the applicant complies with the licensing criteria provided in 16-4-401 for an on-premises consumption license;
- (d)(b) the applicant operates a restaurant at the location where the restaurant beer and wine license will be used or satisfies the department that:
- (i) the applicant intends to open a restaurant that will meet the requirements of subsection (6) and intends to operate the restaurant so that at least 65% of the restaurant's gross income during its first year of operation is expected to be the result of the sale of food;
- (ii) the restaurant beer and wine license will be used in conjunction with that restaurant, that the restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be stated on the food bill; and
- (iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the department by rule;
- (e)(c) the applicant understands and acknowledges in writing on the application that this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine license will be used, the activity must be discontinued or the machines must be removed before the restaurant beer and wine license takes effect; and
- (f)(d) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current seating capacity if the restaurant is operating.
- (2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic beverage may not be considered for a restaurant beer and wine license at the same location.
- (b) (i) An on-premises retail licensee who sells the licensee's existing retail license may not apply for a license under this section for a period of 1 year from the date that license is transferred to a new purchaser.
- (ii) A person, including an individual, with an ownership interest in an existing on-premises retail license that is being transferred to a new purchaser may not attain an ownership interest in a license applied for under this section for a period of 1 year from the date that the existing on-premises retail license is transferred to a new purchaser.
- (3) A completed application for a license under this section and the appropriate application fee, as provided in subsection (11), must be submitted to the department. The department shall investigate the items relating to the application as described in subsections (3)(a) through (3)(d). Based on the results of the investigation and the exercise of its sound discretion, the department shall determine whether:
 - (a) the applicant is qualified to receive a license;

- (b) the applicant's premises are suitable for the carrying on of the business;
- (c) the requirements of this code and the rules promulgated by the department are complied with; and
 - (d) the seating capacity stated on the application is correct.
- (4) An application for a beer and wine license submitted under this section is subject to the provisions of 16-4-203, 16-4-207, and 16-4-405.
- (5) If a premises proposed for licensing under this section is a new or remodeled structure, then the department may issue a conditional license prior to completion of the premises based on reasonable evidence, including a statement from the applicant's architect or contractor confirming that the seating capacity stated on the application is correct, that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in subsection (6).
 - (6) (a) For purposes of this section, "restaurant" means a public eating place:
- (i) where individually priced meals are prepared and served for on-premises consumption,:
- (ii) At where at least 65% of the restaurant's annual gross income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file with the department a statement, in a form approved by the department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from the sale of food.
- (iii) The restaurant must have that has a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use as a full-service restaurant; and
- (iv) A full-service restaurant is a restaurant that provides that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between the hours of 5 p.m. and 11 p.m. The provisions of this subsection (6)(a)(iv) and subsection (6)(b) do not apply to a restaurant for which a restaurant beer and wine license is in effect as of [the effective date of this act] or to subsequent renewals of that license.
- (b) The term does not mean a fast-food restaurant that, excluding any carry-out business, serves a majority of its food and drink in throw-away containers not reused in the same restaurant.
- (7) (a) (i) Subject to the conditions of subsection (7)(a)(ii), a A restaurant beer and wine license may be transferred, upon approval by the department, from the original applicant to a new owner of the restaurant if there is no change of location, and the original owner may transfer location after the license is issued by the department to a new location, upon approval by the department.
- (ii) A new owner may not transfer the license to a new location for a period of 1 year following the transfer of the license to the new only after 1 year of use by the original owner.
- (b) A license issued under this section may be jointly owned, and the license may pass to the surviving joint tenant upon the death of the other tenant. However, the license may not be transferred to any other person or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property upon the death of the owner in this state or in another state.

- (c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of the department, transfer a restaurant beer and wine license to a new owner.
- (8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:
- (i) except as provided in subsection (8)(c), for a restaurant located in a quota area with a population of 5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;
- (ii) for a restaurant located in a quota area with a population of 5,001 to 20,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 160% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;
- (iii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 100% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;
- (iv) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and
- (v) for a restaurant located in a quota area that is also a resort community, as the resort community is designated by the department of commerce under 7-6-1501(5), if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than 200% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.
- (b) In determining the number of restaurant beer and wine licenses that may be issued under this subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(v), the department shall round to the nearer whole number.
- (c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota area under subsection (8)(a)(i), there must be a one-time adjustment of four additional licenses for that quota area.
- (d) If there are more applicants than licenses available in a quota area, then the license must be awarded by lottery as provided in subsection (9).
- (9) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in the quota area, the nonrenewal of a restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department shall advertise the availability of the license in the quota area for which it is available. If there are more applicants than number of licenses available, the license must be awarded to an applicant by a lottery.
- (b) Any A preference must be given to an applicant who does not yet have in any quota area a restaurant beer and wine license or a retail beer license and who operates a restaurant that is in the quota area described in subsection (8) in

which the license has become available and that meets the qualifications of subsection (6) for at least 12 months prior to the filing of an application must be given a preference, and any unsuccessful lottery applicants from previous selections must also be given a preference. An applicant with both preferences a preference must be awarded a license before any applicant with only one without a preference.

- (c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will be required to submit a completed application and a one-time required fee. An applicant's ranking may not be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the intended license advertised by the department or to the number of licenses determined under subsection (8) when there are more applicants than licenses available. The applicant's qualifications for any other restaurant beer and wine license awarded by lottery must be determined at the time of the lottery.
- (d) If a successful lottery applicant does not use a license within 1 year of notification by the department of license eligibility, the applicant shall forfeit the license. The department shall refund any fees paid except the application fee and offer the license to the next eligible ranked applicant in the lottery.
- (10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises consumption.
- (11) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20% of the initial licensing fee. If the department does not make a decision either granting or denying the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies an application, the application fee, plus any interest, less a processing fee established by rule, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the following schedule:
- (a) \$5,000 for restaurants with a stated seating capacity of 60 persons or less:
- (b) \$10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or
- (c) \$20,000 for restaurants with a stated seating capacity of 101 persons or more
 - (12) The annual fee for a restaurant beer and wine license is \$400.
- (13) If a restaurant licensed under this part increases the stated seating capacity of the licensed restaurant or if the department determines that a licensee has increased the stated seating capacity of the licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the time of filing the original application and issuance of a license and the applicable fees for the additional seating.
- (14) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the total licenses issued.

(15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to restaurant beer and wine licenses applied for and to lotteries conducted on or after [the effective date of this act].

Approved April 9, 2009

CHAPTER NO. 188

[HB 197]

AN ACT REVISING SIGNATURE REQUIREMENTS FOR RECALL PETITIONS; AND AMENDING SECTIONS 2-16-612 AND 2-16-614, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-16-612, MCA, is amended to read:

- **"2-16-612. Persons qualified to petition penalty for false signatures.** (1) A person who is a qualified elector of this state may sign a petition for recall of a state officer.
- (2) A person who is a qualified elector of a district of the state from which a state-district officer is elected may sign a petition for recall of a state-district officer of that district or appointed by an officer or the officers of that election district.
- (3) A person who is a qualified elector of a political subdivision of this state may sign a petition for recall of an officer of that political subdivision. However, if a political subdivision is divided into election districts, a person must be a qualified elector in the election district to be eligible to sign a petition to recall an officer elected from that election district.
- (4) A person signing any name other than the person's own to any petition or knowingly signing more than once for the recall or who is not at the time of the signing a qualified elector or a person who knowingly makes a false entry upon an affidavit required in connection with the filing of a petition for the recall of an officer is guilty of unsworn falsification or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-203 or 45-7-208, as applicable."
 - Section 2. Section 2-16-614, MCA, is amended to read:
- **"2-16-614. Number of electors required for recall petition.** (1) Recall petitions for elected or appointed state officers shall must contain the signatures of qualified electors equaling at least 10% of the number of persons registered to vote at the preceding state general election.
- (2) A petition for the recall of a state-district officer must contain the signatures of qualified electors equaling at least 15% of the number of persons registered to vote in the last preceding election in that district.

- (3) (a) Recall Except as provided in subsection (3)(b), recall petitions for elected or appointed county officers shall must contain the signatures of qualified electors equaling at least 15% of the number of persons registered to vote at the preceding county general election.
- (b) If a recall petition is for a county commissioner in a county that is divided into commissioner districts pursuant to 7-4-2102, then the petition:
- (i) must contain the signatures of qualified electors equaling at least 15% of the number of persons registered to vote at the preceding county general election; and
- (ii) must also contain the signatures from at least 15% of the qualified electors residing in that commissioner's commission district.
- (4) Recall petitions for elected or appointed officers of municipalities or school districts shall *must* contain the signatures of qualified electors equaling at least 20% of the number of persons registered to vote at the preceding election for the municipality or school district."

Approved April 9, 2009

CHAPTER NO. 189

[HB 221]

AN ACT REVISING THE TIME AT WHICH YOUTH REACHING 12 YEARS OF AGE DURING A LICENSE YEAR ARE ELIGIBLE TO HUNT; AMENDING SECTION 87-2-805, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-805, MCA, is amended to read:

- "87-2-805. (Temporary) Persons under eighteen years of age youth combination sports license terminally ill youth under seventeen years of age free wildlife conservation license for resident seniors and certain minors. (1) Resident minors who are 12 years of age or older and under 15 years of age may fish and may hunt upland game and migratory game birds during the open season with only a conservation license. Resident minors who are 15 years of age may hunt migratory game birds with only a conservation license. Resident minors who are under 12 years of age may fish without a license. A nonresident person under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B, B-4, or B-5 fishing license unless the nonresident person under 15 years of age is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.
- (2) A resident, as defined by 87-2-102, who is 12 years of age or older and under 15 years of age may purchase a Class A-3 deer A tag for 6.50 and a Class A-5 elk tag for 8.
- (3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license for \$25. A resident who is 12 years of age or older and under 18 years of age and who applies for any hunting license for the first time is entitled to receive a youth combination sports license free of charge.
 - (b) The youth combination sports license includes:

- (i) a conservation license;
- (ii) a fishing license;
- (iii) an upland game bird license;
- (iv) an elk license; and
- (v) a deer license.
- (c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license for \$8.
- (d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license for \$3.
- (e) A person who lawfully purchases or is granted a free youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A person who hunts or fishes using a youth combination sports license purchased or granted free after the person reaches 18 years of age is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:
- (i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and
- (ii) a monetary fine of not less than \$500 and not more than \$5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.
- (f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license.
- (4) (a) The department may issue a free resident or nonresident big game combination license, as applicable, to a resident or nonresident youth under 17 years of age who has been diagnosed with a terminal illness. In order for a youth to qualify for the free license, the department must receive documentation from a licensed physician verifying that the youth is terminally ill. The free license may be issued to a youth on a one-time basis for only one hunting season.
- (b) In exercising hunting privileges, the youth must be in the company of an adult in possession of a valid Montana hunting license or of a licensed Montana outfitter and conduct all hunting within the terms and conditions of the license issued.
- (c) The department may waive hunter safety and education and bowhunter education requirements in 87-2-105 for a qualified youth under this subsection (4) and, in appropriate circumstances, may also allow the qualified youth to hunt from a vehicle in the manner described in 87-2-803.
- (5) Resident minors who are 12 years of age or older and under 15 years of age and residents who are 62 years of age or older must, upon application and production of the documentation and information required by 87-2-202(1), be issued a resident wildlife conservation license without charge.
- (6) Prior to reaching 12 years of age, minors who will reach 12 years of age by January 16 of a license year may hunt any game species after August 15 of that license year as long as the minor obtains the necessary license pursuant to this chapter. (Terminates February 28, 2009—sec. 7, Ch. 452, L. 2007.)
- 87-2-805. (Effective March 1, 2009) Persons under eighteen years of age youth combination sports license terminally ill youth under

seventeen years of age. (1) Resident minors who are 12 years of age or older and under 15 years of age may fish and may hunt upland game and migratory game birds during the open season with only a conservation license. Resident minors who are 15 years of age may hunt migratory game birds with only a conservation license. Resident minors who are under 12 years of age may fish without a license. A nonresident person under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B, B-4, or B-5 fishing license unless the nonresident person under 15 years of age is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

- (2) A resident, as defined by 87-2-102, who is 12 years of age or older and under 15 years of age may purchase a Class A-3 deer A tag for 6.50 and a Class A-5 elk tag for 8.
- (3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license for \$25. A resident who is 12 years of age or older and under 18 years of age and who applies for any hunting license for the first time is entitled to receive a youth combination sports license free of charge.
 - (b) The youth combination sports license includes:
 - (i) a conservation license;
 - (ii) a fishing license;
 - (iii) an upland game bird license;
 - (iv) an elk license; and
 - (v) a deer license.
- (c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license for \$8.
- (d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license for \$3.
- (e) A person who lawfully purchases or is granted a free youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A person who hunts or fishes using a youth combination sports license purchased or granted free after the person reaches 18 years of age is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:
- (i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and
- (ii) a monetary fine of not less than \$500 and not more than \$5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.
- (f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license.
- (4) (a) The department may issue a free resident or nonresident big game combination license, as applicable, to a resident or nonresident youth under 17 years of age who has been diagnosed with a terminal illness. In order for a youth to qualify for the free license, the department must receive documentation from

a licensed physician verifying that the youth is terminally ill. The free license may be issued to a youth on a one-time basis for only one hunting season.

- (b) In exercising hunting privileges, the youth must be in the company of an adult in possession of a valid Montana hunting license or of a licensed Montana outfitter and conduct all hunting within the terms and conditions of the license issued
- (c) The department may waive hunter safety and education and bowhunter education requirements in 87-2-105 for a qualified youth under this subsection (4) and, in appropriate circumstances, may also allow the qualified youth to hunt from a vehicle in the manner described in 87-2-803.
- (5) Prior to reaching 12 years of age, minors who will reach 12 years of age by January 16 of a license year may hunt any game species after August 15 of that license year as long as the minor obtains the necessary license pursuant to this chapter."

Section 2. Effective date. [This act] is effective March 1, 2010.

Approved April 9, 2009

CHAPTER NO. 190

[HB 243]

AN ACT DIRECTING THE CHILDREN'S SYSTEM OF CARE PLANNING COMMITTEE TO STUDY THE SYSTEM OF CARE FOR HIGH-RISK CHILDREN WITH MULTIAGENCY SERVICE NEEDS; REQUIRING A REPORT TO THE LEGISLATURE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the 2003 Legislature directed state agencies to develop a statewide system of care for children with multiagency service needs; and

WHEREAS, the state has worked to implement that directive by developing Kids Management Authorities in a number of communities around the state; and

WHEREAS, Kids Management Authorities have been developed through a combination of grant funds from the federal Substance Abuse and Mental Health Services Administration and state and local funds; and

WHEREAS, federal grant funds are rapidly diminishing and will run out in the next biennium, while the state and local matching requirements for those funds must be significantly increased this biennium in order to sustain Kids Management Authorities at the community level; and

WHEREAS, the Legislature has provided clear direction to state agencies that treatment for children with multiagency service needs should be family centered, should attempt to provide treatment for children in their homes and communities, and should avoid out-of-home and out-of-state placements when possible; and

WHEREAS, the Legislature wants treatment for children to provide positive outcomes and value for the funds spent on treatment; and

WHEREAS, the Legislature created a children's system of care planning committee in section 52-2-303, MCA, to oversee the development of the statewide system of care effort; and

WHEREAS, the Legislature would benefit from more information on the progress made toward a statewide system of care and from recommendations on whether this effort should be sustained, modified, or abandoned.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Report to legislature purpose requirements. (1) (a) The children's system of care planning committee established in 52-2-303 shall study progress achieved to date in developing a statewide system of care for high-risk children with multiagency service needs. The committee shall prepare a report and recommendations for the legislature and provide the information to the appropriate interim committee no later than July 1, 2010.
- (b) In preparing the report, the system of care planning committee shall take special note of input from communities and from families and children involved in the system of care.
 - (2) The report must:
- (a) detail the progress made in developing the system of care, including the communities and areas currently being served, the agencies involved in each effort, and the organizational approaches being used in the communities;
- (b) provide a summary of the number of total clients served, by community, and detail the types of services being provided;
- (c) provide a summary of the federal, state, and local funds spent in operating the system of care and of the cost of services provided by the system of care; and
- (d) include an analysis of the effectiveness of the children's system of care, along with a summary of the barriers that exist in further developing the system of care.
 - (3) The recommendations must:
- (a) state whether and how kids management authorities or their equivalent should be structured, staffed, and funded, including but not limited to identifying the agencies that should be involved, how their involvement could be encouraged or required, and how they could most effectively participate in the process;
- (b) define a clear role for kids management authorities, including whether or how the authorities should be involved in:
 - (i) coordinating services to individual children at the local level;
- (ii) encouraging and ensuring that state agency practices are family centered:
- (iii) providing assistance and advocacy for families in navigating the array of state services for children;
- (c) identify how agency funding may be better blended to provide services to multiagency children, including but not limited to an analysis of whether the state should seek waivers for use of medicaid funds or funds provided through Title IV-E of the Social Security Act;
- (d) provide a clear statement of which children and family populations should be served by the system of care;
- (e) define how local governments may or should be involved in the system of care; and
- (f) define how and state whether the wraparound process of providing a unique set of services that are based on a child's and family's needs and

strengths will be connected to the system of care, including recommendations on how the wraparound process will be provided, to whom it will be provided, who should provide it, and how it will be funded.

(4) The study and report must be completed within the budget approved for the department of public health and human services for the biennium beginning July 1, 2009.

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved April 9, 2009

CHAPTER NO. 191

[HB 290]

AN ACT INCREASING THE LIMIT ON THE AMOUNT OF GROSS ANNUAL SALES THAT REQUIRES A PERSON WHO GROWS AND RETAILS MONTANA-GROWN PRODUCE TO PAY PRODUCE ASSESSMENT FEES AND OBTAIN A PRODUCE DEALER LICENSE; AMENDING SECTIONS 80-3-314 AND 80-3-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-3-314, MCA, is amended to read:

- "80-3-314. Reporting requirements assessment fees exceptions. (1) Produce sold or distributed in this state must be reported, on forms approved by the department, and must be assessed a fee per for each produce unit or equivalent poundage. The fee amount may be adjusted by rule but must be at least 3 cents and not more than 7 cents per for each produce unit.
- (2) The produce dealer who first distributes produce in this state or a grower who retails Montana-grown produce with gross annual sales exceeding \$15,000 \$25,000 shall pay the produce assessment fee established in subsection (1). However, any produce dealer in possession of the produce may be held responsible for payment of the fee unless the grower has paid for a produce dealer license or has made available to the produce dealer a written form provided by the department stating that the assessment fees are being paid.
- (3) The report and fees are due on or before the 30th day of the month following each calendar quarter.
 - (4) Payment of the produce assessment fee is not required on produce that is:
- (a) grown and retailed in Montana by the grower if annual gross retail sales by the grower do not exceed \$15,000 \$25,000;
- (b) grown in this state, not packaged for market, and sold for resale by the grower;
- (c) in the case of vegetative seed potato products, intended or used for planting purposes; or
- (d) purchased from or distributed by a produce dealer licensed under 80-3-321 if the produce has been reported and the assessment fee has been paid."
 - **Section 2.** Section 80-3-321, MCA, is amended to read:
- "80-3-321. Produce dealer license exception renewal. (1) A produce dealer license is required for any person who:

- (a) wholesales produce in this state;
- (b) transports produce from out of state into this state for retail sale; or
- (c) retails produce grown by the produce dealer in this state when gross retail sales exceed \$15,000 \$25,000 annually.
- (2) A produce dealer license is not required for a person who complies with the requirements of this part and who:
- (a) retails produce grown by that person in this state if annual gross produce sales do not exceed \$15,000; \$25,000. however However, the person shall, upon request by of the department, furnish a sworn statement providing that the produce was grown by that person, stating the location where the produce was grown, and stating the amount of gross sales; or.
- (b) is a nonprofit organization that is recognized by the director and that retails only produce purchased from licensed produce dealers or from Montana produce dealers who are in compliance with this part.
- (3) An applicant for a produce dealer license shall provide any information that the department finds necessary to carry out the provisions of this part. Produce dealer licenses expire on December 31 of the year of issuance. A produce dealer shall pay a nonrefundable license fee of \$50. A separate license is required for each place of business, including vehicles. The license fee must be credited toward the produce assessment fee prescribed in 80-3-314.
- (4) A produce dealer license, if required, must be carried at any time produce is sold, and the license is subject to inspection by any person.
- (5) A license issued under this section may not be sold or transferred from one vehicle or location to another without the written consent of the department."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 9, 2009

CHAPTER NO. 192

[HB 291]

AN ACT REDEFINING THE MARKET PRICE THAT MUST BE USED WITH RESPECT TO AUTOMOBILE GLASS REPAIR AND WITH RESPECT TO AUTOMOBILE BODY REPAIR BUSINESSES; AMENDING SECTIONS 33-18-221, 33-18-222, 33-18-223, AND 33-18-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-18-221, MCA, is amended to read:

- "33-18-221. Designation of specific repair shops prohibited lists allowed. (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or part, a motor vehicle may not:
- (a) require that a person insured under the policy use a particular company or location for providing automobile glass replacement, glass repair services, or glass products insured in whole or part by the policy; or
- (b) engage in any act or practice of intimidation, coercion, or threat for or against an insured person to use a particular company or location to provide

automobile glass replacement, glass repair services, or glass products insured, in whole or in part, under the terms of an insurance policy.

- (2) (a) An insurance company may provide an insured with a list that includes the names of particular companies or locations providing automobile glass replacement, glass repair services, or glass products if some of the listed companies or locations are reasonably close and convenient to the insured. The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.
- (b) The insured may use a nonlisted company or location at the insured's sole discretion, and subject to the provisions of subsections (2)(c) and (3), the insurance company will fully and promptly pay for the cost of automobile glass replacement, glass repair services, or glass products provided, less any deductible under the terms of the policy.
- (c) If the insured does not use a list as provided in subsection (2)(a), the insurer may require the insured to obtain not more than three competitive bids to establish the cost of automobile glass replacement, glass repair services, or glass products provided.
- (3) This section does not require an insurer to pay more for automobile glass replacement, glass repair services, or glass products than the lowest prevailing market price as defined in 33-18-222.
- (4) Notwithstanding the provisions of subsections (1) through (3), an insurance company may agree to pay the full cost of glass replacement or repair."
 - Section 2. Section 33-18-222, MCA, is amended to read:
- **"33-18-222.** Lowest prevailing market Market price. (1) For purposes of 33-18-221, and 33-18-223, and 33-18-224, "lowest prevailing" market price" means the:
- (a) price agreed upon between the insurer and the business; or lowest market price in a local area
- (b) prevailing competitive rate that is reasonable and necessary in the local area where the repairs are to be performed.
- (2) The lowest prevailing market price may not be less than cost as provided in 30-14-209."
 - Section 3. Section 33-18-223, MCA, is amended to read:
- **"33-18-223. Prohibited activities** glass broker defined. (1) It is unlawful for an insurance company, individually or with others, to directly or indirectly:
- (a) establish an agreement with any person to act as a glass broker for the insurance company under which the glass broker sets a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work for the insurance company;
- (b) establish an agreement with a glass broker that requires a glass repair shop to bill through that glass broker as a condition of doing glass replacement or glass repair work; or
- (c) establish a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work that is below the lowest prevailing market price as provided in 33-18-222.

(2) As used in this section, "glass broker" means an automobile glass company that acts as a third-party agent for the insurer whenever the glass broker enters into agreements with other automobile glass dealers to perform glass replacement or glass repair work."

Section 4. Section 33-18-224, MCA, is amended to read:

- "33-18-224. Designation of specific automobile body repair businesses prohibited. (1) (a) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:
- (i) require that a claimant under the policy use a particular automobile body repair business or location for an estimate or a repair; or
- (ii) engage in any act or practice that intimidates, coerces, or threatens a claimant or that provides an incentive or inducement for a claimant to use a particular automobile body repair business or location.
- (b) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may have access to the motor vehicle for purposes of preparing a competitive estimate.
- (2) (a) Except as provided in subsection (2)(b), if an insurance company has direct repair programs with automobile body repair businesses or locations, the insurance company may not limit the number of automobile body repair businesses or locations with whom it maintains direct repair programs.
- (b) An insurance company may limit the number of automobile body repair businesses or locations participating in the insurance company's direct repair program to those automobile body repair businesses or locations that comply with the provisions of subsection (2)(c). An insurance company is not required to establish a direct repair program in a particular market area in which the insurance company's number of policyholders does not support establishing a direct repair program with any automobile body repair business or location.
- (c) Upon request, the insurance company shall provide, without prejudice or bias, the claimant with a list that includes all automobile body repair businesses or locations that are reasonably close or convenient to the claimant and willing to provide services and that meet the insurance company's criteria regarding whether the automobile body repair business or location:
 - (i) possesses the equipment necessary to undertake repairs;
- (ii) undertakes training of management and technical personnel with respect to repair information and the claims process;
- (iii) agrees to perform quality repairs at the prevailing competitive market price and that meet reasonable industry repair standards;
- (iv) agrees to warrant the quality of work, including refinishing, in writing to the claimant, for a period of not less than 1 year from the date of repair;
- (v) agrees to inspection of its repairs and services by the insurance company and agrees that the insurance company may terminate the direct repair program with the automobile body repair business or location if the repairs and services are below the standards of quality required by the insurance company; and
- (vi) if requested, agrees to execute an agreement with the insurance company that may contain additional criteria that are not designed to unfairly limit the number of automobile body repair businesses or locations with whom

the insurance company maintains direct repair programs. The additional criteria may include criteria determined to be necessary by the insurance company and designed to ensure that the automobile body repair business or location has the necessary estimating systems and programs and equipment to communicate electronically with the insurance company and that the automobile body repair business or location has taken steps to ensure the privacy of the insurance company and the claimant.

- (d) If the claimant requests the list provided for in subsection (2)(c), the insurance company shall inform the claimant that the claimant may use an automobile body repair business or location at the sole discretion of the claimant.
- (3) For the purposes of this section, an incentive or inducement does not include:
 - (a) providing a claimant with the list provided for in subsection (2)(c); or
- (b) referring to a warranty issued by an automobile body repair business or location.
- (4) The claimant may use an automobile body repair business or location at the claimant's sole discretion, and the insurance company shall pay for the reasonable and necessary cost of the automobile body repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile body repair services than the lowest prevailing market price, as defined in 33-18-222.
- (5) If the claimant uses an automobile body repair business or location that is not on a list provided for in subsection (2)(c), the insurance company may not be held liable for any repair work performed by the automobile body repair business or location chosen by the claimant.
- (6) It is unlawful for an automobile body repair business or location to charge or agree to charge a claimant more than an uninsured customer for any automobile body repair service.
- (7) An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section.
 - (8) For purposes of this section:
- (a) "automobile body repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products;
- (b) "claimant" means the person seeking repair of a motor vehicle whether that person is the insured person or a third party making a claim against the insurer."

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 9, 2009

CHAPTER NO. 193

[HB 317]

AN ACT GUARANTEEING A MEMBER OF THE ARMED FORCES WHO FORFEITED A SPECIAL HUNTING LICENSE OR PERMIT ISSUED BY DRAWING AS A RESULT OF DEPLOYMENT OUTSIDE OF THE

CONTINENTAL UNITED STATES IN SUPPORT OF A CONTINGENCY OPERATION THE SAME SPECIAL LICENSE OR PERMIT, WITHOUT ADDITIONAL FEE, UPON APPLICATION IN THE YEAR OF THE MEMBER'S RETURN FROM MILITARY SERVICE OR IN THE FIRST YEAR THAT THE LICENSE OR PERMIT IS MADE AVAILABLE AFTER THE MEMBER'S RETURN; AND AMENDING SECTION 87-2-803, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-803, MCA, is amended to read:

- "87-2-803. Persons with disabilities service members definitions. (1) Persons with disabilities are entitled to fish and to hunt game birds, not including turkeys, with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule. A person who has purchased a conservation license and a resident fishing license or game bird license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the fishing license or game bird license previously purchased for that license year. A person who is certified as disabled pursuant to subsection (3) and who was issued a permit to hunt from a vehicle for license year 2000 or a subsequent license year is automatically entitled to a permit to hunt from a vehicle for subsequent license years if the criteria for obtaining a permit does not change.
- (2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase a Class A-3 deer A tag for \$6.50 and a Class A-5 elk tag for \$8. A person who has purchased a conservation license and a resident deer license or resident elk license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the deer license or elk license previously purchased and reissuance of the license for that license year at the rate established in this subsection.
- (3) A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person establishes one or more of the disabilities pursuant to subsection (9).
- (4) (a) A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection (4) as a permitholder, may hunt by shooting a firearm from:
- (i) the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-101, except a state or federal highway;
- (ii) within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted; or
- (iii) an off-highway vehicle or snowmobile, as defined in 61-1-101, in any area where hunting is permitted and that is open to motorized use, unless otherwise prohibited by law, as long as the off-highway vehicle or snowmobile is marked as described in subsection (4)(d) of this section.
- (b) This subsection (4) does not allow a permitholder to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner.
- (c) A permitholder must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the permitholder by hunting a game animal that has been wounded by the permitholder when the permitholder is unable to pursue and kill the wounded game animal.

- (d) Any vehicle from which a permitholder is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle, or as prescribed by the department.
- (5) A veteran who meets the qualifications in subsection (9) as a result of a combat-connected injury may apply at a fish, wildlife, and parks office for a regular Class A-3 deer A tag, a Class A-4 deer B tag, a Class B-7 deer A tag, a Class B-8 deer B tag, and a special antelope license at one-half the license fee. Fifty licenses of each license type must be made available annually. Licenses issued to veterans under this part do not count against the number of special antelope licenses reserved for people with permanent disabilities, as provided in 87-2-706.
- (6) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of \$10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure.
- (b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses, in the manner provided in subsection (2) of this section, and must be accompanied by a companion, as provided in subsection (4)(c) of this section.
- (7) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.
- (8) As used in this section, "disabled person", "person with a disability", or "disabled" means or refers to a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.
 - (9) A person is entitled to a permit to hunt from a vehicle if the person:
- (a) is certified by a licensed physician, an advanced practice registered nurse, or a licensed physician assistant to be dependent on an oxygen device or dependent on a wheelchair, crutch, or cane for mobility;
 - (b) is an amputee above the wrist or ankle; or
- (c) is certified by a licensed physician, an advanced practice registered nurse, or a licensed physician assistant to be unable to walk, unassisted, 600 yards over rough and broken ground while carrying 15 pounds within 1 hour and to be unable to handle and maneuver up to 25 pounds.
- (10) Certification by a licensed physician, an advanced practice registered nurse, or a licensed physician assistant under subsection (9) must be on a form provided by the department.
- (11) The department or a person who disagrees with a determination of disability or eligibility for a permit to hunt from a vehicle may request a review by the board of medical examiners pursuant to 37-3-203.
- (12) (a) A Montana resident who is a member of the Montana national guard or the federal reserve as provided in 10 U.S.C. 10101 or who was otherwise engaged in active duty and who participated in a contingency operation as provided in 10 U.S.C. 101(a)(13) that required the member to serve at least 2 months outside of the state, upon request and upon presentation of the documentation described in subsection (12)(b), must be issued a free resident

wildlife conservation license or a Class AAA resident combination sports license, which may not include a bear license, upon payment of the resident hunting access enhancement fee provided for in 87-2-202(3)(c), in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election. A member who participated in a contingency operation after September 11, 2001, that required the member to serve at least 2 months outside of the state may make an election in 2007 or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election and be entitled to a free resident wildlife conservation license or a free Class AAA resident combination sports license in the year of election and in any of the 4 years after the member's election.

- (b) To be eligible for the free resident wildlife conservation license or free Class AAA resident combination sports license provided for in subsection (12)(a), an applicant shall, in addition to the written application and proof of residency required in 87-2-202(1), provide to any regional department office or to the department headquarters in Helena, by mail or in person, the member's DD form 214 verifying the member's release or discharge from active duty. The applicant is responsible for providing documentation showing that the applicant participated in a contingency operation as provided in 10 U.S.C. 101(a)(13).
- (c) A Montana resident who meets the service qualifications of subsection (12)(a) and the documentation required in subsection (12)(b) is entitled to a free Class A resident fishing license in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election.
- (d) The department's general license account must be reimbursed by a quarterly transfer of funds from the general fund to the general license account for costs associated with the free licenses granted pursuant to this subsection (12) during the preceding calendar quarter. Reimbursement costs must be designated as license revenue.
- (13) A member of the armed forces who forfeited a license or permit issued through a drawing as a result of deployment outside of the continental United States in support of a contingency operation as provided in 10 U.S.C. 101(a)(13) is guaranteed the same license or permit, without additional fee, upon application in the year of the member's return from deployment or in the first year that the license or permit is made available after the member's return."

Approved April 9, 2009

CHAPTER NO. 194

[HB 354]

AN ACT REVISING LAWS GOVERNING LICENSURE OF PRIVATE INVESTIGATORS; ELIMINATING THE DEFINITION OF AND REFERENCES TO FIRE INVESTIGATORS IN LAWS GOVERNING PRIVATE INVESTIGATORS AND PRIVATE SECURITY AND ELIMINATING THE NEED FOR A SEPARATE FIRE INVESTIGATION LICENSE; INCLUDING INVESTIGATION OF FIRES AMONG A LICENSED PRIVATE INVESTIGATOR'S ACTIVITIES; PROVIDING CERTAIN EXEMPTIONS FROM LICENSE REQUIREMENTS; AND AMENDING SECTIONS 37-60-101, 37-60-103, 37-60-105, 37-60-301, AND 37-60-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-60-101, MCA, is amended to read:

- "37-60-101. **Definitions.** As used in this chapter, the following definitions apply:
- (1) "Alarm response runner" means an individual employed by an electronic security company, a contract security company, or a proprietary security organization to respond to security alarm system signals.
- (2) "Armed" means an individual who at any time wears, carries, or possesses a firearm in the performance of professional duties.
- (3) "Armed carrier service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.
- (4) "Armed private investigator" means a private investigator who at any time wears, carries, or possesses a firearm in the performance of the individual's duties.
- (5) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, or carrier service guard and who at any time wears or carries a firearm in the performance of the individual's duties.
- (6) "Armored car service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.
 - (7) "Board" means the board of private security provided for in 2-15-1781.
- (8) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.
- (9) "Contract security company" means any person who undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.
- (10) "Department" means the department of labor and industry provided for in 2-15-1701.
- (11) (a) "Electronic security company" means a person who installs, services, or maintains a security alarm system and who undertakes to hire, employ, and provide alarm response runners and security alarm installers on a contractual basis to another person who does not exercise direction and control over the performance of the services rendered.
- (b) The term does not include a person whose primary business is that of a locksmith and who may also install closed-circuit television cameras and battery-operated door devices.
- (12) (a) "Fire investigator" means a person other than an individual identified in subsection (12)(b) who for any consideration:
 - (i) makes or agrees to make an investigation with reference to:
 - (A) a fire to identify evidence and determine the cause of the fire; or

- (B) accidents involving suspected negligence or arson for criminal or civil action:
- (ii) testifies as an expert witness for investigations identified under this subsection (12); or
- (iii) cooperates with law enforcement agencies in conducting fire investigations and collecting evidence relating to fires.
- (b) The term does not mean an insurance adjuster, an individual designated as the state fire marshal under 2-15-2005, or a member of:
 - (i) a fire department as described in 7-3-1345;
 - (ii) law enforcement; or
 - (iii) an entity organized under Title 7, chapter 33.
- (13)(12) "Firearms course" means the course approved by the board and conducted by a firearms instructor.
- (14)(13) "Firearms instructor" means an individual who has been approved by the board to instruct firearms courses in the use of weapons.
- (15)(14) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes against the United States or any state or territory of the United States.
 - (16)(15) "Licensee" means a person licensed under this chapter.
- (17)(16) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.
- $\frac{(18)}{(17)}$ "Person" means an individual, firm, company, association, organization, partnership, or corporation.
- (19)(18) "Private investigator" means a person other than an insurance adjuster who for any consideration makes or agrees to make any investigation with reference to:
- (a) crimes against the United States or any state or territory of the United States;
- (b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, location, affiliations, associations, transactions, reputation, or character of any person;
 - (c) the location, disposition, or recovery of lost or stolen property;
- (d) the cause or responsibility for *fires*, libels, losses, accidents, or injury to persons or property; or
- (e) gathering evidence to be used before any court, board, officer, or investigating committee.
- (20)(19) "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not

limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property or the direction of the movements of the public in public areas.

(21)(20) "Process server" means a person described in 25-1-1101(1).

(22)(21) "Proprietary security organization" means any person who employs a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

(23)(22) "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is conducted.

(24)(23) (a) "Security alarm installer" means an individual who installs, services, or maintains security alarm systems to detect and signal unauthorized intrusion, movement, break-in, or criminal acts and is employed by an electronic security company.

(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed-circuit television cameras and battery-operated door devices.

(25)(24) (a) "Security alarm system" means an assembly of equipment and devices or a single device or a portion of a system intended to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a location.

(b) The term does not include systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a location.

(26)(25) "Security company" means an electronic security company, a proprietary security organization, or a contract security company.

(27)(26) "Street patrol service" means a person providing patrols by means of foot, vehicle, or other method of transportation using public streets, thoroughfares, or property in the performance of the person's duties and responsibilities.

(28)(27) "Unarmed private investigator" means a private investigator who does not wear, carry, or possess a firearm in the performance of the individual's duties.

(29)(28) "Unarmed private security guard" means an individual who is employed by a contract security company or a proprietary security organization, whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, and who does not wear, carry, or possess a firearm in the performance of those duties."

Section 2. Section 37-60-103, MCA, is amended to read:

"37-60-103. Purpose. The purpose of this chapter is to increase the levels of integrity, competency, and performance of security companies and their employees who are required to be licensed, firearms instructors, fire investigators, private investigators, and process servers to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by security companies and their licensed employees, firearms instructors, fire investigators, private investigators, or process servers."

Section 3. Section 37-60-105, MCA, is amended to read:

- **"37-60-105. Exemptions.** (1) Except as provided in subsection (2), this chapter does not apply to:
- (a) any one person employed singly and exclusively by any one employer in connection with the affairs of that employer only and when there exists an employer-employee relationship and the employee is unarmed, does not wear a uniform, and is guarding inside a structure that at the time is not open to the public;
 - (b) a person:
 - (i) employed singly and exclusively by a retail merchant;
- (ii) performing at least some work for the retail merchant as a private security guard; and
- (iii) who has received training as a private security guard from the employer or at the employer's direction;
- (c) an officer or employee of the United States, of this state, or of a political subdivision of the United States or this state while the officer or employee is engaged in the performance of official duties;
- (d) a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit;
 - (e) an attorney at law while performing duties as an attorney at law;
- (f) a legal intern, paralegal, or legal assistant employed by one or more lawyers, law offices, governmental agencies, or other entities; or
 - (g) a law student who is serving a legal internship;
- (h) a collection agency or finance company licensed to do business under the laws of this state, or an employee of a collection agency or finance company licensed in this state while acting within the scope of employment, while making an investigation incidental to the business of the agency or company, including an investigation of the location of a debtor or the debtor's property when the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent;
- (i) special agents employed by railroad companies, provided that the railroad company notifies the board that its agents are operating in the state;
- (j) insurers and insurance producers and insurance brokers licensed by the state while performing duties in connection with insurance transacted by them;
- (k) individuals engaged in the collection and examination of physical material for forensic purposes;
 - (k)(l) an insurance adjuster, as defined in 37-60-101; or
- (+)(m) an internal investigator or auditor while making an investigation incidental to the business of the agency or company by which the investigator or auditor is singularly and regularly employed; or
- (n) a person who evaluates and advises management on personnel and human resource issues in the workplace.
- (2) (a) Except as provided in subsection (2)(b), persons listed as exempt in subsection (1) are not exempt for the purposes of acting as registered process servers.

(b) Subsection (2)(a) does not apply to attorneys or persons who make 10 or fewer services of process in a calendar year, as provided in 25-1-1101."

Section 4. Section 37-60-301, MCA, is amended to read:

- "37-60-301. License required process server registration required. (1) (a) Except as provided in 37-60-105, it is unlawful for any person to act as or perform the duties, as defined in 37-60-101, of a contract security company, a proprietary security organization, an electronic security company, a branch office, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard without having first obtained a license from the board.
- (b) Except as provided in 25-1-1101(2), it is unlawful for any person to act as or perform the duties of a process server for more than 10 services of process in a calendar year without being issued a certificate of registration by the board.
- (2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that the person is licensed as a contract security company, a proprietary security organization, an electronic security company, a branch office, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard.
- (3) A person appointed by the court as a confidential intermediary under 42-6-104 is not required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in 42-1-103, without meeting the requirements of 42-6-104.
- (4) A person who knowingly engages an unlicensed contract security company, proprietary security organization, electronic security company, branch office, private investigator, fire investigator, security alarm installer, alarm response runner, resident manager, certified firearms instructor, or private security guard is guilty of a misdemeanor punishable under 37-60-411."

Section 5. Section 37-60-304, MCA, is amended to read:

- "37-60-304. Licenses and registration application form and content. (1) An application for a license or for a certificate of registration as a process server must be submitted to the department and accompanied by the application fee set by the board.
 - (2) An application must be made under oath and must include:
 - (a) the full name and address of the applicant;
 - (b) the name under which the applicant intends to do business;
- (c) a statement as to the general nature of the business in which the applicant intends to engage;
- (d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, an electronic security company, a branch office, a certified firearms instructor, a private investigator, a fire investigator, a security alarm installer, an alarm response runner, a resident manager, or a private security guard or registered as a process server;
- (e) except for an applicant pursuant to 37-60-303(7)(a), one recent photograph of the applicant, of a type prescribed by the department, and one classifiable set of the applicant's fingerprints;

- (f) a statement of the applicant's age and experience qualifications, except for an applicant pursuant to 37-60-303(7)(a); and
- (g) other information, evidence, statements, or documents as may be prescribed by the rules of the board.
 - (3) The board shall verify the statements in the application.
- (4) The submittal of fingerprints is a prerequisite to the issuance of a license or certificate of registration to an applicant, other than an applicant under 37-60-303(7)(a), by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation."

Approved April 9, 2009

CHAPTER NO. 195

[HB 365]

AN ACT PROVIDING FOR PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY; ALLOWING A WAIVER OF HEALTH MAINTENANCE ORGANIZATION REQUIREMENTS; CLARIFYING THAT PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY ARE NOT MEDICAID MANAGED CARE NETWORKS; AMENDING SECTIONS 33-31-102, 33-31-201, AND 53-6-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-31-102, MCA, is amended to read:

"33-31-102. **Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Affiliation period" means a period that, under the terms of the health insurance coverage offered by a health maintenance organization, must expire before the health insurance coverage becomes effective.
 - (2) "Basic health care services" means:
 - (a) consultative, diagnostic, therapeutic, and referral services by a provider;
 - (b) inpatient hospital and provider care;
 - (c) outpatient medical services;
 - (d) medical treatment and referral services;
- (e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);
 - (f) care and treatment of mental illness, alcoholism, and drug addiction;
 - (g) diagnostic laboratory and diagnostic and therapeutic radiologic services;
 - (h) preventive health services, including:
 - (i) immunizations;
 - (ii) well-child care from birth;
 - (iii) periodic health evaluations for adults;
 - (iv) voluntary family planning services;
 - (v) infertility services; and
- (vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction;

- (i) minimum mammography examination, as defined in 33-22-132;
- (j) outpatient self-management training and education for the treatment of diabetes along with certain diabetic equipment and supplies as provided in 33-22-129; and
- (k) treatment and medical foods for inborn errors of metabolism. "Medical foods" and "treatment" have the meanings provided for in 33-22-131.
- (3) "Commissioner" means the commissioner of insurance of the state of Montana.
 - (4) "Dependent" has the meaning provided in 33-22-140.
 - (5) "Enrollee" means a person:
 - (a) who enrolls in or contracts with a health maintenance organization;
- (b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or
- (c) on whose behalf the health maintenance organization contracts to receive health care services.
- (6) "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.
 - (7) "Health care services" means:
 - (a) the services included in furnishing medical or dental care to a person;
 - (b) the services included in hospitalizing a person;
- (c) the services incident to furnishing medical or dental care or hospitalization; or
- (d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.
- (8) "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.
- (9) (a) "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers. This subsection does not limit methods of provider payments made by health maintenance organizations.
- (b) The term does not apply to a PACE organization that has received a waiver pursuant to 33-31-201.
- (10) "Insurance producer" means an individual, partnership, or corporation appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.
- (11) "PACE organization" means an organization, as defined in 42 CFR 460.6, that is authorized by the centers for medicare and medicaid services and the department of public health and human services to operate a program of all-inclusive care for the elderly.
 - (11)(12) "Person" means:
 - (a) an individual;
 - (b) a group of individuals;
 - (c) an insurer, as defined in 33-1-201;

- (d) a health service corporation, as defined in 33-30-101;
- (e) a corporation, partnership, facility, association, or trust; or
- (f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.
- (12)(13) "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.
- (13)(14) "Point-of-service option" means a delivery system that permits an enrollee of a health maintenance organization to receive health care services from a provider who is, under the terms of the enrollee's contract for health care services with the health maintenance organization, not on the provider panel of the health maintenance organization.
- (14)(15) "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, or advanced practice registered nurse, as specifically listed in 37-8-202, who treats any illness or injury within the scope and limitations of the provider's practice or any other person who is licensed or otherwise authorized in this state to furnish health care services.
- (15)(16) "Provider panel" means those providers with whom a health maintenance organization contracts to provide health care services to the health maintenance organization's enrollees.
- (16)(17) "Purchaser" means the individual, employer, or other entity, but not the individual certificate holder in the case of group insurance, that enters into a health care services agreement.
- (17)(18) "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent."
 - **Section 2.** Section 33-31-201, MCA, is amended to read:
- "33-31-201. Establishment of health maintenance organizations waiver. (1) Notwithstanding any law of this state to the contrary, a person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. A person may not establish or operate a health maintenance organization in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner. A foreign person may qualify for a certificate of authority if it first obtains from the secretary of state a certificate of authority to transact business in this state as a foreign corporation under 35-1-1028.
- (2) Each health maintenance organization operating in this state as of October 1, 1987, shall submit an application for a certificate of authority under subsection (3) within 30 days after the effective date of rules adopted by the commissioner as provided in 33-31-103. Each such applicant may continue to operate in this state until the commissioner acts upon the application. If an application is denied under 33-31-202, the applicant must be treated as a health maintenance organization whose certificate of authority has been revoked.
- (3) Each application of a health maintenance organization, whether separately licensed or not, for a certificate of authority must:
 - (a) be verified by an officer or authorized representative of the applicant;

- (b) be in a form prescribed by the commissioner;
- (c) contain:
- (i) the applicant's name;
- (ii) the location of the applicant's home office or principal office in the United States (if a foreign person);
 - (iii) the date of organization or incorporation;
- (iv) the form of organization, (including whether the providers affiliated with the health maintenance organization will be salaried employees or group or individual contractors);
 - (v) the state or country of domicile; and
- (vi) any additional information the commissioner may reasonably require; and
- (d) set forth the following information or be accompanied by the following documents, as applicable:
- (i) a copy of the applicant's organizational documents, such as its corporate charters or articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto to those documents, certified by the public officer with whom the originals were filed in the state or country of domicile:
- (ii) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the applicant's internal affairs, certified by its secretary or other officer having custody thereof of the document;
- (iii) a list of the names, addresses, and official positions of the persons responsible for the conduct of the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee; the principal officers in the case of a corporation; and the partners or members in the case of a partnership or association;
 - (iv) a copy of any contract made or to be made between:
 - (A) any provider and the applicant; or
- (B) any person listed in subsection (3)(d)(iii) and the applicant. The applicant may file a list of providers executing a standard contract and a copy of the contract instead of copies of each executed contract.
- (v) the extent to which any of the following will be included in provider contracts and the form of any provisions that:
- (A) limit a provider's ability to seek reimbursement for basic health care services or health care services from an enrollee;
- (B) permit or require a provider to assume a financial risk in the health maintenance organization, including any provisions for assessing the provider, adjusting capitation or fee-for-service rates, or sharing in the earnings or losses; and
 - (C) govern amending or terminating an agreement with a provider;
- (vi) a financial statement showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent certified financial statement satisfies this requirement unless the commissioner

directs that additional or more recent financial information is required for the proper administration of this chapter.

- (vii) a description of the proposed method of marketing, a financial plan that includes a projection of operating results anticipated until the organization has had net income for at least 1 year, and a statement as to the sources of working capital as well as any other source of funding;
- (viii) a power of attorney executed by the applicant, on a form prescribed by the commissioner, appointing the commissioner, his the commissioner's successors in office, and his the commissioner's authorized deputies as the applicant's attorney to receive service of legal process issued against it in this state;
- (ix) a statement reasonably describing the geographic service area or areas to be served, by county, including:
- (A) a chart showing the number of primary and specialty care providers, with locations and service areas by county;
- (B) the method of handling emergency care, with the location of each emergency care facility; and
 - (C) the method of handling out-of-area services;
- (x) a description of the way in which the health maintenance organization provides services to enrollees in each geographic service area, including the extent to which a provider under contract with the health maintenance organization provides primary care to those enrollees;
- (xi) a description of the complaint procedures to be used as required under 33-31-303;
- (xii) a description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under 33-31-222;
- (xiii) a summary of the way in which administrative services will be provided, including the size and qualifications of the administrative staff and the projected cost of administration in relation to premium income. If the health maintenance organization delegates management authority for a major corporate function to a person outside the organization, the health maintenance organization shall include a copy of the contract in its application for a certificate of authority. Contracts for delegated management authority must be filed with the commissioner in accordance with the filing provisions of 33-31-301(2); however However, nothing in this subsection deprives the health maintenance organization of its right to confidentiality of any proprietary information, and the commissioner may not disclose that proprietary information to any other person. All contracts must include:
 - (A) the services to be provided;
 - (B) the standards of performance for the manager;
- (C) the method of payment, including any provisions for the administrator to participate in the profits or losses of the plan;
 - (D) the duration of the contract; and
 - (E) any provisions for modifying, terminating, or renewing the contract.
- (xiv) a summary of all financial guaranties by providers, sponsors, affiliates, or parents within a holding company system or any other guaranties that are intended to ensure the financial success of the plan, including hold harmless

agreements by providers, insolvency insurance, reinsurance, or other guaranties;

- (xv) a summary of benefits to be offered enrollees, including any limitations and exclusions and the renewability of all contracts to be written;
 - (xvi) evidence that it can meet the requirement of 33-31-216(10); and
- (xvii) any other information that the commissioner may reasonably require to make the determinations required in 33-31-202.
- (4) Each health maintenance organization shall file each substantial change, alteration, or amendment to the information submitted under subsection (3) with the commissioner at least 30 days prior to its effective date, including changes in articles of incorporation and bylaws, organization type, geographic service area, provider contracts, provider availability, plan administration, financial projections and guaranties, and any other change that might affect the financial solvency of the plan. The commissioner may, after notice and hearing, disapprove any proposed change, alteration, or amendment to the business plan. The commissioner may make reasonable rules exempting from the filing requirements of this subsection those items he considers unnecessary.
- (5) An applicant or a health maintenance organization holding a certificate of authority shall file with the commissioner all contracts of reinsurance and any modifications thereto to the contracts. An agreement between a health maintenance organization and an insurer is subject to Title 33, chapter 2, part 12. A reinsurance agreement must remain in full force and effect for at least 90 days following written notice of cancellation by either party by certified mail to the commissioner.
- (6) Each health maintenance organization shall maintain, at its administrative office, and make available to the commissioner upon request executed copies of all provider contracts.
- (7) The commissioner may make reasonable rules exempting an insurer or health service corporation operating a health maintenance organization as a plan from the filing requirements of this section if information requested in the application has been submitted to the commissioner under other laws and rules administered by the commissioner.
- (8) (a) The commissioner may waive the requirements of this section for a PACE organization that has entered into a PACE program agreement pursuant to 42 U.S.C. 1396u-4.
- (b) A request for waiver must be submitted in a form prescribed by the commissioner. The waiver application must be filed and approved annually. The annual renewal process must be completed by June 30 of each year.
- (c) The factors that the commissioner may take into account when granting a waiver include but are not limited to the financial condition of the PACE organization, any consumer complaints against the PACE organization, and the length of time the PACE organization has been in business.
- (d) The PACE organization shall submit an audited financial statement for the organization as a whole and a financial statement for the PACE program specifically with the initial waiver application and annually on June 30. The commissioner may request additional information necessary to evaluate the waiver request.

- (e) The waiver automatically expires if the certification of the PACE organization by the centers for medicare and medicaid services or the department of public health and human services expires or is terminated.
- (f) The PACE organization shall notify the commissioner within 30 days if the centers for medicare or medicaid services takes adverse action or issues any warnings regarding the continuation of the PACE organization."

Section 3. Section 53-6-702, MCA, is amended to read:

- **"53-6-702. Definitions.** As used in this part, the following definitions apply:
- (1) "Department" means the department of public health and human services.
- (2) "Health maintenance organization" means a health maintenance organization as defined in 33-31-102.
- (3) (a) "Managed care community network" or "network" means an entity, other than a health maintenance organization, that provides or arranges for comprehensive physical or mental health care services under a contract with the department, that is reimbursed by a capitated rate or a fixed monetary amount for a specified time period with a risk of financial loss or a financial incentive to the entity, and that:
- (i) contracts for an estimated annual value of \$1 million or more of state and federal medicaid funds; or
 - (ii) operates statewide or covers 20% or more of the medicaid population.
- (b) The term does not include a provider of health care services under a contract with the department on a fee-for-service basis or a PACE organization, as defined in 42 CFR 460.6, that has received a waiver under 33-31-201.
- (4) "Managed health care entity" or "entity" means a health maintenance organization or a managed care community network.
- (5) "Program" means an element of the integrated health care system created by this part."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 9, 2009

CHAPTER NO. 196

[HB 397]

AN ACT CREATING A REGISTRY FOR VOLUNTARY REGISTRATION BY CLOSE RELATIVES FOR PURPOSES OF NOTIFYING THOSE RELATIVES WHEN A CHILD THAT IS RELATED HAS BEEN REMOVED FROM THE CHILD'S HOME BY THE STATE; AND AMENDING SECTION 41-3-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-101, MCA, is amended to read:

- **"41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:
- (a) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for the children's care and protection;

- (b) achieve these purposes in a family environment and preserve the unity and welfare of the family whenever possible;
- (c) ensure that there is no forced removal of a child from the family based solely on an allegation of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of harm;
- (d) recognize that a child is entitled to assert the child's constitutional rights;
- (e) ensure that all children have a right to a healthy and safe childhood in a permanent placement; and
- (f) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.
- (2) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.
- (3) In implementing this chapter, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child, place the child with the child's noncustodial birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, when placement with the extended family is approved by the department, prior to placing the child in an alternative protective or residential facility. Prior to approving a placement, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.
- (4) (a) The department shall create a registry for voluntary registration by close relatives of a child for purposes of notifying those relatives when a child that is related has been removed from the child's home pursuant to this chapter.
- (b) The registry must contain the names of the child and the child's parents and may contain the names of the child's grandparents, aunts, uncles, adult brothers, and adult sisters and must contain the contact information for the child and parents and any of the relatives whose names appear in the registry.
- (5) The department shall consult the registry and notify the relatives on the registry on the first working day after placing the child in accordance with 41-3-301.
- (6) The department may charge a fee commensurate with the cost of operating the registry. The fee may be charged only to those persons whose names are voluntarily entered in the registry.
- (4)(7) In implementing the policy of this section, the child's health and safety are of paramount concern."

Approved April 9, 2009

CHAPTER NO. 197

[HB 400]

AN ACT REVISING THE ALCOHOL CONTENT OF BEER; AND AMENDING SECTIONS 16-1-102, 16-1-106, AND 16-3-244, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-102, MCA, is amended to read:

"16-1-102. Policy as to sale of beer. It is hereby declared to be the policy of the state of Montana that the manufacture, transportation, distribution, sale, and possession of "beer", as that term is defined in this code, and which contains not more than 7% of alcohol by weight, shall must be controlled and regulated as provided under this code. Beer Unless defined as beer in 16-1-106(5)(b), beer, porter, ale, stout, and malt liquors containing more than 7% of 8.75% alcohol by weight volume and which that are defined as "liquor" shall be are subject to the regulations and controls provided for liquor."

Section 2. Section 16-1-106, MCA, is amended to read:

- **"16-1-106. Definitions.** As used in this code, the following definitions apply:
- (1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.
- (2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises consumption.
- (3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.
- (4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.
 - (5) "Beer" means:
- (a) a malt beverage containing not more than 7% of 8.75% alcohol by weight volume; or
 - (b) an alcoholic beverage containing not more than 14% alcohol by volume:
- (i) that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted cereal grain; and
- (ii) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.
- (6) "Beer importer" means a person other than a brewer who imports malt beverages.
 - (7) "Brewer" means a person who produces malt beverages.
 - (8) "Community" means:
- (a) in an incorporated city or town, the area within the incorporated city or town boundaries:
- (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and
- (c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.
- (9) "Department" means the department of revenue, unless otherwise specified, and includes the department of justice with respect to receiving and processing, but not granting or denying, an application under a contract entered into under 16-1-302.

- (10) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% alcohol by volume and not more than 6.9% alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.
- (11) "Immediate family" means a spouse, dependent children, or dependent parents.
- (12) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.
 - (13) "Liquor" means an alcoholic beverage except beer and table wine.
- (14) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.
- (15) "Package" means a container or receptacle used for holding an alcoholic beverage.
- (16) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code.
- (17) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.
- (18) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.
- (19) "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.
- (20) "Rules" means rules adopted by the department or the department of justice pursuant to this code.
- (21) "Special event", as it relates to an application for a beer and wine special permit, means a short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.
- (22) "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.
- (23) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.
- (24) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.
- (25) "Table wine" means wine that contains not more than 16% alcohol by volume and includes cider.

- (26) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.
- (27) "Warehouse" means a building or structure located in Montana that is owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.
- (28) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 3. Section 16-3-244, MCA, is amended to read:

"16-3-244. Beer advertising limitations. It shall be is lawful to advertise beer containing not more than 7% of alcohol by weight, as defined and regulated, subject to the restrictions on brewers and beer importers contained in 16-3-241 of this code and subject to the following restrictions on retailers. No A retail licensee shall may not display or permit to be displayed on the exterior portion or surface of such the retailer's place of business or on the exterior portion or surface of any building of which said the place of business is a part or on any premises adjacent thereto to the place of business, whether any of such the premises be are owned or leased by the retailer, any sign, poster, or advertisement bearing the name, brand name, trade name, trademark, or other designation indicating the manufacturer, brewer, beer importer, wholesaler, or place of manufacture of any beer whatsoever, unless it is on a marquee, board, or other space used for temporary advertisements and is not displayed for more than 10 days per display period."

Approved April 9, 2009

CHAPTER NO. 198

[HB 407]

AN ACT REVISING THE LAW RELATING TO SEXUAL ABUSE OF CHILDREN; PROVIDING A REPORTING REQUIREMENT FOR PEACE OFFICERS; AND AMENDING SECTION 45-5-625, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-625, MCA, is amended to read:

- **"45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of children if the person:
- (a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;
- (b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

- (c) knowingly, by any means of communication, including electronic communication, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;
- (d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;
- (e) knowingly possesses any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;
- (f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or
- (g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;
- (h) knowingly travels within, from, or to this state with the intention of meeting a child under 16 years of age or a person the offender believes to be a child under 16 years of age in order to engage in sexual conduct, actual or simulated: or
- (i) knowingly coerces, entices, persuades, arranges for, or facilitates a child under 16 years of age or a person the offender believes to be a child under 16 years of age to travel within, from, or to this state with the intention of engaging in sexual conduct, actual or simulated.
- (2) (a) Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than \$10,000.
- (b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$10,000.
- (c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.
- (3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sexual offender information or treatment course or program conducted or approved by the department of corrections.
- (4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:
- (i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

- (ii) may be fined an amount not to exceed \$50,000; and
- (iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.
- (b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.
 - (5) As used in this section, the following definitions apply:
- (a) "Electronic communication" means a sign, signal, writing, image, sound, data, or intelligence of any nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.
 - (b) "Sexual conduct" means:
 - (i) actual or simulated:
 - (A) sexual intercourse, whether between persons of the same or opposite sex;
- (B) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;
 - (C) bestiality;
 - (D) masturbation:
 - (E) sadomasochistic abuse;
- (F) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person; or
- (G) defecation or urination for the purpose of the sexual stimulation of the viewer; or
- (ii) depiction of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate, harass, or degrade the child or to arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.
- (c) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.
 - (d) "Visual medium" means:
- (i) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or
- (ii) any disk, diskette, or other physical media that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method."
- Section 2. Sexual abuse of children report to national center for missing and exploited children. A peace officer who, pursuant to a criminal investigation, recovers images or movies of a child in an exhibition of sexual conduct, actual or simulated, or images or movies of a child engaging in sexual conduct, actual or simulated, shall:
- (1) provide the images or movies to the law enforcement contact at the child victim identification program at the national center for missing and exploited children;

- (2) request the law enforcement contact at the child victim identification program to identify any images or movies recovered that contain an identified victim of child sexual abuse as defined by 45-5-625; and
- (3) provide case information to the child victim identification program in any case in which the peace officer identifies a previously unidentified victim of child sexual abuse.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 46, chapter 4, part 3, and the provisions of Title 46, chapter 4, part 3, apply to [section 2].

Approved April 9, 2009

CHAPTER NO. 199

[HB 530]

AN ACT REVISING THE DEFINITION OF "SOCIAL WORK" TO CLARIFY THAT THE TERM INCLUDES THE USE OF DIAGNOSES AND ADMINISTERING, EVALUATING, AND ASSESSING TESTS; AND AMENDING SECTION 37-22-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-22-102, MCA, is amended to read:

"37-22-102. Definitions. As used in this chapter:

- (1) "Board" means the board of social work examiners and professional counselors established under 2-15-1744.
 - (2) "Department" means the department of labor and industry.
 - (3) "Licensee" means a person licensed under this chapter.
- (4) "Psychotherapy" means the use of psychosocial methods within a professional relationship to assist a person to achieve a better psychosocial adaptation and to modify internal and external conditions that affect individuals, groups, or families in respect to behavior, emotions, and thinking concerning their interpersonal processes.
- (5) "Social work" means the professional practice directed toward helping people achieve more adequate, satisfying, and productive social adjustments. The practice of social work involves special knowledge of social resources, human capabilities, and the roles that individual motivation and social influences play in determining behavior and involves diagnoses and the application of social work techniques, including:
- (a) counseling and using psychotherapy with individuals, families, or groups;
 - (b) providing information and referral services;
 - (c) providing, arranging, or supervising the provision of social services;
- (d) explaining and interpreting the psychosocial aspects in the situations of individuals, families, or groups;
- (e) helping communities to organize to provide or improve social and health services; and
 - (f) research or teaching related to social work; and

(g) administering, evaluating, and assessing tests if the licensee is qualified to administer the test and make the evaluation and assessment."

Approved April 9, 2009

CHAPTER NO. 200

[HB 593]

AN ACT PROVIDING REQUIREMENTS FOR MINE AND SMELTER WASTE REMEDIATION PROJECTS; PROVIDING PENALTIES FOR FAILURE TO COMPLY WITH THE REQUIREMENTS; AMENDING SECTION 75-1-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 7], unless the context requires otherwise, the following definitions apply:

- (1) "Department" means the department of environmental quality provided for in 2-15-3501.
- (2) "Mine waste" means soil, rock, and other earthen materials excavated from a mine and slimes, tailings, dusts, sludges, or other waste products from the crushing, cleaning, milling, or beneficiation of ores or other mineral-bearing materials, including material that may have migrated from its original place of deposition by erosion or human transit, and that contain hazardous or deleterious substances.
- (3) "Smelter waste" means cinders, clinker, slag, and other waste products from the reduction of ores by any means, including material that may have migrated from its original place of deposition by erosion, and that contain hazardous or deleterious substances.
- **Section 2. Remediation schedule.** Except as provided in [section 7], a person who undertakes a remedial action for the remediation of mine or smelter waste on property owned by someone other than the owner of the waste shall complete the remedial action in accordance with a schedule negotiated between the person completing the remedial action and the property owner and approved by the department.
- **Section 3. Remediation location.** (1) Except as provided in [section 7] and subsection (2) of this section, as part of a remedial action on property owned by another, mine and smelter waste may not be placed or remediated in place at a location within 200 feet of any mine excavation or opening.
- (2) (a) The requirements of subsection (1) may be waived when, after review of an application by a person undertaking a remedial action, the department finds that the remedial action plan complies with Title 75, chapters 2, 5, and 10, and applicable rules.
- (b) The person conducting the remedial action shall reimburse the department for costs incurred by the department under this section.
- (c) Reimbursements must be deposited in the environmental rehabilitation and response account provided for in 75-1-110.
- (3) The person conducting the remedial action must have the landowner's consent before taking action under this section.
- (4) This section does not apply to facilities containing mine or smelter waste that are permitted under Title 82, chapter 4, or that were constructed prior to January 1, 2007.

- **Section 4. Minimum reclamation standards.** (1) Except as provided in [section 7], mine and smelter waste repositories constructed by persons undertaking a remedial action on property owned by another must be capped with a minimum of 24 inches of cover material, including a minimum of 6 inches of topsoil, and revegetated as provided in subsection (3).
- (2) Except as agreed to by the person undertaking the remedial action and the property owner or as provided in [section 7], locations where mine or smelter waste has been removed by a person undertaking a remedial action on property owned by someone other than the waste owner must be capped by a minimum of 6 inches of topsoil and revegetated as provided in subsection (3).
 - (3) Except as provided in [section 7]:
- (a) mine and smelter waste repositories or lands where mine or smelter waste has been removed must be revegetated using plant species native to the area; and
- (b) revegetated areas must achieve a vegetative cover equal to 85% of the vegetation cover of adjacent lands that were not previously disturbed within 3 years of the initial seeding.
- **Section 5. Remediation plan.** (1) A person undertaking a remediation action for mine or smelter waste on property owned by someone other than the waste owner shall prepare and submit to the property owner a detailed, written plan describing the waste to be remediated and remedial actions to take place on the property.
- (2) The property owner has a minimum of 30 days to review the plan. If the remediation is completed pursuant to 75-10-712 or 75-10-746, the review is not required.
- **Section 6.** Civil penalty. (1) A district court may assess a civil penalty upon a person who violates [sections 1 through 5] of not more than \$1,000 per day.
- (2) An action under this section is not a bar to enforcement by injunction or other appropriate civil remedy.
- (3) The penalty provided for in subsection (1) is recoverable in an action brought by the property owner and is payable to the property owner. The action must be filed in the district court of the county where the violation occurred.
- Section 7. Mine and smelter waste remediation compliance with hazardous waste cleanup orders. [Sections 1 through 6] do not apply to reclamation of an abandoned mine site pursuant to 82-4-371 or to the extent that the actions irreconcilably conflict with an order or plan approval issued by the department pursuant to Title 75, chapter 10, part 7, a corrective action order or permit issued pursuant to Title 75, chapter 10, part 4, or a permit issued for reclamation of a mine site pursuant to Title 82, chapter 4, part 3.
 - Section 8. Section 75-1-110, MCA, is amended to read:
- **"75-1-110.** Environmental rehabilitation and response account. (1) There is an environmental rehabilitation and response account in the state special revenue fund provided for in 17-2-102.
 - (2) There must be deposited in the account:
- (a) fine and penalty money received pursuant to 75-10-1223, 82-4-311, and 82-4-424 and other funds or contributions designated for deposit to the account;
 - (b) reimbursements received pursuant to [section 3];

- (b)(c) unclaimed or excess reclamation bond money received pursuant to 82-4-241, 82-4-311, 82-4-424, and 82-4-426; and
 - $\frac{(e)}{(d)}$ interest earned on the account.
- (3) Money in the account is available to the department of environmental quality by appropriation and must be used to pay for:
- (a) reclamation and revegetation of land affected by mining activities, research pertaining to the reclamation and revegetation of land, and the rehabilitation of water affected by mining activities;
- (b) reclamation and revegetation of unreclaimed mine lands for which the department may not require reclamation by, or obtain costs of reclamation from, a legally responsible party;
- (c) remediation of sites containing hazardous wastes or hazardous substances for which the department may not recover costs from a legally responsible party; or
- (d) response to an imminent threat of substantial harm to the environment, to public health, or to public safety for which no funding or insufficient funding is available pursuant to 75-1-1101.
- (4) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account until spent or appropriated by the legislature."
- Section 9. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 75, chapter 10, and the provisions of Title 75, chapter 10, apply to [sections 1 through 7].
- Section 10. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 11. Effective date. [This act] is effective on passage and approval. Approved April 9, 2009

CHAPTER NO. 201

[HB 190]

AN ACT REVISING LAWS RELATED TO ACCESS TO STATE WATERS FROM COUNTY ROADS AND BRIDGES; PROVIDING THAT A FENCE ATTACHED TO OR ABUTTING A COUNTY ROAD BRIDGE IS NOT ENCROACHMENT CONSIDERED ANUNDER CIRCUMSTANCES; PROVIDING FOR PUBLIC ACCESS TO SURFACE WATERS FOR RECREATIONAL USE FROM A COUNTY ROAD RIGHT-OF-WAY AND FROM A COUNTY BRIDGE, ITS RIGHT-OF-WAY, AND ITS ABUTMENTS; PROVIDING FOR PUBLIC PASSAGE TO SURFACE WATERS THROUGH COUNTY ROAD AND BRIDGE RIGHTS-OF-WAY WHILE MAINTAINING LIVESTOCK CONTROL OR PROPERTY MANAGEMENT; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO NEGOTIATE WITH AFFECTED LANDOWNERS TO PROVIDE METHODS TO ENSURE PUBLIC PASSAGE TO SURFACE WATERS FOR RECREATIONAL PURPOSES WHILE MAINTAINING LIVESTOCK CONTROL OR PROPERTY MANAGEMENT; PROVIDING FOR PAYMENT OF THE COSTS OF ANY FENCE MODIFICATION NECESSARY TO PROVIDE FOR PUBLIC PASSAGE; AMENDING SECTION 7-14-2134, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature finds that significant controversy has existed related to public access to streams and rivers from county road and bridge rights-of-way; and

WHEREAS, a Montana Attorney General's Opinion in 2000 (48 A.G. Op. 13) held that the use of a county road right-of-way to gain access to streams and rivers is consistent with and reasonably incidental to the public's right to travel on county roads and that the public may gain access to streams and rivers by using the bridge, its right-of-way, and its abutments; and

WHEREAS, during the 2007-08 interim a group of stakeholders met to address the controversy and agreed in principle that a legislative solution was preferable and that past legislative attempts may have failed because they were overly complex; and

WHEREAS, the stakeholders also agreed in principle that any proposed legislation needed to provide:

- (1) that a fence in a county road right-of-way abutting a bridge should not be considered an encroachment:
- (2) that the public may access streams and rivers from a county road or bridge right-of-way, but that the public must stay in the right-of-way to gain access;
- (3) that the legislation neither create any right nor extinguish any right related to county roads established by prescriptive use that exist at the time of passage;
- (4) a process to define the physical characteristics of a fence used for public access in county road and bridge rights-of-way; and
- (5) an approach with broad scope rather than an attempt to resolve a myriad of possible contingencies; and

WHEREAS, the stakeholders determined that each of these provisions was integral to the others and that if any section of the proposed legislation containing the agreed-upon principles was removed, the entire legislation should be void.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-2134, MCA, is amended to read:

- **"7-14-2134. Removal of highway encroachment.** (1) If Except as provided in subsection (4) and as clarified in [sections 2 and 3], if any highway is encroached upon by fence, building, or otherwise, the road supervisor or county surveyor of the district must give notice, orally or in writing, requiring the encroachment to be removed from the highway.
- (2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor or county surveyor must shall immediately remove the same encroachment.
- (3) The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.
- (4) This section does not apply to a fence for livestock control or property management that is in a county road right-of-way and that is attached to or abuts a county road bridge edge, guardrail, or abutment if the fence and bridge appurtenances are not on the roadway, as defined in 61-1-101. Any fence described in this subsection must comply with [section 3]."

Section 2. Access to surface waters by public bridge or county road right-of-way. (1) A person may gain access to surface waters for recreational use by using:

- (a) a public bridge, its right-of-way, and its abutments; and
- (b) a county road right-of-way.
- (2) When accessing surface waters pursuant to subsection (1), a person shall stay within the road or bridge right-of-way. Absent definition in an easement or deed to the contrary, the width of a bridge right-of-way is the same width as the right-of-way of the road to which the bridge is attached.
- (3) The provisions in [sections 1 and 3] and this section related to public access to surface waters for recreational use neither create nor extinguish any right related to county roads established by prescriptive use that exist on [the effective date of this act].
- (4) For purposes of determining liability, a person accessing surface waters for recreational use pursuant to this section is owed no duty by a landowner or an agent or tenant of that landowner other than for an act or omission that constitutes willful or wanton misconduct.
- Section 3. Fencing for livestock control and public passage negotiation costs. (1) At county road bridges for which public access is authorized pursuant to [section 2], each fence attached to or abutting a county road bridge edge, guardrail, or abutment for livestock control or for property management pursuant to 7-14-2134(4) must provide for public passage to surface waters for recreational use pursuant to this section.
- (2) (a) If a dispute arises regarding public passage pursuant to subsection (1), the department, pursuant to the department's policy in 87-1-229 to work with private land managers to resolve and reduce user conflicts, shall negotiate with the affected landowner regarding the characteristics of an access feature of a legal fence for public passage and livestock control or property management. Examples of an access feature of a legal fence that provides public passage and livestock control or property management may include:
 - (i) a stile;
 - (ii) a gate;
 - (iii) a roller;
 - (iv) a walkover;
 - (v) a wooden rail fence that provides for passage; or
- (vi) any other method designed for public passage and livestock control or property management.
- (b) One access feature, as described in subsection (2)(a), on each side of the stream is sufficient. When practicable, one access feature must be located on the downstream bridge edge, guardrail, or abutment. The department may waive these provisions when one access feature is sufficient.
- (c) If the landowner and the department cannot reach agreement within 60 days after the department's initial contact with the landowner for negotiation, the department shall provide the landowner with options for methods to provide public passage while controlling livestock or managing property. If the landowner does not choose one of the method options within 30 days after the options are offered, the department shall choose and then may install one of the method options.

- (3) The department, in cooperation with other interested parties, shall provide the materials, installation, and maintenance of any fence modifications necessary to provide public passage as required by this section.
- **Section 4. Codification instruction.** [Sections 2 and 3] are intended to be codified as an integral part of Title 23, chapter 2, part 3, and the provisions of Title 23, chapter 2, part 3, apply to [sections 2 and 3].
- **Section 5. Nonseverability.** It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

 ${\bf Section~6.~Effective~date.}~[This~act]~is~effective~on~passage~and~approval.$

Approved April 13, 2009

CHAPTER NO. 202

[HB 104]

AN ACT CLARIFYING THAT STATE ACTIVE DUTY PAY AND EXPENSES MUST BE DRAWN ON APPROPRIATED FUNDS; AMENDING SECTION 10-1-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Section 10-1-501, MCA, is amended to read:
- **"10-1-501. Pay for militia.** (1) When the organized militia is ordered into active duty as provided for in Article VI, section 13, of the constitution of this state, warrants for pay and expenses must be drawn upon the general fund of the state funds appropriated by the legislature.
- (2) If national guard members are placed on state duty for special work pursuant to 10-1-505, the members are entitled to pay and allowances as provided in 10-1-502(3). Warrants for pay and allowances for state duty for special work must be drawn upon funds appropriated by the legislature."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2009

CHAPTER NO. 203

[HB 116]

AN ACT CLARIFYING THE PROOF OF INSURANCE REQUIREMENT FOR AN OWNER OR OPERATOR OF A MOTOR VEHICLE; AMENDING SECTION 61-6-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-6-302, MCA, is amended to read:

- **"61-6-302. Proof of compliance.** (1) The registration receipt required by 61-3-322 must contain a statement that unless the vehicle is eligible for an exemption under 61-6-303, it is unlawful to operate the vehicle without a valid motor vehicle liability insurance policy, a certificate of self-insurance, or a posted indemnity bond, as required by 61-6-301.
- (2) Each person owner or operator of a motor vehicle shall carry in a the motor vehicle being operated by the person an insurance card approved by the

department but issued by the insurance carrier to the motor vehicle owner as proof of compliance with 61-6-301. A motor vehicle owner or operator shall exhibit the insurance card upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department. A person commits an offense under this subsection if the person fails to carry the insurance card in a motor vehicle or fails to exhibit the insurance card upon demand of a person specified in this subsection. However, a person charged with violating this subsection may not be convicted if the person produces in court or the office of the arresting officer proof of insurance valid at the time of arrest."

Section 2. Effective date. [This act] is effective on passage and approval. Approved April 15, 2009

CHAPTER NO. 204

[HB 161]

AN ACT RATIFYING THE WATER RIGHTS COMPACT ENTERED INTO BY THE BLACKFEET TRIBE OF THE BLACKFEET INDIAN RESERVATION, THE STATE OF MONTANA, AND THE UNITED STATES OF AMERICA; TRANSFERRING \$4 MILLION FROM THE GENERAL FUND TO THE BLACKFEET TRIBE WATER RIGHTS COMPACT INFRASTRUCTURE ACCOUNT; APPROPRIATING FUNDS FOR WATER-RELATED INFRASTRUCTURE PROJECTS WITHIN THE EXTERIOR BOUNDARIES OF THE BLACKFEET INDIAN RESERVATION; AMENDING SECTION 85-20-1505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, it is the policy of the state to seek negotiated settlements of federal and Indian reserved water rights claims in Montana under Title 85, chapter 2, part 7, MCA; and

WHEREAS, pursuant to this policy, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate the settlement of water rights claims filed by Indian tribes or on their behalf by the United States claiming reserved waters within the state of Montana; and

WHEREAS, the Montana Reserved Water Rights Compact Commission and the Blackfeet Tribe have reached agreement on a water rights compact; and

WHEREAS, a Blackfeet Tribe-Montana water rights compact is essential to provide legal certainty with regard to the water rights of Indian and non-Indian water rights holders; and

WHEREAS, implementation of the compact will require state and federal cost sharing; and

WHEREAS, the State of Montana has expressed a commitment to share the costs of the construction, renovation, and upgrade of infrastructure relating to Four Horns Reservoir in the amount of \$20 million; and

WHEREAS, state law requires legislative ratification of any compact entered into pursuant to 85-2-702, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Water rights compact entered into by the Blackfeet Tribe of the Blackfeet Indian Reservation, the State of Montana, and the United States ratified. The compact entered into by the Blackfeet Tribe, the State of Montana and the United States of America to settle for all time any and

all claims to federal reserved water rights for the Blackfeet Tribe within the boundaries of the Blackfeet Indian Reservation within the State of Montana and filed with the secretary of state of the State of Montana under the provisions of 85-2-703 on [date of filing] is ratified. The compact is as follows:

ARTICLE I - RECITALS

WHEREAS, pursuant to the Treaty of 1855, 11 Stat. 657, a Reservation was established in Montana for the Blackfeet Tribe; and

WHEREAS, pursuant to said Treaty, the Blackfeet Tribe claims reserved water rights to fulfill the purposes of the Treaty and the Reservation; and

WHEREAS, in 1979, the United States, on its own behalf and on behalf of the Blackfeet Tribe, its members and Allottees brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribe's water rights claims, see United States v. Aageson, No. CIV-79-21-GF (filed April 5, 1979); and

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America in trust for Indian tribes; see "the McCarran Amendment," 43 U.S.C. 666(a)(1) (1952); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes Blackfeet tribal water rights; and

WHEREAS, the United States has filed claims on its own behalf and on behalf of the Blackfeet Tribe, its members and Allottees in the general stream adjudication initiated by the State of Montana, see In the Matter of the Adjudication of the Existing and Reserved Rights to the Use of Water, Both Surface and Underground, of the Blackfeet Tribe of the Blackfeet Reservation within the State of Montana, Civil No. WC-91-1; and

WHEREAS, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate settlement of water rights claims filed by Indian tribes and/or on their behalf by the United States claiming reserved waters within the State of Montana; and

WHEREAS, the federal district court litigation was stayed in 1983 pending the outcome of Montana State court water adjudication proceedings, see Northern Cheyenne v. Adsit, 721 F.2d 1187 (9th Cir.,1983); and

WHEREAS, the adjudication of Blackfeet tribal water rights in the State court proceeding has been stayed while negotiations are proceeding to conclude a compact resolving all water rights claims of the Blackfeet Tribe within the Reservation; and

WHEREAS, the Blackfeet Tribal Business Council, or its duly designated representatives, have authority to negotiate this Compact pursuant to Article VI, Section 1(a) of the Constitution and By-Laws for the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana, as amended; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. sections 516-17; and

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this

Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. 1457, inter alia; and

WHEREAS, the Blackfeet Tribe of the Blackfeet Indian Reservation, the State of Montana, and the United States agree that the Tribal Water Right described in this Compact is in satisfaction of the water rights claims of the Tribe, its members and Allottees, and of the United States on behalf of the Tribe and its members and Allottees within the Blackfeet Indian Reservation; and

WHEREAS, the Parties agree that it is in the best interest of all Parties that the water rights claims of the Blackfeet Tribe be settled through agreement between and among the Tribe, the State of Montana, and the United States.

NOW THEREFORE, the Parties agree to enter into this Compact for the purpose of settling the federally reserved water rights claims of the Blackfeet Tribe, its members, and Allottees of the Blackfeet Indian Reservation and of the United States on behalf of the Tribe, its members and Allottees within the Blackfeet Indian Reservation.

ARTICLE II- DEFINITIONS

The following definitions shall apply for purposes of this Compact:

- (1) "Acre-foot" or "Acre-feet" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.
- (2) "Acre-Feet per Year" or "AFY" means an annual quantity of water measured in acre-feet over a period of a calendar year.
- (3) "Allottee" or "Allottees" means any individual or individuals who own or hold a trust allotment or interest in a trust allotment on the Reservation under the authority of the General Allotment Act (24 Stat. 388) and the Blackfeet Allotment Acts (34 Stat. 1035 and 41 Stat. 3), and subject to the terms and conditions of those Acts.
 - (4) "Annual" means during one calendar year.
 - (5) "Available St. Mary River Water" means:
- (a) water from the St. Mary River allocated to the United States under the Boundary Waters Treaty minus that quantity of water required for the Milk River Project Water Right; and/or
- (b) water otherwise part of the Milk River Project Water Right but made available to the Tribe by the United States without any net reduction to the legal entitlements to water of water users within entities with contracts for water from the Milk River Project Water Right, as those legal entitlements may be determined initially by the Secretary or subsequently by a court of competent jurisdiction.
- (6) "Badger Creek Drainage" means Badger Creek and its tributaries within the Reservation within Basin 41M, as shown in Appendix 2.
- (7) "Basin 40F" means the hydrologic Basin 40F, including the Milk River and its tributaries, as shown in Appendix 2.
- (8) "Basin 41L" means the hydrologic Basin 41L, including Cut Bank Creek and its tributaries, as shown in Appendix 2.
- (9) "Basin 41M" means the hydrologic Basin 41M, including Birch Creek, Badger Creek, Two Medicine River and their respective tributaries, as shown in Appendix 2.

- (10) "Basin 40T" means the hydrologic Basin 40T, including the St. Mary River and its tributaries, as shown in Appendix 2.
- (11) "Birch Creek" means the mainstem of the southern boundary stream of the Reservation from the southwestern Reservation boundary to the confluence of the Two Medicine River, as shown in Appendix 2.
- (12) "Birch Creek Drainage" means Birch Creek and its tributaries within the Reservation within Basin 41M, as shown in Appendix 2.
- (13) "Birch Creek Management Plan" means the management plan entered into by the Tribe, the State, the Bureau of Indian Affairs and the Pondera County Canal and Reservoir Company, attached hereto as Appendix 1, and any amendments thereto. Such amendments are pursuant to, and shall not be deemed a modification or amendment of, this Compact.
- (14) "Blackfeet Irrigation Project" means the irrigation project authorized by federal law for development on the Reservation in Basins 41L and 41M, and currently administered by the United States Department of the Interior, Bureau of Indian Affairs.
- (15) "Blackfeet Water Resources Department" or "BWRD" means the Blackfeet Water Resources Department, or any successor agency.
- (16) "Board" means the Blackfeet-Montana Compact Board established by Section J.1 of Article IV of this Compact.
- (17) "Boundary Waters Treaty" means the "Treaty Between the United States and Great Britain Relating to Boundary Waters, and Questions Arising Between the United States and Canada," entered into on January 11, 1909, and ratified by the Senate on May 13, 1910 (36 Stat. 2448).
- (18) "Call" means the right of the holder of a water right with a senior priority and an immediate need for a recognized use to require a holder of a water right with a junior priority to refrain from diverting water otherwise physically available.
 - (19) "Cfs" means cubic feet per second.
- (20) "Change in Use" means a change in the point of diversion, the place of use, the purpose of use, the period of use or the place or means of storage, including for Lease.
- (21) "Compact" means this water rights settlement entered into by the Blackfeet Tribe, the State and the United States.
- (22) "Cut Bank Creek Drainage" means Cut Bank Creek and its tributaries within the Reservation within Basin 41L, as shown in Appendix 2.
- (23) "Direct Use" means diversion of water from the Natural Flow of a source to be used for a designated purpose without intermediate storage.
- (24) "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.
- (25) "Effective Date" means the date on which the Compact is finally approved by the Tribe, by the Montana legislature and by the Congress of the United States, whichever date is latest.
- (26) "Excepted Rights" means any right excepted from the permitting requirements of State law to appropriate Stock Water for impoundments or pits with a priority date after the Effective Date of this Compact, any right exempt from the permitting requirements of State law to appropriate Ground Water with a priority date after the Effective Date of this Compact, temporary

emergency appropriations made after the Effective Date of this Compact and as provided in 85-2-113, MCA, and those small Stock Water and Ground Water rights that are developed free from pre-development review, and those temporary emergency uses to protect lives or property, under tribal law, as each may be applicable.

- (27) "Existing Uses" means, as applied to the Tribal Water Right, uses both existing and that historically existed, from both Natural Flow and Ground Water, including irrigation use on all assessable and temporarily non-assessable lands within the Blackfeet Irrigation Project, as of the date the ratification of the Compact by the Montana legislature becomes effective. The following shall be considered Existing Uses and not New Developments:
- (a) water made available by the replacement, repair or rehabilitation of storage facilities existing as of the Effective Date of the Compact to their originally designed capacity;
- (b) water made available by the rehabilitation, betterment, enlargement, improvement and/or construction of facilities of the Badger-Fisher Irrigation Unit of the Bureau of Indian Affairs' Blackfeet Irrigation Project and other related facilities, specifically:
- (i) rehabilitation and betterment of the Four Horns Feeder Canal system up to at least 300 cfs in capacity;
- (ii) enlargement of the existing off-stream Four Horns Dam and Reservoir to its maximum practical capacity;
- (iii) construction of facilities to deliver a minimum of 15,000 acre-feet of water per year from the enlarged Four Horns Dam to a point on Birch Creek to be designated by the Parties;
- (iv) rehabilitation and betterment of the outlet canal delivery system from Four Horns Dam to Blacktail Creek;
 - (v) rehabilitation and betterment of the Badger-Fisher Main Canal; and
- (vi) measures to enhance on-farm efficiency in the Badger-Fisher Irrigation Unit of the Blackfeet Irrigation Project;
- (c) water made available by the rehabilitation and betterment of Lower Two Medicine Lake and Mission Lake;
- (d) water used by the development of the Two Medicine Water Treatment Plant and Municipal Water Project and associated delivery works, including delivery of water to East Glacier, Browning, Seville and Cut Bank; and
- (e) water used by the development of the Babb municipal water supply system.
 - (28) "Ground Water" means any water that is beneath the ground surface.
 - (29) "Harm" means an impact on a water right resulting in a material injury.
- (30) "Lake Elwell" means the water impounded on the Marias River in Montana by Tiber Dam, a feature of the Lower Marias Unit, Pick-Sloan Missouri Basin Program built pursuant to the Act of December 22, 1944 (58 Stat. 887), as set forth in House Document 475 and Senate Document 191, as revised and coordinated by Senate Document 247, 78th Congress, Second Session.
- (31) "Lease" means, as applied to the Tribal Water Right, to authorize a Person or Persons to use all or any part of the Tribal Water Right through a

service contract, temporary assignment, or other similar agreement of limited duration.

- (32) "Milk River Drainage" means the Milk River and its tributaries within the Reservation within Basin 40F, as shown in Appendix 2.
- (33) "Milk River Project" means the Bureau of Reclamation project conditionally approved by the Secretary of the Interior on March 14, 1903, under the Act of June 17, 1902 (32 Stat. 388, chapter 1093), commencing at Lake Sherburne Reservoir and providing water to a point approximately 6 miles east of Nashua, Montana. The St. Mary Storage Unit was authorized on March 25, 1905 by the Secretary of the Interior. Fresno Dam, constructed under the National Industrial Recovery Act, was approved by the President in August 1935, pursuant to the acts of June 25, 1910, and December 5, 1924. The Dodson Pumping Unit was approved by the President on March 17, 1944, under the Water Conservation and Utilization Act of August 11, 1939.
- (34) "Milk River Project Water Right" is included herein as a Water Right Arising Under State Law and means those water rights held by the United States Bureau of Reclamation on behalf of the Milk River Project as finally adjudicated by the Montana Water Court.
- (35) "Missouri River Basin" means the hydrologic basin of the Missouri River and its tributaries.
- (36) "Natural Flow" means the water that would exist in a watercourse absent human intervention.
- (37) "New Development" means the development of a use of the Tribal Water Right set forth in this Compact, from any source, commencing after the date the ratification of the Compact by the Montana legislature becomes effective, and encompasses all uses of the Tribal Water Right not defined as Existing Uses.
- (38) "Non-irrigation Use" means the use of a water right for purposes other than irrigation.
 - (39) "Parties" means the Tribe, the State, and the United States.
- (40) "Person" means an individual or any other entity, public or private, including the Tribe, the State, and the United States, and all officers, agents and departments of each of the above.
- (41) "Recognized Under State Law" means, as applied to a water right, a water right arising under Montana law and does not include water rights arising under federal law.
- (42) "Reservation" means the Blackfeet Indian Reservation of Montana as established by the Treaty of October 17, 1855, 11 Stat. 657, and as the Reservation was modified by Executive Order of July 5, 1873, I Kappler 855; the Act of April 15, 1874, 18 Stat. 28; Executive Order of August 19, 1874, I Kappler 856; Executive Order of April 13, 1875, I Kappler 856; Executive Order of July 13, 1880, I Kappler 856; Agreements with the Blackfeet, ratified by the Act of May 1, 1888, 25 Stat. 113; and Agreement with the Blackfeet, ratified by the Act of June 10, 1896, 29 Stat. 321, 353.
- (43) "St. Mary River Drainage" means the St. Mary River and its tributaries within the Reservation within Basin 40T, as shown in Appendix 2.
- (44) "Secretary" means the Secretary of the United States Department of the Interior, or the Secretary's duly authorized representative.
- (45) "State" means the State of Montana and all officers, agencies, departments and political subdivisions thereof.

- (46) "Stock Water" means water used for livestock.
- (47) "Tribal Water Right" means the right of the Blackfeet Tribe, including any Tribal member or Allottee, to divert, use or store water as described in Article III of this Compact.
- (48) "Tribe" means the Blackfeet Tribe of the Blackfeet Indian Reservation and all officers, agencies, and departments thereof.
- (49) "Two Medicine River Drainage" means the Two Medicine River and its tributaries within the Reservation within Basin 41M, as shown in Appendix 2.
- (50) "Upper Birch Creek Drainage" means that portion of the Birch Creek Drainage within the Reservation from Swift Dam to the confluence of Blacktail Creek, as shown in Appendix 2.
- (51) "United States" means the federal government and all officers, agencies and departments thereof.
- (52) "Water Rights Arising Under State Law" means those valid water rights Recognized Under State Law existing as of the date the ratification of the Compact by the Montana legislature becomes effective, and not subsequently relinquished or abandoned, as: decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permitted by DNRC; issued, as State water reservations, by the Montana Board of Natural Resources and Conservation or DNRC; exempted from filing in the State adjudication pursuant to 85-2-222, MCA; excepted from the permitting process pursuant to 85-2-306, MCA. The following State water reservations, though Recognized Under State Law, do not constitute Water Rights Arising Under State Law as that term is used in this Compact: Water Reservation Nos. 41L 71688 and 41M 72585 other than the portion authorized for use as PO-171-071-01; and Water Reservation Nos. 41M 30017392, 41M 30017536 other than the portion arising off the Reservation, and 41L 30017445, as shown in Appendix 3.

ARTICLE III - TRIBAL WATER RIGHT

- A. Religious or Cultural Uses. The Tribal Water Right described in this Article III includes all traditional religious or cultural uses of water by Blackfeet Tribal members within the Reservation.
- B. Right of Use. All Existing Uses by the Tribe, its members and Allottees are included in the Tribal Water Right recognized in this Compact. Such uses include but are not limited to irrigation, Stock Water, domestic, municipal, storage and those uses identified in Article III.A.
 - C. Basin 41M Birch Creek Drainage.
 - 1. Quantification.
- a. Irrigation right. The Tribe has a Direct Use water right of 100 Cfs of the Natural Flow of Birch Creek for irrigation use in the Upper Birch Creek Drainage. This right may be changed to another place of use or purpose of use only in accordance with Article IV.D.3.
 - b. In-stream Flow Right.
- i. The Tribe also has an in-stream Natural Flow right in Birch Creek of 15 Cfs from October 1 to March 31, and 25 Cfs from April 1 to September 30 of each year. The Tribe may establish, in its discretion and after conferral with appropriate fish and wildlife agencies, a lesser in-stream Natural Flow level of not less than 10 Cfs. Subject to Appendix 1, the Tribe may use all or part of the difference between the in-stream Natural Flow right set forth herein and any

lesser in-stream Natural Flow level of not less than 10 Cfs at any place of use and for any purpose of use.

- ii. Other than as set forth in Article III.C.1.b.i, the in-stream flow right set forth herein shall not be subject to change to any other use, provided that the emergency use of water pursuant to Article III.H.5 shall not be considered a change or alteration in use, or a violation of a water right for in-stream flow.
- c. Additional Flow Right. After satisfaction of all Water Rights Arising Under State Law in Basin 41M, the Tribe may divert or authorize the use of the Natural Flow in Birch Creek as measured at the State Highway 358 bridge crossing Birch Creek and any gaining flows available from the same bridge crossing to Birch Creek's confluence with the Two Medicine River.
- d. Ground Water Right. The Tribe also has a right to all Ground Water in the Birch Creek Drainage that is not hydrologically connected to Birch Creek, and to develop or permit the development of Excepted Rights in the Birch Creek Drainage.
- 2. Priority Date. The priority date of the Tribal Water Right set forth in Article III.C.1 shall be October 17, 1855.
 - 3. Period of Use.
- a. Except as provided in Article IV.D.3, the period of use of the water right set forth in Article III.C.1.a shall be April 1 to October 1 of each year.
- b. The period of use of the water right set forth in Article III.C.1.b, c and d shall be January 1 to December 31 of each year.
- 4. Points and Means of Diversion. Subject to the terms and conditions of Article IV of this Compact, and in addition to what is specifically authorized in Article III.C.1.b.i, the Tribe may divert or permit the diversion of the water right set forth in Article III.C.1.a and c from any point on Birch Creek for use within the Reservation and by any means authorized by the Tribal Water Code, or permit the diversion of the water right set forth in Article III.C.1.c from a point off the Reservation pursuant to a Lease under Article IV.D.2.
- 5. Purposes. The water right set forth in Article III.C.1 may be used for any purpose consistent with the terms of this Compact and allowed by Tribal or federal law.
- 6. Call Protection. All Water Rights Arising Under State Law using water from sources other than Birch Creek within Basin 41M shall be protected from any Call for the in-stream flows set forth in Article III.C.1.b.
- 7. Birch Creek Management Plan. The use of the water right set forth in Article III.C.1.a shall also be governed by the terms of the Birch Creek Management Plan, set forth as Appendix 1.
- 8. Commencement of Development. In addition to the foregoing, the exercise of the water rights set forth in Article III.C.1.a and b is subject to the Agreement Regarding Birch Creek Water Use entered into by the Tribe and the State on January 31, 2008.
 - D. Basin 41M Badger Creek Drainage and Two Medicine River Drainage.
 - 1. Quantification.
- a. The Tribe has a water right to all Natural Flow and Ground Water within the Badger Creek and Two Medicine Drainages, with the exception of those waters subject to the Water Rights Arising Under State Law in those drainages.

- b. Of the Tribal Water Right set forth in Article III.D.1.a, 20 Cfs shall be dedicated to maintain an in-stream flow in the mainstem of Badger Creek within the Badger Creek Drainage, and 20 Cfs shall be dedicated to maintain an in-stream flow in the mainstem of the Two Medicine River within the Two Medicine River Drainage. The in-stream flow right set forth in this Article III.D.1.b shall not be subject to change to any other use, provided that the emergency use of water pursuant to Article III.H.5 shall not be considered a change or alteration in use, or a violation of a water right for in-stream flow.
- c. The Tribe is entitled to develop such storage as is necessary to effectuate the right set forth in Article III.D.1.a.
- 2. Priority Date. The priority date of the Tribal Water Right set forth in Article III.D.1 shall be October 17, 1855.
- 3. Period of Use. The period of use of the water right set forth in Article III.D.1 shall be January 1 to December 31 of each year.
- 4. Points and Means of Diversion. Subject to the terms and conditions of Article IV of this Compact, the Tribe may divert or permit the diversion of the water right set forth in Article III.D.1 from any point within the Reservation for use within the Reservation and by any means authorized by the Tribal Water Code, or permit the diversion of the water right set forth in Article III.D.1 from a point off the Reservation pursuant to a Lease under Article IV.D.2.
- 5. Purposes. The water right set forth in Article III.D.1 may be used for any purpose consistent with the terms of this Compact and allowed by Tribal or federal law.
- 6. Call Protection. All Water Rights Arising Under State Law within Basin 41M shall be protected from any Call from any user of the Tribal Water Right, with the exceptions of Calls for the in-stream flows set forth in Article III.D.1.b, Calls for stored water, and Calls for water diverted from another hydrologic basin.
 - E. Basin 41L Cut Bank Creek Drainage.
 - 1. Quantification.
- a. The Tribe has a water right to all Natural Flow and Ground Water within the Cut Bank Creek Drainage, with the exception of those waters subject to the Water Rights Arising Under State Law in that drainage.
- b. Of the water right set forth in Article III.E.1.a, 2 Cfs shall be dedicated to maintain an in-stream flow in the mainstem of Cut Bank Creek as shown on Appendix 2. The in-stream flow right set forth in this Article III.E.1.b shall not be subject to change to any other use, provided that the emergency use of water pursuant to Article III.H.5 shall not be considered a change or alteration in use, or a violation of a water right for in-stream flow.
- c. The Tribe is entitled to develop such storage as is necessary to effectuate the right set forth in Article III.E.1.a.
- d. The Tribe shall defer New Development of the Tribal Water Right set forth in Article III.E.1.a for irrigation uses not relying exclusively on stored water or water diverted from another hydrologic basin for a period of ten years after the Effective Date of this Compact.
- 2. Priority Date. The priority date of the Tribal Water Right set forth in Article III.E.1 shall be October 17, 1855.
- 3. Period of Use. The period of use of the water right set forth in Article III.E.1 shall be January 1 to December 31 of each year.

- 4. Points and Means of Diversion. Subject to the terms and conditions of Article IV of this Compact, the Tribe may divert or permit the diversion of the water right set forth in Article III.E.1 from any point within the Reservation for use within the Reservation and by any means authorized by the Tribal Water Code, or permit the diversion of the water right set forth in Article III.E.1 from a point off the Reservation pursuant to a Lease under Article IV.D.2.
- 5. Purposes. The water right set forth in Article III.E.1 may be used for any purpose consistent with the terms of this Compact and allowed by Tribal or federal law.
- 6. Call Protection. All Water Rights Arising Under State Law for Non-Irrigation Uses within Basin 41L shall be protected from any Call from any user of the Tribal Water Right, with the exceptions of Calls for the in-stream flows set forth in Article III.E.1.b, Calls for stored water, and Calls for water diverted from another hydrologic basin.
 - F. Basin 40F Milk River Drainage.
 - 1. Quantification.
- a. The Tribe has a water right to all Natural Flow and Ground Water available to the United States under the Boundary Waters Treaty and all Ground Water not subject to the Boundary Waters Treaty in Basin 40F within the Reservation, with the exception of those waters subject to the Water Rights Arising Under State Law in Basin 40F on the Reservation.
- b. Of the water right set forth in Article III.F.1.a, 2 Cfs shall be dedicated to maintain an in-stream flow in the Milk River, as shown on Appendix 2. The in-stream flow right set forth in this Article III.F.1.b shall not be subject to change to any other use, provided that the emergency use of water pursuant to Article III.H.5 shall not be considered a change or alteration in use, or a violation of a water right for in-stream flow.
- c. The Tribe is entitled to develop such storage as is necessary to effectuate the right set forth in Article III.F.1.a. $\,$
- d. The Tribe shall defer New Development of the Tribal Water Right set forth in Article III.F.1.a for irrigation uses not relying exclusively on stored water or water diverted from another hydrologic basin for a period of ten years after the Effective Date of this Compact.
- 2. Priority Date. The priority date of the Tribal Water Right set forth in Article III.F.1 shall be October 17, 1855.
- 3. Period of Use. The period of use of the water right set forth in Article III.F.1 shall be January 1 to December 31 of each year.
- 4. Points and Means of Diversion. Subject to the terms and conditions of Article IV of this Compact, the Tribe may divert or permit the diversion of the water right set forth in Article III.F.1 from any point within Basin 40F within the Reservation for use within the Reservation and by any means authorized by the Tribal Water Code, or permit the diversion of the water right set forth in Article III.F.1 from a point off the Reservation pursuant to a Lease under Article IV.D.2.
- 5. Purposes. The water right set forth in Article III.F.1 may be used for any purpose consistent with the terms of this Compact and allowed by Tribal or federal law.
- 6. Call Protection. All Water Rights Arising Under State Law for Non-Irrigation Uses within Basin 40F on the Reservation shall be protected

from any Call from any user of the Tribal Water Right, with the exceptions of Calls for the in-stream flows set forth in Article III.F.1.b, Calls for stored water, and Calls for water diverted from another hydrologic basin.

- G. Basin 40T St. Mary River Drainage.
- 1. Quantification.
- a. St. Mary River. The Tribe has a water right to:
- i. 50,000 Acre Feet per Year of water from the St. Mary River Drainage, other than Lee Creek and Willow Creek, subject to the Boundary Waters Treaty and the terms of Article IV.D.4; and
- ii. all Ground Water in the St. Mary River Drainage not subject to the Boundary Waters Treaty.
- b. Lee Creek. The Tribe also has the right to all Natural Flow available to the United States under the Boundary Waters Treaty and all Ground Water in Lee Creek within the Reservation, with the exception of those waters subject to Water Rights Arising Under State Law in Lee Creek.
- c. Willow Creek. The Tribe also has the right to all Natural Flow available to the United States under the Boundary Waters Treaty and all Ground Water in Willow Creek (also known as Rolf Creek) within the Reservation, with the exception of those waters subject to Water Rights Arising Under State Law in Willow Creek.
- d. Additional Waters. After satisfaction of all Water Rights Arising Under State Law and full development, pursuant to Article IV.D.4, of the Tribal Water Right set forth in Article III.G.1.a.i, the Triba also has the right to the remaining portion of the United States' share of the St. Mary River under the Boundary Waters Treaty for any tribally authorized use and need.
- e. Storage. The Tribe is entitled to develop such storage within the Reservation as is necessary to effect uate the right set forth in Article III.G.1.a-d.
- 2. Priority Date. The priority date of the Tribal Water Right set forth in Article III.G.1 shall be October 17, 1855.
- 3. Period of Use. The period of use of the water right set forth in Article III.G.1 shall be from January 1 through December 31 of each year.
- 4. Points and Means of Diversion. Subject to the terms and conditions of Article IV of this Compact, the Tribe may divert or permit the diversion of the water right set forth in Article III.G.1 from any point within the Reservation for use within the Reservation and by any means authorized by the Tribal Water Code and, if necessary, federal law, or permit the diversion of the water right set forth in Article III.G.1 from a point off the Reservation pursuant to a Lease under Article IV.D.2.
- 5. Purposes. The water right set forth in Article III.G.1 may be used for any purpose consistent with the terms of this Compact and allowed by Tribal or federal law.
- 6. Call Protection. All Water Rights Arising Under State Law within Basin 40T shall be protected from any Call from any user of the Tribal Water Right, except for Calls for stored water or water diverted from another hydrologic basin.
- H. Additional Rights to Water. In addition to the water rights specifically set forth in Article III.A-G of this Compact, the Tribe has the following rights to water:

- 1. Lake Elwell. As part of the Tribal Water Right, the Tribe shall be entitled to an allocation of stored water in Lake Elwell as agreed to by the Parties and as provided by Congress, measured at the dam, for use or disposition by the Tribe for any beneficial purpose, pursuant to the terms of this Compact; provided that such allocation shall be in accordance with the terms and conditions of any Act of Congress ratifying this Compact. Except as directed by Congress, the United States shall have no responsibility or obligation to provide any facility for the transport of water allocated under Article III.H.1 to the Reservation or to any other location.
- 2. Appurtenant Water Rights. For land within the Reservation acquired after the Effective Date of this Compact, the Tribe has the right to any Water Right Arising Under State Law acquired as an appurtenance to the land. At such time as the acquired land is transferred to trust status, the water right appurtenant to the land acquired shall be added to the Tribal Water Right quantified in this Compact with an October 17, 1855 priority date, provided that the Tribe shall continue to use the acquired right as historically used or may change the use of the right pursuant to the provisions set forth in Article IV.D. The Tribe shall notify DNRC of any acquisition of water upon acquisition or no later than in the Tribe's annual report and shall identify the water right acquired, as set forth in Article IV.I.5. Any water right acquired shall be added as decreed by the Montana Water Court to the list of Existing Uses of the Tribal Water Right as provided in Article IV.I.3 of this Compact.
- 3. Water Rights Arising Under State Law Relinquishment or Abandonment. Any portion of a Water Right Arising Under State Law within the Reservation that is voluntarily relinquished or is determined under State law to be abandoned, relinquished, or having otherwise ceased to exist, shall be stricken from the relevant basin decree as a Water Right Arising Under State Law and be entitled to no further protection as such a right pursuant to this Compact.
- 4. Lakes, Ponds and Wetlands. As part of the Tribal Water Right, the Tribe, its members and Allottees have the right to all water naturally occurring in all lakes, ponds, wetlands and other such water bodies located within the Reservation on trust lands and fee lands owned by the Tribe, its members or Allottees as of the Effective Date of this Compact.
- 5. Emergency Use. The Tribe has the right to use or authorize the use of water from any source on the Reservation for temporary emergency appropriations necessary to protect lives or property.
- I. Use of the Tribal Water Right on the Blackfeet Irrigation Project. The use of the water rights set forth in Article III.C through E on units of the Blackfeet Irrigation Project as part of that Blackfeet Irrigation Project is a use of the Tribal Water Right, and the use of this water shall be subject to federal law.
 - J. Basin Closures.
- 1. In those portions of Basins 40F, 40T, 41L and 41M within the Reservation, and from the mainstems of the Reservation boundary streams (Birch Creek, Cut Bank Creek, and the Two Medicine River), DNRC shall not process or grant any application for an appropriation received after the ratification of this Compact by the Montana legislature becomes effective. Provided that, in accordance with the terms and conditions of Article IV.G.1, DNRC may issue a certificate of water right or permit for use on fee land for Excepted Rights from the sources otherwise closed by this subsection. Provided further that, after such time as the Tribe promulgates an amended water code

pursuant to the provisions of Article IV.C, DNRC shall not issue a certificate of water right or permit for use on fee land within the Reservation for Excepted Rights from the sources otherwise closed by this subsection.

- 2. The basin closures set forth in Article III.J.1 are not a limit on use of the Tribal Water Right as set forth in this Compact.
- 3. The basin closures set forth in Article III.J.1 are not a limit on Change in Use or transfers of Water Rights Arising Under State Law, subject to the terms and conditions in Article IV.G.2.
- K. Proposed Decree. For purposes of entry in the Montana Water Court, the proposed decree of the Tribal Water Right set forth in Article III of this Compact is attached as Appendix 5. If there are differences between Appendix 5 and the Final Decree, the Final Decree shall control.

ARTICLE IV - IMPLEMENTATION OF COMPACT

- A. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United States for the benefit of the Tribe, its members and Allottees.
 - B. Use of Tribal Water Right.
- 1. Persons Entitled to Use Tribal Water Right. The Tribal Water Right may be used by the Tribe, and/or Persons authorized by the Tribe.
- 2. Effect of Non-Use of the Tribal Water Right. Non-use of all or any portion of the Tribal Water Right described in Article III shall not constitute a relinquishment, forfeiture, or abandonment of such rights.
 - C. Tribal Water Right: Administration.
- 1. Except as otherwise provided in this Compact, the use of the Tribal Water Right shall be administered by the Tribe, and the Tribe has the final and exclusive jurisdiction to resolve all disputes between or among users of the Tribal Water Right. The Tribal Water Right shall be administered and enforced pursuant to an amended tribal water code. The amended code shall be developed and adopted by the Tribe, following public comment, within one year of the Effective Date of this Compact. The code and any subsequent amendments thereto will not take effect until the Secretary has timely approved the code or any subsequent amendment thereto. The amended tribal water code shall include:
- a. a process by which any Allottee may request and be provided with an equitable distribution of water for irrigation use on the Allottee's trust allotment;
- b. a process for notice and a right to be heard for the consideration and determination of any request by an Allottee for an equitable distribution of water for irrigation use on the Allottee's trust allotment, including a process for formal review of denied or disputed distributions and for resolution of contested administrative decisions:
- c. a process by which any Person within the Reservation may apply for use of a portion of the Tribal Water Right, including for their historic use of water;
- d. a process by which any Person shall receive authorization for an Excepted Right, without pre-development review, including a Ground Water use, a Stock Water impoundment or pit, or an emergency use to protect lives or property, consistent with standards no more restrictive than those under State law for uses excepted from permitting requirements.

- e. a process by which determination of Harm shall be made, which shall include notice to potentially affected water users and the DNRC, due process, a written determination and the basis therefor, and full access to all information on which the determination is based.
- f. a process for protecting Ground Water from New Developments in areas where Ground Water may be inadequate due to either quantity or quality.
- 2. Administration and delivery of the Tribal Water Right within the Blackfeet Irrigation Project shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs (BIA), in accordance with applicable federal laws. In the event the Tribe assumes ownership of the Blackfeet Irrigation Project or the Tribe contracts the administration, operation and maintenance, and/or other functions of the Blackfeet Irrigation Project under the Indian Self-Determination and Education Assistance Act, P.L. 93-638, or the Tribe establishes a separate entity that assumes ownership of the Blackfeet Irrigation Project or contracts the administration, operation and maintenance, and/or other functions of the Blackfeet Irrigation Project under P.L. 93-638, administration and delivery of the Tribal Water Right within the Blackfeet Irrigation Project shall be conducted by the Tribe in accordance with applicable federal laws.
- 3. After approval by the Secretary of the Tribe's amended water code, the Tribe shall have sole and exclusive jurisdiction to issue authorizations for Excepted Rights, provided that any filing for use of a portion of the Tribal Water Right for an Excepted Right made with the DNRC shall be made on a form provided by the Tribe and, including any fee submitted in conjunction with the filing, shall be promptly forwarded to the BWRD for processing pursuant to the Tribal water code.
 - D. Tribal Water Right: New Development or Change in Use.
- 1. Authorization. Except as specifically set forth in Article IV.D.3, and subject to the conditions set forth immediately below, the Tribe may make or authorize a New Development or Change in Use of the Tribal Water Right. Except as set forth in the tribal water code pursuant to Article IV.C.1.e, any New Development or Change in Use shall not Harm any Water Right Arising Under State Law for Non-irrigation Uses.
 - 2. Lease
- a. The Tribe may make a Lease for use off the Reservation of the following portion of the Tribal Water Right that has been put to use and/or stored prior to the provision of notice to the DNRC, pursuant to Article IV.D.2.b, or the date of the application for Change in Use, as applicable:
- i. Water developed by Direct Use from Birch Creek pursuant to Article III.C.1.c, the Badger Creek Drainage and/or Two Medicine River Drainage pursuant to Article III.D.1, and/or the St. Mary River Drainage pursuant to Article III.G.1;
- ii. Water stored from the Badger Creek Drainage and/or Two Medicine River Drainage pursuant to Article III.D.1; from the Cut Bank Creek Drainage pursuant to Article III.E.1; from the Milk River Drainage pursuant to Article III.F.1; from the St. Mary River Drainage pursuant to Article III.G.1; and/or in Tiber Reservoir as allocated to the Tribe pursuant to Article III.H.1 or otherwise and federal law; and
- iii. That portion of the Tribal Water Right quantified in Article III.C.1.b.i that the Tribe may use for purposes other than in-stream flow pursuant to the terms of that subsection.

- b. The Tribe may make a Lease for use off the Reservation from the storage sources listed in Article IV.D.2.a.ii and from the source identified in Article IV.D.2.a.iii so long as it provides notice in advance to the DNRC of the terms of the Lease and any modifications thereto or termination thereof. For Leases from the sources identified in Article IV.D.2.a.ii lasting one irrigation season or less, notice to the DNRC shall be provided as far in advance as practicable. For Leases from the sources identified in Article IV.D.2.a.ii lasting longer then one year, notice shall be provided to the DNRC no later than the later of 120 days prior to the date on which the Lease is to take effect or March 31 of the year in which the Lease is to take effect. Provision of notice regarding Leases from the source identified in Article IV.D.2.a.iii shall be governed by the provisions of the Birch Creek Management Plan (Appendix 1). The point of delivery for a lease from the storage sources listed in Article IV.D.2.a.ii shall be the dam of the storage project. The point of delivery for leases from the source identified in Article IV.D.2.a.iii shall be the Reservation boundary. If disputes arise between or among holders of Water Rights Arising Under State Law as to the reasonable transmission and carriage losses from the point of delivery to the place of use of the Lease, the district court pursuant to its powers and duties under Title 85, Chapter 5, MCA, shall calculate such losses.
- c. The Tribe may make a Lease for use off the Reservation from the sources listed in Article IV.D.2.a.i provided that either the Tribe or its assignee, on behalf of the Tribe, first complies with the following provisions of State law as those provisions read on October 31, 2007:
- i. Subsections (1)-(3), (5)(a) (with the exception of that portion of subsection (5)(a) that requires the application of 85-2-402(4), which shall not apply) and of 85-2-402(8) through (17), MCA;
- ii. Subsections (1) through (8) of 85-2-407, MCA, provided, however, that the term of any such Lease may be for up to 99 years, and the DNRC may approve the renewal of such a Lease for a period of up to 99 years; and
 - iii. 85-2-408, MCA.

If the assignee is the party submitting the change application (pursuant to 85-2-402 and 85-2-407, MCA) on behalf of the Tribe, the assignee must first have obtained approval of the Lease from the Tribe pursuant to the Tribal Water Code.

d. In the event that, after the Effective Date of this Compact, the Montana legislature substantively amends or repeals any of the sections identified in Article IV.D.2.c, the Tribe and the DNRC shall meet no later than 60 days after the effective date of the State legislative action amending or repealing to determine whether the provisions set forth in Article IV.D.2.c or the new provisions of State law shall govern the process for off-

Reservation Leases under this Compact. In the event that the Tribe and the DNRC are unable to agree, the provisions of Article IV.D.2.c shall remain in effect. Any modification to the provisions of Article IV.D.2.c agreed to by the Tribe and the DNRC in response to future State legislative action shall be pursuant to and not a modification or amendment to this Compact.

e. If the Tribe receives a good faith offer from a Person for Lease of a portion of the Tribal Water Right in Birch Creek pursuant to Article III.C.1.c to an off-Reservation point of diversion or place of use, or in the Badger Creek Drainage set forth in Article III.D.1 to an off-Reservation point of diversion or place of use, and if delivery facilities exist to otherwise allow the diversion of Badger Creek water into Birch Creek, the Tribe shall allow holders of Water

Rights Arising Under State Law using water out of Birch Creek the first opportunity to acquire use of such rights on the same terms and conditions as the good faith offer.

- f. If the Tribe receives a good faith offer from a Person for Lease of a portion of the Tribal Water Right in the Cut Bank Creek Drainage set forth in Article III.E.1 to an off-Reservation point of diversion or place of use, the Tribe shall allow holders of Water Rights Arising Under State Law using water from the Cut Bank Creek Drainage the first opportunity to acquire use of such rights on the same terms and conditions as the good faith offer.
- g. If the Tribe receives a good faith offer from a Person for Lease of a portion of the Tribal Water Right in the Milk River Drainage set forth in Article III.F.1 to an off-Reservation point of diversion or place of use, the Tribe shall allow holders of Water Rights Arising Under State Law using water from the Milk River Drainage the first opportunity to acquire use of such rights on the same terms and conditions as the good faith offer.
- h. If the Tribe receives a good faith offer from a Person for Lease of a portion of the Tribal Water Right in the St. Mary River set forth in Article III.G to an off-Reservation point of diversion or place of use, the Tribe shall allow water users receiving water from the Milk River Project the first opportunity, and other Milk River water users the second opportunity, to acquire use of such rights on the same terms and conditions as the good faith offer.
- i. Except as may be provided by Congress, the off-Reservation use of any portion of the Tribal Water Right set forth in Article III.C.1.b, III.D.1, III.E.1 or III.F.1 is limited to a place of use within the Missouri River Basin.
- j. No Lease of any portion of the Tribal Water Right may permanently alienate the water right.
- k. The Tribe or any Person using diversion or transportation facilities located off the Reservation in connection with a use of the Tribal Water Right shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water, prior to exercising a use of the Tribal Water Right off the Reservation.
- $3.\,\mathrm{Special}\,\mathrm{Rules}$ for Changes in Use of the Birch Creek Water Right Set Forth in Article III.C.1.a.
- a. Change in Place of Use. The Tribe may change or authorize a change in the place of use of the water right set forth in Article III.C.1.a only if:
- i. the proposed change in place of use is to the Badger-Fisher Unit of the Blackfeet Irrigation Project, or to other areas of the Birch Creek Drainage served by water out of the Badger Creek Drainage; and
- ii. there is a need for irrigation water beyond available supplies in those areas due to constraints imposed on the Badger-Fisher Unit by the physical availability of water other than as a result of Leases, a failure of delivery capabilities, or significant adverse environmental impacts of continued delivery of Badger Creek water due to degraded delivery systems or otherwise; and
- iii. total annual diversions to the Badger-Fisher Unit pursuant to the water right set forth in Article III.C.1.a do not exceed the volume of water needed to supply 75% of the net irrigation requirement for a crop mix of 75% alfalfa and 25% small grains delivered at 50% efficiency for 6000 acres, and the flow rate of the right set forth in Article III.C.1.a for use in the Upper Birch Creek Drainage

is reduced by the flow rate of water being diverted for use in the Badger-Fisher Unit.

b. Change in Purpose of Use. The Tribe may change or authorize a change in the purpose of use of the water right set forth in Article III.C.1.a up to a maximum of 6250 AFY. The relationship between the quantity and flow rate of water proposed for change and the quantity of water available for irrigation pursuant to the water right set forth in Article III.C.1 shall be determined by the following formula:

The volume of water proposed to be changed will be divided by 50% to determine the diverted volume of the Tribal change. This diverted volume of the Tribal change is subtracted from the modeled average diversion volume (12,500 acre-feet) to determine the changed average diversion volume. The new irrigation diversion flow rate is established by dividing the changed average diversion volume by the modeled diversion volume and multiplying this quotient by the flow rate set forth in Article III.C.1.a (100 Cfs). Several example scenarios are shown in Appendix 4.

- 4. Development of the Tribe's St. Mary River Right Set Forth in Article III.G.1.a.i. As directed by Congress, and after appropriate investigation and study, the Parties shall identify and the United States shall provide the Tribe, from Available St. Mary River Water, and/or from any other source mutually agreed to by the Parties, sufficient water to fulfill the Tribe's water right set forth in Article III.G.1.a.i. The fulfillment of the Tribe's water right set forth in Article III.G.1.a.i, pursuant to this subsection, from any water subject to the Milk River Project Water Right may occur only in a manner that causes no injury to the Milk River Project and shall not require current or future Milk River Project water users or their contracting entity or entities to subsidize or pay for any costs required to develop or fulfill the water right set forth in Article III.G.1.a.i. The use of the Tribe's water right set forth in Article III.G.1.a.i, or of any portion of that right, shall commence only after the Parties have mutually agreed in writing that water has been identified and is available to fulfill that right or any portion of it consistent with the terms of this Compact.
- E. Subsequent Federal or State Law. Administration under Article IV.C.2 and Article IV.F.1 shall be as set forth in this Compact except as may otherwise be determined by a court of competent jurisdiction or established by Congress.
 - F. Water Rights Arising Under State Law: Administration.
- 1. The State shall administer and enforce all Water Rights Arising Under State Law to the use of Natural Flows and Ground Water within and outside the Reservation. The State shall have the final and exclusive jurisdiction to resolve all disputes between holders of Water Rights Arising Under State Law.
- 2. The State shall not administer or enforce any part of the Tribal Water Right within the Reservation.
 - G. Water Rights Arising Under State Law: New Uses or Change in Use.
- 1. Limit on New Uses. DNRC shall not process or grant an application for an appropriation within those portions of the Basins closed pursuant to Article III.J received after the ratification of this Compact by the Montana legislature becomes effective, provided that, DNRC may process applications and issue certificates of water right or permits for use on fee land of those uses excepted from the closures as set forth in Article III.J until such time as the Secretary approves an amended tribal water code promulgated pursuant to the provisions of Article IV.C. After approval of the amended water code by the Secretary,

filings for Excepted Rights shall be processed pursuant to the provisions of Article IV.C.3.

- 2. Change in Use of Water Rights Arising Under State Law within the Reservation. The State may authorize a Change in Use of a Water Right Arising Under State Law within the Reservation in accordance with State law. DNRC shall provide timely notice to the Tribe of every application for change.
- H. Cooperative Ground Water Management. BWRD may designate or modify a controlled Ground Water area within the Reservation pursuant to Article IV.C.1.f and applicable tribal law. DNRC may designate or modify a controlled Ground Water area adjacent to the Reservation pursuant to applicable State law. DNRC may manage a permanent or temporary controlled Ground Water area adjacent to the Reservation in cooperation with BWRD.
 - I. Information Sharing.
- 1. Within one year after a hydrologic basin subject to this Compact is finally decreed by the Montana Water Court, the DNRC shall provide the BWRD and the United States with a report listing all decreed Water Rights Arising Under State Law within that hydrologic basin.
- 2. Within one year after the date the ratification of this Compact by the Montana legislature becomes effective, the DNRC shall provide the BWRD and the United States with a report listing all uses pursuant to permits and water reservations, and those uses excepted from the permitting requirements of State law to the extent that the DNRC has such information.
- 3. Within one year after the ratification of this Compact by the Montana legislature becomes effective, the BWRD and the United States shall provide the DNRC with a report listing all Existing Uses of the Tribal Water Right, provided that, due to the small and varied nature of the traditional religious and cultural uses identified in Article III.A, such uses need not be included on the report required by this subsection. The Parties shall concur in the listing of all Existing Uses of the Tribal Water Right within six months after receipt of the report.
- 4. On an annual basis DNRC shall provide the Tribe and the United States with a listing of all Excepted Rights for which a certificate of water right or permit has been issued or a Change in Use has been approved by DNRC within the Reservation and in drainages affected by this Compact, and an ownership update for each water right within the Reservation and in drainages affected by this Compact whose owner of record has been changed in DNRC's database.
- 5. On an annual basis BWRD shall provide the DNRC and the United States with an update since the last report listing all New Development of the Tribal Water Right described in this Compact within and outside the Reservation, of all Changes in Use of water rights within and outside the Reservation, and of all appurtenant water rights acquired pursuant to Article III.H.2.
- 6. The BWRD, the DNRC, and the United States may agree to modify the reporting requirements set forth in Article IV.I. Such modification is pursuant to, and shall not be deemed a modification of, this Compact.
- 7. Any Party may request additional information from any other Party to assist in reviewing any report made by one Party to another.
 - J. Enforcement: Blackfeet-Montana Compact Board.
- 1. Establishment of Board. There is hereby established the Blackfeet-Montana Compact Board. The Board shall consist of three members: one member selected by the Governor of the State of Montana, after consultation

with affected water users; one member appointed by the Chairman of the Blackfeet Tribal Business Council; and one member selected by the other two members. All members shall be appointed within six months of the Effective Date of this Compact and within thirty days of the date any vacancy occurs. If an appointment is not timely made by the Governor, the Director of DNRC or the Director's designee shall fill the State's position. If an appointment is not timely made by the Chairman of the Blackfeet Tribal Business Council, the Director of BWRD or the Director's designee shall fill the Tribe's position. Each member shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. Expenses of the members appointed by the State and the Tribe shall be borne by the entity appointing the member. The expenses of the third member and all other expenses shall be borne equally by the Tribe and the State, subject to the availability of funds.

- 2. Membership. Should the two appointed members fail to agree on the selection of a third member within sixty days of the date of appointment of the second member, or within thirty days after any vacancy occurs, the following procedure shall be utilized:
- a. Within five days thereafter each member shall nominate three persons to serve as a member of the Board;
- b. Within fifteen days thereafter each member shall reject two of the persons nominated by the other member;
- c. Within five days thereafter, the remaining two nominees shall be submitted to the chief judge of the United States District Court for the District of Montana for selection of the third member of the Board.
- 3. Quorum and Vote Required. Two members of the Board shall constitute a quorum if reasonable notice of the time, place, and purpose of the meeting, hearing, or other proceeding has been provided in advance to the absent member. All Board decisions shall be by a majority of the Board.
 - 4. Jurisdiction of the Board.
- a. The Blackfeet-Montana Compact Board shall have jurisdiction to resolve controversies over the right to the use of water as between the Parties or holders of water rights developed or authorized under the Tribal Water Right and holders of Water Rights Arising Under State Law. Such controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact, disputes over the application and interpretation of the provisions of Article IV.D.3, disputes over the application and interpretation of the provisions of the Birch Creek Management Plan, and disputes between holders of Excepted Rights issued pursuant to Article IV.C.3 who are not enrolled members of the Tribe and other water right holders under either State or tribal law.
- b. The jurisdiction of the Board shall not extend to the administration or distribution of water on lands served by the Milk River Project, nor to the diversion of water made outside the Reservation for Milk River Project use, nor to the administration or distribution of water on lands served by the Blackfeet Irrigation Project, nor to the administration or distribution of water on lands served by the Pondera County Canal and Reservoir Company.
 - 5. Prerequisite Administrative Procedures.
- a. Any Tribal Water Right holder concerned that a use of water by a holder of a Water Right Arising Under State Law is inconsistent with the Compact shall

first contact the BWRD. If the BWRD and the DNRC are unable to resolve the issue in a manner acceptable to the Tribal Water Right holder within a reasonable time through discussion, the BWRD or the Tribal Water Right holder may seek relief through the Compact Board. The DNRC agrees to assist the BWRD in obtaining reasonable access onto the land of the holder of the Water Right Arising Under State Law to acquire information regarding the challenged use.

- b. Any holder of a Water Right Arising Under State Law concerned that an exercise of the Tribal Water Right is inconsistent with the Compact shall first contact the DNRC. If the DNRC and the BWRD are unable to resolve the issue in a manner acceptable to the water right holder within a reasonable time through discussion, the DNRC or the water right holder may seek relief through the Compact Board. The Tribe agrees to allow the DNRC reasonable access onto Tribal land or to assist the DNRC in obtaining reasonable access onto the land of the Tribal Water Right holder to acquire information regarding the challenged exercise.
- c. The BWRD and the DNRC may jointly develop supplemental procedures as necessary or appropriate after consultation with affected water right holders. Such supplemental procedures are pursuant to, and shall not be deemed a modification of, this Compact.
- d. Any authorized user of a portion of the Tribal Water Right appealing a decision of the DNRC to the Compact Board may seek technical assistance from the BWRD in preparing and presenting the appeal.
- e. Any holder of a Water Right Under State Law appealing a decision of the BWRD to the Compact Board may seek technical assistance from the DNRC in preparing and presenting the appeal.
 - 6. Powers and Duties.
- a. Hearings. The Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint technical experts. The Tribe and the State shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribe and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The Persons involved in the controversy may present evidence and cross examine any witnesses. The Board shall determine the controversy and grant any appropriate relief, including a temporary order; provided that, the Board shall have no power to award money damages, costs, or attorneys' fees. All decisions of the Board shall be in writing, and, together with a written justification for the decision and any dissenting opinions, shall be served personally or by certified mail on all Persons involved in the proceeding before the Board, the Tribe, the State and the United States. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six months after its first meeting. All records of the Board shall be open to public inspection, except as otherwise ordered by the Board consistent with applicable federal, State and tribal law.
 - b. Appointment of Water Commissioner.
- i. The Board shall have the authority to appoint one or more commissioners to provide day to day administration of water subject to this Compact, including the opening and closing of headgates. The Tribe and the State shall agree on a recommendation for each commissioner to be appointed by the Board. If the Tribe and the State fail to agree, each may nominate one individual for

consideration for each commissioner position, and the Board shall select from between the nominees.

- ii. Under the jurisdiction of the Board, the commissioners shall have the authority to administer and distribute water on the Reservation and from the off-reservation portions of the Reservation boundary streams (the mainstems of Birch Creek, Cut Bank Creek and the Two Medicine River), to water right holders under the Tribal Water Right and the holders of Water Rights Arising Under State Law according to the rights fixed by all applicable decrees and this Compact. The authority of any commissioners appointed pursuant to this Article IV.J.6.b, as it pertains to facilities owned by the United States, shall extend only to the provision of written orders to the federal representative with the authority to adjust diversions or releases, which the federal representative, or his or her designee, shall then promptly carry out, so long as the federal representative determines that execution of the order does not threaten the safety, security or physical integrity of the facility, and does not extend to the actual opening or closing of headgates. The authority of any commissioners appointed pursuant to this Article IV.J.6.b, as it pertains the use of the Milk River Project Water Right, shall extend only to the delivery of water to the diversion facilities of the Milk River Project on the Reservation and shall not extend to the administration, diversion or distribution of water to or from any facilities or lands served by the Milk River Project off the Reservation. The authority of any commissioners appointed pursuant to this Article IV.J.6.b., as it pertains to portions of the Tribal Water Right used within the Blackfeet Irrigation Project, extends only to the delivery of water to Blackfeet Irrigation Project diversion facilities and shall not extend to the administration of that water on lands served by the Blackfeet Irrigation Project, which shall remain subject to Article IV.C.2. The authority of any commissioners appointed pursuant to this Article IV.J.6.b, as it pertains to the use of the Water Rights Arising Under State Law of the Pondera County Canal and Reservoir Company (PCCRC), extends only to the delivery of water to PCCRC diversion facilities from Birch Creek and shall not extend to the administration of that water on lands served by PCCRC.
- iii. The State and the Tribe shall share the costs of any water commissioners appointed by the Board.
 - 7. Review and Enforcement of Board Decisions.
- a. Decisions by the Board shall be effective immediately, unless stayed by the Board. Persons involved in the proceedings before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty days of such decision. The hearing on appeal shall be a trial de novo. The notice of appeal shall be filed with the Board and served personally or by certified mail upon all Persons involved in the proceeding before the Board, the Tribe, the State and the United States.
- b. Unless an appeal is filed within thirty days of a final decision of the Board, as provided in Article IV.J.7.a, any decision of the Board shall be recognized and enforced by any court of competent jurisdiction on petition of the Board, or any Person before the Board in the proceeding in which the decision was made.
- c. A court of competent jurisdiction in which a timely appeal is filed pursuant to Article IV.J.7.a, or in which a petition to confirm or enforce is filed pursuant to Article IV.J.7.b, may order such temporary or permanent relief as it considers just and proper.

- d. An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to Article IV.J.7.a, or in which a petition to confirm or enforce is filed pursuant to Article IV.J.7.b, in the manner and to the same extent as from orders or judgments of the court in a civil action.
- e. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board within sixty days of filing of a notice of appeal.
- 8. Waiver of Immunity. The Tribe and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under this Compact by the Blackfeet-Montana Compact Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribe or the State shall not extend to any action for money damages, costs, or attorneys' fees. The Parties agree that only Congress can waive the immunity of the United States. The participation of the United States in the proceedings of the Compact Board shall be as provided by Congress.
- K. Notice and Reporting. All notices and reports required by this Compact to be delivered to or served on a Party shall be sent to:
- 1. The Chairman of the Blackfeet Tribal Business Council, Browning, Montana;
 - 2. The Director of DNRC, Helena, Montana; and
- 3. The Director of the Rocky Mountain Regional Office of the Bureau of Indian Affairs, Billings, Montana.

ARTICLE V - DISCLAIMERS AND RESERVATION OF RIGHTS

- A. No Effect on Other Tribal Rights or Federal Reserved Water Rights.
- 1. Except as otherwise provided herein, the relationship between the Tribal Water Right described herein and any rights to water of any other Indian Tribe, or of any federally derived water right of an individual, or of the United States on behalf of such Tribe or individual shall be determined by the rule of priority.
- 2. Nothing in this Compact may be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribes, tribal members, or Indian owner of trust land of other Indian tribes outside of the Blackfeet Reservation.
- 3. Nothing in this Compact is otherwise intended to affect or abrogate a right or claim of an Indian Tribe other than the Blackfeet Tribe.
- 4. Except as provided herein and authorized by Congress, nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of the United States on federal lands outside the Reservation.
- B. General Disclaimers. Nothing in this Compact shall be so construed or interpreted:
 - 1. As a precedent for the litigation of reserved water rights;
- 2. As a precedent for the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;
- Except as provided in Article III.J pertaining to basin closures, to preclude the acquisition or exercise of a Water Right Arising Under State Law to the use

of water by any Allottee or member of the Tribe outside the Reservation by purchase of such right or by application to the State in accordance with State law:

- 4. To determine the relative rights inter sese of Persons using water under the authority of the State or the Tribe;
- 5. To limit in any way the rights of the Parties or any other Person to litigate any issues or questions not resolved by this Compact;
- 6. To authorize the taking of a water right that is vested under State or federal law;
- 7. To create or deny substantive rights through headings or captions used in this Compact;
- 8. To address or prejudge how, in any interstate or international apportionment, the Tribal Water Right shall be counted;
- 9. To constitute a waiver of sovereign immunity by the Tribe or State, except as is expressly set forth in this Compact;
- 10. To constitute a waiver of sovereign immunity by the United States except as expressly set forth in 43 U.S.C. 666 (1952) or as otherwise provided by Congress;
- 11. To prohibit the Tribe, its members, or Allottees, or the United States on behalf of the Tribe, its members, or Allottees, or the United States in any other capacity from objecting in any general stream adjudication in Montana Water Court to any claims to water rights;
- 12. To prevent the Tribe, its members or Allottees, or the United States on behalf of the Tribe, its members or Allottees, from filing an action in a court of competent jurisdiction to prevent any Person or Party from interfering with the Tribe in the enjoyment of the Tribal Water Right;
- 13. To affect or determine the applicability of any State or federal law, including, without limitation, environmental and public safety laws, on activities of the Tribe, its members, or Allottees, the State or holders of Water Rights Arising Under State law, or the United States;
- 14. To limit any existing, present or future claims of the Tribe, its members or Allottees, or the United States on behalf of the Tribe, its members or Allottees, concerning water quality;
- 15. To prevent the Montana Water Court from adjudicating any properly filed claims to the use of water within the Reservation;
- 16. Except as expressly provided herein and as required by Congress, to modify the obligation of any agency of the United States pursuant to federal law;
- 17. To limit the ability of the Tribe, the State, or the United States to enforce any tribal, State, or federal laws or any common law rights relating to the protection of the environment;
- 18. To prejudice any right that Tribal members may have to secure a portion of the Tribal Water Right from the Tribe;
- 19. To affect the right, if any, of the Tribe to establish, through a final court judgment or congressional act, that its aboriginal or treaty title to lands outside the Reservation, including but not limited to lands within Glacier National Park and the Lewis and Clark National Forest, has not been extinguished; and
- 20. To determine the rights, if any, of the Tribe on lands within Glacier National Park and the Lewis and Clark National Forest.

- 21. Nothing in this Compact shall be construed or interpreted to create any right, title or interest in federal lands off the Reservation.
- C. Rights Reserved. The Parties expressly reserve all rights not granted, recognized or relinquished in this Compact.
 - D. Obligations of the United States Contingent.
- 1. Notwithstanding any other language in this Compact, except as authorized under other provisions of federal law, the obligations of the United States under this Compact shall be contingent on ratification and necessary authorization by Congress.
- 2. The expenditure or advance of any money or the performance of any work by the United States or the Tribe pursuant to this Compact which may require appropriation of money by Congress or allotment of funds is contingent on such appropriation or allotment being made.
- 3. The State and the Tribe recognize that this Compact has not been approved by the United States or any agency thereof and ratification by the Montana legislature or ratification by the Tribe in no manner binds or restricts the discretion of the United States in the negotiation of all related matters.
- E. Obligations of the State Contingent. The expenditure or advance of any money or the performance of any work by the State pursuant to this Compact which may require appropriation of money by the Montana legislature or allotment of funds shall be contingent on such appropriation or allotment being made.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

- A. State Contribution to Settlement. The Parties agree that the State contribution to settlement shall be negotiated by the State, the Tribe, and the United States as part of the negotiations on the federal legislation contemplated by Article VI.C. The agreement to, expenditure, or advance of any State contribution which may require authorization and appropriation of money by the Montana legislature or allotment of funds is contingent on such appropriation or allotment being made.
- B. Federal Contribution to Settlement. The Parties agree that the federal contribution to settlement shall be negotiated by the Tribe, the State, and the United States as part of the negotiations on the Federal legislation.
- C. Federal Legislation. The Tribe and the State agree to seek ratification of the Compact by Congress and any additional federal legislation necessary to effectuate the Compact.

ARTICLE VII - FINALITY

- A. Ratification and Effectiveness of Compact.
- 1. Following the first ratification by any Party, the terms of this Compact may not be modified without the consent of the Parties.
- 2. Notwithstanding any other provision in this Compact, the Tribe reserves the right to withdraw as a Party if:
- a. Congress has not ratified this Compact and authorized appropriations within four years from the date the ratification of the Compact by the Montana legislature becomes effective;
- b. Appropriations are not made in the manner contemplated by the federal legislation ratifying this Compact;

- c. The Parties do not reach agreement on the State contribution to settlement:
- d. The State has not authorized appropriations within five years from the date the Compact is ratified by the United States; or
- e. Appropriations are not made by the State in the manner contemplated by any agreement for contributions to settlement made pursuant to Article VI.A.
- 3. The Tribe may exercise its right to withdraw from the Compact under Article VII.A.2 by sending to the Governor of Montana and to the Secretary of the Interior by certified mail a resolution of the Blackfeet Tribal Business Council stating the Tribe's intent to withdraw and specifying a reason for withdrawal and a withdrawal date not sooner than one hundred and twenty days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, this Compact shall become null and void without further action by any Party, and the Parties agree to resume negotiation in good faith for quantification of the water rights of the Blackfeet Tribe and entry of a decree in a court of competent jurisdiction.
- 4. Notwithstanding any other provision in this Compact, the State reserves the right to withdraw as a Party to this Compact if:
- a. the Tribe and Congress have not ratified this Compact within four years from the date the ratification of the Compact by the Montana legislature becomes effective;
- b. Congress requires a State contribution to settlement that exceeds the contributions described in Article VI.A;
- c. Congress does not authorize and appropriate the federal share of funding agreed to pursuant to Article VI.B; or
- d. the DNRC does not concur in the list of Existing Uses of the Tribal Water Right pursuant to Article IV.I.2.
- 5. The State may exercise its right to withdraw by sending to the Chairman of the Blackfeet Tribal Business Council and to the Secretary of the Interior a letter delivered by certified mail from the Governor of the State of Montana stating the State's intent to withdraw and specifying a reason for withdrawal and a withdrawal date not sooner than one hundred and twenty days from the date of the letter. On the date designated in the letter for State withdrawal, this Compact shall become null and void without further action by any Party, and the Parties agree to resume negotiation in good faith for quantification of the water rights of the Blackfeet Tribe and entry of a decree in a court of competent jurisdiction.
- 6. Notwithstanding any other provision in this Compact, the Department of the Interior reserves the right to refuse to support federal legislation ratifying this Compact.
 - B. Incorporation into Decrees.
- 1. Within one hundred eighty days of the date this Compact is ratified by the Tribe, the State, and Congress, whichever is latest, the Tribe, the State, or the United States shall file, in the case In the Matter of the Adjudication of the Existing and Reserved Rights to the Use of Water, Both Surface and Underground, of the Blackfeet Tribe of the Blackfeet Reservation within the State of Montana, Civ. No. WC-91-1, pursuant to the provisions of State law, a motion for entry of the proposed decree set forth in Appendix 5 as the decree of the water rights held by the United States in trust for the Blackfeet Tribe. If the Montana Water Court does not approve the proposed decree submitted with the

motion within three years following the filing of the motion, the Compact shall be voidable by agreement of the State and the Tribe. If the Montana Water Court approves the proposed decree within three years, but the decree is subsequently set aside by the Montana Water Court or on appeal, the Compact shall be voidable by agreement of the State and the Tribe. Any effect of the failure of approval or setting aside of the decree on the approval, ratification, and confirmation by the United States shall be as provided by Congress. The Parties understand and agree that the submission of this Compact to a State court or courts, as provided for in this Compact, is solely to comply with the provisions of State law, and does not expand the jurisdiction of the State court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

- 2. Consistent with 3-7-224, MCA, setting forth the jurisdiction of the chief water judge, for the purposes of 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to Article III, and Appendix 5 (proposed decree), and may extend to other sections of the Compact only to the extent that they relate to the determination of existing water rights. The final decree shall consist of Article III as displayed in Appendix 5, and such other information as may be required by 85-2-234, MCA. Nevertheless, pursuant to 85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.
 - C. Disposition of Federal Suit.
- 1. On issuance of a final decree by the Montana Water Court or its successor, and the completion of any direct appeals therefrom, or on expiration of the time for filing any such appeal, the United States, the Tribe, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed.R.Civ.P., to dismiss without prejudice the claims of the Tribe, Tribal members, and Allottees and any claims made by the United States for benefit of the Tribe, Tribal members, and Allottees in United States v. Aageson, No. CIV-79-21-GF (filed April 5, 1979). The case may only be resumed if the State or Tribe exercises their rights under Article VII.A.
- 2. The Decree shall be filed by the Parties as a consent decree in Aageson, or in federal court as a new proceeding after the dismissal of Aageson conditional on agreement by the Parties to seek the necessary State, Tribal, and federal legislation to implement the remaining provisions of the Compact, if it is finally determined in a judgment binding on the State of Montana that the State courts lack jurisdiction over, or that the State court proceedings are inadequate to adjudicate some or all of the water rights asserted in Aageson.
 - D. Settlement of Tribal Water Right Claims.
- 1. The water rights and other benefits confirmed to the Tribe in this Compact are in full and final satisfaction of and are intended to be in replacement of and substitution for all claims to water or to the use of water by the Tribe, Tribal members, and Allottees and the United States on behalf of the Tribe, Tribal members, and Allottees existing on the Effective Date of this Compact, including water rights claims based on or recognized in Conrad Inv. Co. v. United States, 161 F. 829 (9th Cir. 1908), within the Reservation.
- 2. In consideration of the rights confirmed to the Tribe, Tribal members, and Allottees in this Compact, and of performance by the State and the United States of all actions required by this Compact, and on entry of a final order issuing the decree of the Tribal Water Right held in trust by the United States as quantified in this Compact and displayed in Appendix 5, and except for water

rights, benefits and uses confirmed in this Compact, the Tribe and the United States as trustee for the Tribe, Tribal members, and Allottees hereby waive, release, and relinquish any and all claims to water rights or to the use of water within the Reservation existing on the Effective Date of this Compact.

- 3. Any claim to water by the Tribe, its members or Allottees within the Reservation shall be satisfied out of the Tribal Water Right confirmed by this Compact, except for any Water Rights Arising Under State Law held by the Tribe, its members or Allottees as of the Effective Date of this Compact, which shall be satisfied pursuant to their own terms.
- E. Settlement of Tribal Claims Against the United States. Waiver of claims against the United States, by the Tribe, its members and Allottees shall be as provided by Congress.
- F. Binding Effect. After the Effective Date of this Compact and entry of a final decree, its terms shall be binding on:
- 1. The State and any Person using, claiming or in any manner asserting any right under the authority of the State to the use of water in Montana; provided that, the validity of consent, ratification, or authorization by the State is to be determined by Montana law;
- 2. The Tribe and any Person using, claiming or in any manner asserting any right to the use of the Tribal Water Right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe or Tribal members, or any rights arising under tribal law; provided that, the validity of consent, ratification or authorization by the Tribe is to be determined by Tribal law; and
- 3. The United States and any Person using, claiming or in any manner asserting any right under the authority of the United States to the use of water in Montana; provided that, the validity of consent, ratification or authorization by the United States is to be determined by federal law.

ARTICLE VIII - LEGISLATION/DEFENSE OF COMPACT

- A. State Legislation. The State and Tribe agree to seek ratification of the Compact by the Montana legislature and any additional State legislation necessary to effectuate the Compact.
- B. Federal Legislation. The State and Tribe agree to seek ratification of the Compact by Congress and any additional federal legislation necessary to effectuate the Compact.
- C. Tribal Legislation. The State and Tribe agree to seek ratification of the Compact by the Blackfeet Tribe and any Tribal legislation necessary to effectuate the Compact.
- D. Defense of the Compact. The Parties agree to defend the Compact after its Effective Date from all challenges and attacks and in all proceedings pursuant to Article VII.B and C, and agree that no provision of the Compact shall be modified as to substance except as may be provided in the Compact, or by agreement among the Parties.
 - **Section 2.** Section 85-20-1505, MCA, is amended to read:
- "85-20-1505. Blackfeet Tribe water rights compact infrastructure account use. (1) There is an account within the state special revenue fund called the Blackfeet Tribe water rights compact infrastructure account. The department shall administer the account.

- (2) The Blackfeet Tribe water rights compact infrastructure account may be used only for water-related infrastructure projects within the exterior boundaries of the Blackfeet Indian reservation.
- (3) Funds from this account may not be disbursed unless a water rights compact among the Blackfeet Tribe, the state, and the United States has been finally ratified by the legislature, the Congress of the United States, and the Blackfeet Tribe.
- (4) All interest and other income earned on money in the account must be deposited in the account."
- **Section 3. General fund transfer.** There is transferred for the 2011 biennium \$4 million from the state general fund to the Blackfeet Tribe water rights compact infrastructure account provided for in 85-20-1505.
- **Section 4. Appropriation.** There is appropriated to the department of natural resources and conservation from the Blackfeet Tribe water rights compact infrastructure account established in 85-20-1505 \$4 million for the purposes of and subject to the requirements of 85-20-1505.
- **Section 5. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.
- **Section 6. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].
 - **Section 7. Effective date.** [This act] is effective on passage and approval.

Approved April 15, 2009

CHAPTER NO. 205

[HB 246]

AN ACT EXEMPTING FROM FEDERAL REGULATION UNDER THE COMMERCE CLAUSE OF THE CONSTITUTION OF THE UNITED STATES A FIREARM, A FIREARM ACCESSORY, OR AMMUNITION MANUFACTURED AND RETAINED IN MONTANA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 6] may be cited as the "Montana Firearms Freedom Act".

- Section 2. Legislative declarations of authority. The legislature declares that the authority for [sections 1 through 6] is the following:
- (1) The 10th amendment to the United States constitution guarantees to the states and their people all powers not granted to the federal government elsewhere in the constitution and reserves to the state and people of Montana certain powers as they were understood at the time that Montana was admitted to statehood in 1889. The guaranty of those powers is a matter of contract between the state and people of Montana and the United States as of the time that the compact with the United States was agreed upon and adopted by Montana and the United States in 1889.
- (2) The ninth amendment to the United States constitution guarantees to the people rights not granted in the constitution and reserves to the people of

Montana certain rights as they were understood at the time that Montana was admitted to statehood in 1889. The guaranty of those rights is a matter of contract between the state and people of Montana and the United States as of the time that the compact with the United States was agreed upon and adopted by Montana and the United States in 1889.

- (3) The regulation of intrastate commerce is vested in the states under the 9th and 10th amendments to the United States constitution, particularly if not expressly preempted by federal law. Congress has not expressly preempted state regulation of intrastate commerce pertaining to the manufacture on an intrastate basis of firearms, firearms accessories, and ammunition.
- (4) The second amendment to the United States constitution reserves to the people the right to keep and bear arms as that right was understood at the time that Montana was admitted to statehood in 1889, and the guaranty of the right is a matter of contract between the state and people of Montana and the United States as of the time that the compact with the United States was agreed upon and adopted by Montana and the United States in 1889.
- (5) Article II, section 12, of the Montana constitution clearly secures to Montana citizens, and prohibits government interference with, the right of individual Montana citizens to keep and bear arms. This constitutional protection is unchanged from the 1889 Montana constitution, which was approved by congress and the people of Montana, and the right exists as it was understood at the time that the compact with the United States was agreed upon and adopted by Montana and the United States in 1889.
- **Section 3. Definitions.** As used in [sections 1 through 6], the following definitions apply:
- (1) "Borders of Montana" means the boundaries of Montana described in Article I, section 1, of the 1889 Montana constitution.
- (2) "Firearms accessories" means items that are used in conjunction with or mounted upon a firearm but are not essential to the basic function of a firearm, including but not limited to telescopic or laser sights, magazines, flash or sound suppressors, folding or aftermarket stocks and grips, speedloaders, ammunition carriers, and lights for target illumination.
- (3) "Generic and insignificant parts" includes but is not limited to springs, screws, nuts, and pins.
- (4) "Manufactured" means that a firearm, a firearm accessory, or ammunition has been created from basic materials for functional usefulness, including but not limited to forging, casting, machining, or other processes for working materials.
- Section 4. Prohibitions. A personal firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in Montana and that remains within the borders of Montana is not subject to federal law or federal regulation, including registration, under the authority of congress to regulate interstate commerce. It is declared by the legislature that those items have not traveled in interstate commerce. This section applies to a firearm, a firearm accessory, or ammunition that is manufactured in Montana from basic materials and that can be manufactured without the inclusion of any significant parts imported from another state. Generic and insignificant parts that have other manufacturing or consumer product applications are not firearms, firearms accessories, or ammunition, and their importation into Montana and incorporation into a firearm, a firearm accessory, or ammunition manufactured in Montana does not subject the firearm, firearm accessory, or ammunition to

federal regulation. It is declared by the legislature that basic materials, such as unmachined steel and unshaped wood, are not firearms, firearms accessories, or ammunition and are not subject to congressional authority to regulate firearms, firearms accessories, and ammunition under interstate commerce as if they were actually firearms, firearms accessories, or ammunition. The authority of congress to regulate interstate commerce in basic materials does not include authority to regulate firearms, firearms accessories, and ammunition made in Montana from those materials. Firearms accessories that are imported into Montana from another state and that are subject to federal regulation as being in interstate commerce do not subject a firearm to federal regulation under interstate commerce because they are attached to or used in conjunction with a firearm in Montana.

Section 5. Exceptions. [Section 4] does not apply to:

- (1) a firearm that cannot be carried and used by one person;
- (2) a firearm that has a bore diameter greater than 1 1/2 inches and that uses smokeless powder, not black powder, as a propellant;
- (3) ammunition with a projectile that explodes using an explosion of chemical energy after the projectile leaves the firearm; or
- (4) a firearm that discharges two or more projectiles with one activation of the trigger or other firing device.
- Section 6. Marketing of firearms. A firearm manufactured or sold in Montana under [sections 1 through 6] must have the words "Made in Montana" clearly stamped on a central metallic part, such as the receiver or frame.
- **Section 7.** Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 30, and the provisions of Title 30 apply to [sections 1 through 6].
- **Section 8. Applicability.** [This act] applies to firearms, firearms accessories, and ammunition that are manufactured, as defined in [section 3], and retained in Montana after October 1, 2009.

Approved April 15, 2009

CHAPTER NO. 206

[HB 263]

AN ACT REQUIRING CERTAIN HEALTH CARE PROVIDERS AND FACILITIES TO DISCLOSE ESTIMATED COSTS OF TREATMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 3] may be cited as the "Patient's Right to Know the Costs of Medical Procedures Act".

Section 2. Legislative purpose. The purpose of [sections 1 through 3] is to provide health care consumers with better information on the cost of their medical care and to introduce elements of competition into the marketplace.

Section 3. Disclosures required of health care providers. (1) Upon request of a patient or a patient's agent, a health care provider, outpatient center for surgical services, clinic, or hospital shall provide the patient or the patient's agent with its estimated charge for a health care service or course of treatment that exceeds \$500. The estimate must be provided for a service that a patient is receiving or has been recommended to receive. The estimate must be

provided at the time the service is scheduled or within 10 business days of the patient's or agent's request.

- (2) The patient or patient's agent may request that the information required under this section be provided in writing or electronically.
 - (3) The estimated charge:
- (a) must represent a good faith effort to provide accurate information to the patient or the patient's agent;
 - (b) is not a binding contract upon the parties; and
- (c) is not a guarantee that the estimated amount will be the charged amount or will account for unforeseen conditions.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 50, chapter 4, part 5, and the provisions of Title 50, chapter 4, part 5, apply to [sections 1 through 3].

Approved April 15, 2009

CHAPTER NO. 207

[HB 264]

AN ACT REQUIRING HEALTH INSURERS TO DISCLOSE PREAUTHORIZATION OR PREAPPROVAL REQUIREMENTS AND ESTIMATED COVERED AND OUT-OF-POCKET COSTS FOR CERTAIN HEALTH CARE SERVICES; AMENDING SECTIONS 33-22-244 AND 33-22-521, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-244, MCA, is amended to read:

- "33-22-244. Disclosure standards individual policy. (1) In order to provide for full and fair disclosure in the sale of disability insurance, an individual disability insurance policy may not be delivered or issued for delivery in this state unless an outline of coverage is filed with and approved by the insurance commissioner in accordance with 33-1-501 and is delivered to the applicant at the time the application is made.
 - (2) The outline of coverage must include:
- (a) a general description of the principal benefits and coverages provided by the policy;
- (b) a general description of the insured's financial responsibility under the policy, including, if applicable, the amount of the deductible, the amount or percentage of copayment, and the maximum annual out-of-pocket expenses to be paid by the insured;
 - (c) a statement of the maximum lifetime benefit available under the policy;
 - (d) a statement of the estimated periodic premium to be paid by the insured;
- (e) a general description of the factors or case characteristics that the insurer may consider in establishing or changing the premiums and, if applicable, in determining the insurability of the applicant;
- (f) a description of any preauthorization or other preapproval requirements for medical care:
- (f)(g) a prominently displayed statement of the insured's responsibility for payment of billed charges beyond those charges reimbursed by the insurer when

the insured uses health care services from a health care provider who is outside a network of health care providers used by the insurer; and

- (g)(h) a general description of the trend of premium increases or decreases for comparable policies issued by the insurer during the preceding 5 years, if the trend data is available.
- (3) The outline of coverage may include any other information that the insurer considers relevant to the applicant's selection of an appropriate individual disability policy.
- (4) An insurer or producer shall provide to an individual, upon request, an outline of coverage for any health benefit product marketed to the general public. The outline of coverage provided under this subsection may exclude the statement of the estimated periodic premium to be paid by the insured.
- (5) Prior to issuance of an individual disability insurance policy, written informational materials describing the policy's cancer screening coverages must be provided to a potential applicant. The informational materials are not subject to filing with and approval of the insurance commissioner."

Section 2. Section 33-22-521, MCA, is amended to read:

- "33-22-521. Disclosure standards group policy. (1) In order to provide for full and fair disclosure in the sale of disability insurance, a group disability insurance policy may not be delivered or issued for delivery in this state unless an outline of coverage is filed with and approved by the insurance commissioner in accordance with 33-1-501 and is delivered to the applicant at the time the application is made.
 - (2) The outline of coverage must include:
- (a) a general description of the principal benefits and coverages provided by the policy;
- (b) a general description of the insured's financial responsibility under the policy, including, if applicable, the amount of the deductible, the amount or percentage of copayment, and the maximum annual out-of-pocket expenses to be paid by the insured;
 - (c) a statement of the maximum lifetime benefit available under the policy;
 - (d) a statement of the estimated periodic premium to be paid by the insured;
- (e) a general description of the factors or case characteristics that the insurer may consider in establishing or changing the premiums and, if applicable, in determining the insurability of the applicant;
- (f) a description of any preauthorization or other preapproval requirements for medical care:
- (f)(g) a prominently displayed statement of the insured's responsibility for payment of billed charges beyond those charges reimbursed by the insurer when the insured uses health care services from a health care provider who is outside a network of health care providers used by the insurer; and
- (g)(h) a general description of the trend of premium increases or decreases for comparable policies issued by the insurer during the preceding 5 years, if the trend data is available.
- (3) If applicable, the outline of coverage must disclose that the policy does not contain coverage for mental illness or chemical dependency.

- (4) The outline of coverage may include any other information that the insurer considers relevant to the applicant's selection of an appropriate group disability policy.
- (5) An insurer or producer shall provide to an individual, upon request, an outline of coverage for any health benefit product marketed to the general public. The outline of coverage provided under this subsection may exclude the statement of the estimated periodic premium to be paid by the insured.
- (6) An outline of coverage must also be sent to an employee when an employee is sent a certificate of insurance.
- (7) Prior to issuance of a group disability insurance policy, written informational materials describing the policy's cancer screening coverages must be provided to a prospective applicant. The informational materials are not subject to filing with and approval of the insurance commissioner."
- **Section 3. Short title.** [Sections 3 through 5] may be cited as the "Patient's Right to Know of Insurance Coverage Provisions Act".
 - Section 4. Legislative purpose. The purpose of [sections 3 through 5] is:
- (1) to provide health care consumers with better information regarding the portion of their health care costs that will be paid by their health insurer and the portion that they will have to pay themselves; and
 - (2) to introduce elements of competition into the marketplace.
- Section 5. Disclosures required of health insurers limitations. (1) When requested by an insured or the insured's agent, a health insurer shall provide a summary of the insured's coverage for a specific health care service or course of treatment when an actual charge or estimate of charges by a health care provider, outpatient center for surgical services, clinic, or hospital exceeds \$500.
- (2) The insured or insured's agent may request that the information required under this section be provided in writing or electronically.
- (3) The health insurer shall make a good faith effort to provide accurate information under this section. The health insurer is only required to provide information under this section based upon cost estimates and procedure codes obtained by the insured from the insured's health care provider.
- **Section 6.** Codification instruction. [Sections 3 through 5] are intended to be codified as an integral part of Title 50, chapter 4, part 5, and the provisions of Title 50, chapter 4, part 5, apply to [sections 3 through 5].

Section 7. Effective date. [This act] is effective January 1, 2010.

Approved April 15, 2009

CHAPTER NO. 208

[HB 386]

AN ACT CREATING THE MONTANA RIGHT OF DISPOSITION ACT PERTAINING TO FUNERAL OR OTHER DISPOSITION ARRANGEMENTS; ESTABLISHING A PRIORITY OF PERSONS WHO MAY ARRANGE FOR THE FUNERAL OR DISPOSITION OF OTHERS; PROVIDING FOR THE LOSS OF THE RIGHT OF DISPOSITION; PROVIDING FOR THE RESOLUTION OF DISPUTES AS TO THE RIGHT OF DISPOSITION; ESTABLISHING RIGHTS AND IMMUNITY FOR A MORTICIAN WHO

RELIES ON INSTRUCTIONS OF A PERSON WHO THE MORTICIAN REASONABLY BELIEVES HAS THE RIGHT OF DISPOSITION; CLARIFYING THE RIGHT TO CONTROL THE DISPOSITION OF HUMAN REMAINS WITH RESPECT TO MAUSOLEUM AND COLUMBARIUM AUTHORITIES; REVISING THE DEFINITION OF "AUTHORIZING AGENT"; AND AMENDING SECTIONS 35-21-810 AND 37-19-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 9] may be cited as the "Montana Right of Disposition Act".

Section 2. Purpose. The legislature declares that it is the public policy of this state to provide an orderly and uniform system to determine which individuals hold the right to direct and carry out funeral and disposition arrangements for the remains of deceased individuals.

- Section 3. Prepaid funeral arrangements disposition directions definition. (1) A person who is 18 years of age or older and of sound mind, by entering into a prepaid funeral contract with any mortuary licensed under Title 37, chapter 19, part 4, or by providing disposition directions may direct the location, manner, and conditions of disposition of the person's remains and the arrangements for funeral goods and services to be provided upon the person's death.
- (2) The funeral prearrangements that are prepaid and contracted for with a licensed mortuary or the disposition directions may not be cancelled or substantially revised unless the cancellation or substantial revision has been ordered by a person appointed by the decedent in the prepaid funeral contract or the disposition directions as the person authorized to cancel or revise the terms of the prepaid funeral contract or the disposition directions.
 - (3) As used in this section, the term "disposition directions" means:
- (a) a video provided in a replayable format of the person who is the subject of the disposition directions in which the person describes the wishes for disposition and that is accompanied by a written attestation of the video accuracy by two witnesses who are at least 18 years of age; or
- (b) a legible written instrument signed by the person who is the subject of the disposition directions and by two people who are at least 18 years of age who have witnessed the signing by the person. The written instrument may be but is not limited to a letter of instructions, a will, a trust document, or advance directives. A written instrument that does not name a person with the right to control the decedent's disposition must follow the priority of rights of disposition provided in [section 4].
- **Section 4. Priority of rights of disposition.** (1) A person who is 18 years of age or older and of sound mind wishing to authorize another person to control the disposition of the person's remains may execute an affidavit or a written instrument before a notary public in substantially the following form:

County of]
, [person designating another person to control th
disposition of the person's remains] do hereby designat
[person who is provided with the right to control
the disposition] with the right to control the disposition of my remains upon m
leath. I have or have not attached specific directions concerning th
disposition of my remains with which the designee shall substantially comply

provided the directions are lawful and there are sufficient resources in my estate to carry out the directions.

Subscribed	and	sworn	to	before	me	this		day	of	the	month	of
of the year												

- (2) Except as provided in [sections 3 and 7] and subsection (1) of this section, the right to control the disposition of the remains of a deceased person, including the location, manner, and conditions of the disposition and arrangements for funeral goods and services, vests in the following persons in the order named if the named person is 18 years of age or older and is of sound mind:
- (a) a person designated by the decedent as the person with the right to control the decedent's disposition in an affidavit or written instrument executed in accordance with subsection (1);
 - (b) the surviving spouse;
- (c) the sole surviving child of the decedent or, if there is more than one child of the decedent, the majority of the surviving children. However, less than one-half of the surviving children may be vested with the rights and duties provided in this section if those surviving children have used reasonable efforts to notify all other surviving children of their instructions and they are not aware of opposition to their instructions on the part of more than one-half of all surviving children.
- (d) the surviving parent or parents of the decedent. If one of the surviving parents is absent, the remaining parent may be vested with the rights and duties provided in this section if that parent's reasonable efforts have been unsuccessful in locating the absent surviving parent.
- (e) the surviving sibling of the decedent or, if there is more than one sibling of the decedent, the majority of the surviving siblings. However, less than one-half of the surviving siblings may be vested with the rights and duties provided in this section if those siblings have used reasonable efforts to notify all other surviving siblings of their instructions and they are not aware of any opposition to their instructions on the part of more than one-half of all surviving siblings.
- (f) the surviving grandparent of the decedent or, if there is more than one surviving grandparent, the majority of the grandparents. However, less than one-half of the surviving grandparents may be vested with the rights and duties provided in this section if those grandparents have used reasonable efforts to notify all other surviving grandparents of their instructions and are not aware of any opposition to their instructions on the part of more than one-half of all surviving grandparents.
- (g) the guardian of the decedent at the time of the decedent's death, if a guardian had been appointed;
 - (h) the personal representative of the estate of the decedent;
- (i) the person in classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may exercise the right of disposition.
- (j) if the disposition of the remains of the decedent is the responsibility of the state or a local government, the public officer, administrator, or employee responsible for arranging the disposition of the decedent's remains; and

- (k) in the absence of any person provided for in subsections (2)(a) through (2)(j), any other person, including the mortician with custody of the remains, who is willing to assume the responsibility to act and arrange the disposition of the decedent's remains after attesting in writing that a good faith effort has been made to contact the individuals provided for in subsections (2)(a) through (2)(j).
- Section 5. Arrangements provided by survivors. The provisions of [section 3 and section 4(1)] do not prevent the decedent's survivors, in the order listed in [section 4], from pursuing, at their own expense, meaningful services and making arrangements for funeral services that do not conflict with the decedent's instructions for disposition made in accordance with [section 3 and section 4(1)].
- Section 6. Loss of right of disposition. A person entitled to the right of disposition under [section 4] forfeits that right and the right is passed on to the next qualifying person listed in [section 4] under the following circumstances:
- (1) the person is charged with deliberate or negligent homicide in connection with the decedent's death. However, if the charges against the person are dismissed or if the person is acquitted of the charges, the right of disposition is returned to the person.
- (2) the person does not exercise the person's right of disposition within 2 days after notification of the death of the decedent or within 3 days of the decedent's death, whichever is earlier;
- (3) the person and the decedent are spouses and a petition to dissolve the marriage was pending at the time of the decedent's death; or
- (4) the district court, pursuant to [section 7], determines that the person entitled to the right of disposition and the decedent were estranged at the time of death. For purposes of this subsection, "estranged" means a physical and emotional separation from the decedent existing at the time of death and that existed for a period of time prior to death that clearly demonstrates an absence of affection, trust, and regard for the decedent.
- **Section 7. Disputes.** (1) The district court for the county where the decedent resided may award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition and make decisions regarding the decedent's remains if those sharing the right of disposition under [section 4] cannot agree.
- (2) The following provisions apply to the court's determination under subsection (1):
- (a) If the persons holding the right of disposition are two or more persons with the same relationship to the decedent and they cannot, by majority vote, make a decision regarding the disposition of the decedent's remains, any of the persons or a mortician with custody of the remains may file a petition asking the district court to make a determination in the matter.
- (b) In making a determination, the district court shall consider the following:
- (i) the reasonableness and practicality of any proposed funeral arrangements and disposition;
- (ii) the degree of the personal relationship between the decedent and each of the persons claiming the right of disposition;
- (iii) the desires of the person or persons who are able and willing to pay the cost of the funeral arrangements and disposition;

- (iv) the convenience and needs of other family and friends wishing to pay respects;
 - (v) the desires of the decedent:
- (vi) the degree to which the funeral arrangements would allow maximum participation by all those wishing to pay their respects.
- (3) (a) In the event of a dispute regarding the right of disposition, a mortician may not be held liable for refusing to accept the remains or to inter or otherwise dispose of the remains of the decedent or complete the arrangements for final disposition of the remains until the mortician receives a court order or a written agreement signed by the parties to the disagreement that decides the final disposition of the remains.
- (b) If the mortician retains the remains for final disposition while the parties are in disagreement, the mortician may embalm or refrigerate and shelter the body, or both, in order to preserve the body while awaiting the final decision of the district court and may add the cost of embalming or refrigeration and sheltering, or both, to the final disposition costs.
- (c) If a mortician files a petition under this section for an order of disposition from the district court, the mortician may add the legal fees and court costs associated with the petition to the final disposition costs.
- (d) This section may not be construed to require or to impose a duty upon a mortician to bring an action under this section. A mortician may not be held criminally or civilly liable for choosing not to bring an action under this section.
- (4) Except to the extent that it may be considered by the district court under subsection (2)(b)(iii), the fact that a person has paid or agreed to pay for all or part of the funeral arrangements and disposition does not give that person a greater right of disposition than the person would otherwise have.
- (5) The personal representative of the estate of the decedent does not have, by virtue of being the personal representative, a greater claim to the right of disposition than the person would otherwise have under the provisions of [sections 1 through 9].
- Section 8. Right to rely. (1) A person who signs a funeral agreement, cremation authorization form, or other authorization for disposition must be considered as warranting the truthfulness of any facts set forth in the agreement, form, or authorization, including:
- (a) the identity of the decedent whose remains are subject to the disposition; and
 - (b) the person's authority to order the disposition.
- (2) A mortician may rely on the funeral service agreement, cremation authorization form, or other authorization and may carry out the instructions of the person or persons who the mortician reasonably believes hold the right of disposition.
- (3) A mortician is not responsible to contact or to independently investigate the existence of any next of kin or relatives of the decedent.
- (4) If a class includes two or more persons who are equal in priority, a mortician may rely on and act according to the instructions of the first person in the class to make funeral and disposition arrangements if another person in the class has not provided to the mortician written notice of the person's objections to the arrangements and the mortician does not have knowledge of any objections to the arrangements by other members of the class.

Section 9. Immunity. A mortuary or mortician who relies in good faith on the instructions of an individual claiming the right of disposition is not subject to criminal or civil liability or subject to disciplinary action for carrying out the disposition of the remains in accordance with the instructions.

Section 10. Section 35-21-810, MCA, is amended to read:

- "35-21-810. Disposition of remains liability. (1) The right to control the disposition of the remains of a deceased person, unless other directions have been given by the decedent, vests in, and the duty of interment and the liability for the reasonable cost of interment of the remains devolves upon, the following in the order named:
 - (a) a spouse;
 - (b) a majority of adult children;
 - (c) a parent;
 - (d) a close relative of the decedent; or
- (e) in the absence of a person listed in subsections (3)(a) through (3)(d), a personal representative, a public administrator, the deceased through a preneed authorization, or others as designated by the board of funeral service by rule is as provided in [section 4].
- (2) The liability for the reasonable cost of interment devolves jointly and severally upon all kin of the decedent listed in subsection (1) [section 4] in the same degree of kindred and upon the estate of the decedent.
- (3) A person signing an authorization for the interment of any remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred, and the person's authority to order the interment. The person signing the authorization is personally liable for all damage occasioned by or resulting from breach of the warranty.
- (4) The mausoleum-columbarium authority may inter any remains upon the receipt of a written authorization of a person representing to be a person who has acquired the right to control the disposition of the remains. A mausoleum-columbarium authority is not liable for interring pursuant to the authorization unless it has actual notice that presentation is untrue."
 - Section 11. Section 37-19-101, MCA, is amended to read:
- "37-19-101. **Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:
 - (1) "Arrangements" includes:
- (a) planning the details of funeral service, including time of service, type of service, and, if requested, acquiring the services of clergy;
 - (b) obtaining the necessary information for filing death certificates;
- (c) comparing or discussing prices, including merchandise prices and financial arrangements; and
- (d) providing for onsite direction and coordination of participants and onsite direction, coordination, and facilitation at funeral, graveside, or memorial services or rites.
- (2) "At-need" arrangements means arrangements made by an authorized person on behalf of a deceased.
- (3) "Authorizing agent" means a person legally entitled to order the final disposition of human remains, including burial, cremation, entombment,

donation to medical science, or other means, of human remains. An authorizing agent is, in The order of preference: for an authorizing agent is subject to the priority of rights of disposition established in [section 4].

- (a) a spouse;
- (b) a majority of adult children;
- (c) a parent;
- (d) a close relative of the deceased; or
- (e) in the absence of a person or persons listed in subsections (1)(a) through (1)(d), a personal representative, a public administrator, the deceased through a preneed authorization, or others as designated by board rule.
 - (4) "Board" means the board of funeral service provided for in 2-15-1743.
- (5) "Branch establishment" means a separate facility that may or may not have a suitable visitation room or preparation room and that is owned by, a subsidiary of, or otherwise financially connected to or controlled by a licensed mortuary.
- (6) "Cemetery" means any land or structure in this state dedicated to and used or intended to be used for interment of cremated remains or human remains. It may be any one or a combination of a burial park for earth interments, a mausoleum for crypt or niche interments, or a columbarium.
- (7) "Cemetery company" means an individual, partnership, corporation, or association that:
- (a) owns or controls cemetery lands or property and conducts the business of a cemetery; or
- (b) applies to the board to own or control cemetery lands or property and conduct the business of a cemetery.
- (8) "Closed container" means a container in which cremated remains can be placed and enclosed in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.
- (9) "Columbarium" means a room or space in a building or structure used or intended to be used for the interment of cremated remains.
- (10) "Cremated remains" means all human remains recovered after the completion of the cremation, including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.
- (11) "Cremation" means the technical process, using heat, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation.
- (12) "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the cremation of human remains.
- (13) "Cremation container" means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet substantially all of the following standards:
 - (a) be composed of readily combustible materials suitable for cremation;
- (b) be able to be closed in order to provide a complete covering for the human remains:
 - (c) be resistant to leakage and spillage;
 - (d) be rigid enough for handling with ease; and

- (e) be able to provide protection for the health, safety, and integrity of crematory personnel.
- (14) "Crematory" means the building or portion of a building that houses the cremation chamber and the holding facility.
- (15) "Crematory operator" means the person in charge of the licensed crematory facility.
- (16) "Crematory technician" means an employee of a crematory facility who is trained to perform cremations and is licensed by the board.
- (17) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person.
- (18) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
 - (19) "Embalming" means:
- (a) obtaining burial or removal permits or assuming other duties incidental to the practice of embalming;
- (b) disinfecting and preserving or attempting to preserve dead human bodies in their entirety or in parts by the use of chemical substances, fluids, or gases ordinarily intended for that use by introducing the chemical substances, fluids, or gases into the body by vascular or hypodermic injection or by direct introduction into the organs or cavities; and
 - (c) restorative art.
 - (20) "Funeral directing" includes:
 - (a) supervising funerals;
 - (b) the making of preneed or at-need contractual arrangements for funerals;
 - (c) preparing dead bodies for burial, other than by embalming;
- (d) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and
 - (e) representing to the public that one is a funeral director.
- (21) "Holding facility" means an area within or adjacent to the crematory facility designated for the retention of human remains prior to cremation that must:
 - (a) comply with any applicable public health law;
 - (b) preserve the dignity of the human remains;
- (c) recognize the health, safety, and integrity of the crematory operator and crematory personnel; and
 - (d) be secure from access by anyone other than authorized personnel.
- (22) "Human remains" means the body of a deceased person or part of a body or limb that has been removed from a living person, including the body, part of a body, or limb in any stage of decomposition.
- (23) "Interment" means any lawful disposition of cremated remains or human remains.
- (24) (a) "Intern" means a person who has met the educational and testing requirements for a license to practice mortuary science in Montana, has been licensed by the board as an intern, and is engaged in the practice of mortuary science under the supervision of a licensed mortician.

- (b) For the purposes of this subsection (24), "supervision" means the extent of oversight that a mortician believes an intern requires based upon the training, experience, judgment, and professional development of the intern.
- (25) "Lot" or "grave space" means a space in a cemetery used or intended to be used for interment.
- (26) "Mausoleum" means a community-type room or space in a building or structure used or intended to be used for the interment of human remains in crypts or niches.
- (27) "Mortician" means a person licensed under this chapter to practice mortuary science.
- (28) (a) "Mortuary" means a place of business licensed by the board, located in a building or portion of a building having a specific street address or location, containing but not limited to a suitable room for viewing or visitation and a preparation room, and devoted exclusively to activities that are related to the preparation and arrangements for funerals, transportation, burial, or other disposition of dead human bodies.
- (b) The term includes conducting activities from the place of business referred to in subsection (28)(a) that are incidental, convenient, or related to the preparation of funeral or memorial services or rites or the transportation, burial, cremation, or other disposition of dead human bodies in any area where those activities may be conducted.
- (29) "Mortuary science" means the profession or practice of funeral directing and embalming.
- (30) "Niche" means a space in a columbarium or mausoleum used or intended to be used for the interment of the cremated remains or human remains of one or more deceased persons.
- (31) "Perpetual care and maintenance" means continual and proper maintenance of cemetery buildings, grounds, and lots or grave spaces.
- (32) "Preneed arrangements" means arrangements made with a licensed funeral director or licensed mortician by a person on the person's own behalf or by an authorized individual on the person's behalf prior to the death of the person.
- (33) "Temporary container" means a receptacle for cremated remains that is usually made of cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.
- (34) "Urn" means a receptacle designed to permanently encase the cremated remains."
- **Section 12. Codification instruction.** [Sections 1 through 9] are intended to be codified as an integral part of Title 37, chapter 19, and the provisions of Title 37, chapter 19, apply to [sections 1 through 9].

Approved April 15, 2009

CHAPTER NO. 209

[HB 402]

AN ACT REVISING LAWS RELATED TO STATE LAND BANKING; REMOVING THE SUNSET OF THE LAND BANKING PROGRAM; INCREASING THE NUMBER OF ACRES OF STATE LAND THAT MAY BE

SOLD OR DISPOSED OF; AMENDING SECTIONS 77-2-363 AND 77-2-366, MCA: AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2-363, MCA, is amended to read:

- "77-2-363. Land banking land sales and limitations sale preparation costs. (1) (a) The board may not cumulatively sell or dispose of more than 100,000 250,000 acres of state land. Seventy-five percent of the acreage cumulatively sold must be isolated parcels that do not have a legal right of access by the public. At any one time during the life of the land banking process, the board may not sell more than 20,000 acres of state land unless the board has acted to use the revenue from that land to make purchases pursuant to 77-2-364.
- (b) The estimated fair market value must be determined by a Montana-licensed and Montana-certified appraiser.
- (2) (a) A person bidding to purchase state land offered for sale shall 20 days prior to the day of auction deposit with the department a bid bond in the form of a certified check or cashier's check drawn on any Montana bank equal to at least 20% of the minimum sale price specified by the department pursuant to 77-2-323(1) to guarantee the bidder's payment of the purchase price.
- (b) If the current lessee of the land to be sold has initiated the sale as authorized by 77-2-364, the lessee may cancel the sale by giving notice to the department at least 10 days prior to the day of the auction. When the sale is canceled by the lessee, the lessee shall pay the costs incurred by the department for the preparation of the sale, including any costs incurred for preparation of documents required by 75-1-201.
- (c) The department shall retain the bid bond of the successful bidder and shall return the bid bonds of the unsuccessful bidders. If the successful bidder fails to comply with the terms of the sale for any reason, the successful bidder's bid bond must be forfeited and credited to the interest and income account of the proper trust.
- (3) Except for a sale that is initiated by the lessee of the parcel of land proposed for sale, prior to the proposed sale of any parcel of state land under the land banking process, the board shall give 60 days' notice of the proposed sale to the lessee of the parcel to allow the lessee sufficient time to determine whether the lessee wishes to propose an exchange of the land to the board.
- (4) For a sale initiated by the board or the department, the lessee of the land must be afforded all the rights and privileges to match the high bid, as provided in 77-2-324.
- (5) (a) When the lessee has initiated a sale of land under this section, the lessee shall remit to the department the estimated costs of preparing the parcel for sale, including but not limited to appraisals, cultural surveys, environmental review pursuant to Title 75, chapter 1, parts 1 through 3, and land surveys. Payment must be made within 10 days after the board has provided preliminary approval for the sale of the parcel.
- (b) If the parcel is sold to the lessee, the funds remitted for the costs of the sale must be applied to the actual costs at closing. If the parcel is sold to a party other than the lessee, the funds remitted by the lessee must be refunded to the lessee and actual costs of preparing the parcel for sale must be assessed to the purchaser at closing."

Section 2. Section 77-2-366. MCA, is amended to read:

- "77-2-366. Land banking process—time limit—report to environmental quality council. (1) State land may not be sold through the land banking process pursuant to 77-2-361 through 77-2-367 after October 1, 2011. Land banking purchases under 77-2-364 may continue after October 1, 2011, until all the proceeds in the state land bank fund are expended or revert to the public school fund or the permanent fund of the respective trust pursuant to 77-2-362(2)(d).
- (2) The department shall provide a report to the environmental quality council by the July 1, 2008, prior to each regular legislative session that describes the results of the land banking program in detail. At a minimum, the report must summarize the sale and purchase transactions made through the program by type, location, acreage, value, and trust beneficiary. The environmental quality council shall make any recommendations that it determines necessary regarding the implementation of the state land banking process, including recommendations for legislation."

Section 3. Effective date. [This act] is effective on passage and approval. Approved April 15, 2009

CHAPTER NO. 210

[HB 403]

AN ACT REQUIRING THAT COURTS CONSIDER A CHILD'S NEED FOR CONTINUITY OF CARE IN DETERMINING WHETHER THE CHILD SHOULD BE PLACED WITH A PERSON OTHER THAN A PARENT; AND AMENDING SECTIONS 40-4-211, 40-6-601, 40-6-602, 41-3-437, 41-3-438, 41-3-439, 72-5-223, AND 72-5-225, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-211, MCA, is amended to read:

- "40-4-211. Jurisdiction commencement of parenting proceedings.
 (1) A court of this state competent to decide parenting matters has jurisdiction to make a parenting determination by initial or amended decree if:
 - (a) this state:
- (i) is the home state of the child at the time of commencement of the proceedings; or
- (ii) had been the child's home state within 6 months before commencement of the proceedings and the child is absent from this state because of the child's removal or retention by any person and a parent or person acting as parent continues to live in this state: or
- (b) it is in the best interest of the child that a court of this state assume jurisdiction because:
- (i) the child and the parents or the child and at least one contestant have a significant connection with this state; and
- (ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or
 - (c) the child is physically present in this state and:
- (i) has been abandoned, including being surrendered to an emergency services provider as provided in 40-6-405; Θ

- (ii) has been with a caretaker relative who has been awarded continuing custody pursuant to 40-6-602; or
- (ii)(iii) it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or
- (d) (i) no other state has jurisdiction under prerequisites substantially in accordance with subsection (1)(a), (1)(b), or (1)(c) or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine parenting of the child; and
 - (ii) it is in the child's best interest that the court assume jurisdiction.
- (2) Except under subsections (1)(c) and (1)(d), physical presence in this state of the child or of the child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make a parenting determination.
- (3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine parenting of the child.
 - (4) A parenting plan proceeding is commenced in the district court:
 - (a) by a parent, by filing a petition:
 - (i) for dissolution or legal separation;
- (ii) for parenting in the county in which the child is permanently resident or found; or
 - (iii) for custody under 40-6-411; or
- (b) by a person other than a parent if the person has established a child-parent relationship with the child, by filing a petition for parenting in the county in which the child resides or is found.
- (5) Notice of a parenting proceeding must be given to the child's parent, guardian, caretaker, those persons with whom the child is physically residing, and all other contestants, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties.
- (6) For purposes of subsection (4)(b), "child-parent relationship" means a relationship that:
- (a) exists or did exist, in whole or in part, preceding the filing of an action under this section, in which a person provides or provided for the physical needs of a child by supplying food, shelter, and clothing and provides or provided the child with necessary care, education, and discipline; and which relationship
- (b) continues or existed on a day-to-day basis through interaction, companionship, interplay, and mutuality that fulfill the child's psychological needs for a parent as well as the child's physical needs; and
- (c) meets or met the child's need for continuity of care by providing permanency or stability in residence, schooling, and activities outside of the home.
- (7) A custody proceeding under 40-6-411 is commenced in the district court by a parent by filing in one of the following counties:
- (a) the county where the newborn is located if the parent knows where the newborn is; $\,$
- (b) the county where the emergency services provider to whom the newborn was surrendered is located if subsection (7)(a) does not apply; or

(c) the county where the biological parent is located if neither subsection (7)(a) or (7)(b) applies."

Section 2. Section 40-6-601, MCA, is amended to read:

- "40-6-601. Legislative finding and purpose definitions. (1) The legislature recognizes that the right of parents to the custody and control of their children is based upon the liberties secured by the United States and Montana constitutions and that a parent's right to that custody and control is therefore normally supreme to the interests of other persons. The legislature also recognizes a growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and care of a child to a grandparent or other caretaker relative for a lengthy period of time. The legislature finds that a caretaker relative frequently offers continuity of care by providing a child a loving, stable, and secure environment in which to live, make friends, and attend school, which is an environment not provided by a parent who temporarily abandons a child. However, a child is deprived of that caring and safe environment, and the related continuity of care it may provide, when a parent returns to claim the child with little or no notice to the caretaker relative. This situation, which in some instances has occurred multiple times with the same child, is disruptive to the more stable life offered by the caretaker relative and may violate the child's rights ensured by Article II, section 15, of the Montana constitution, such as the right under Article II, section 3, of the Montana constitution of seeking safety, health, and happiness. For these reasons, it is the purpose of the legislature in enacting 40-6-602 and this section to exercise its police powers for the health and welfare of children who have been abandoned by their parents to the care of relatives and to create a procedure, applicable in limited situations caused by the voluntary surrender of a child by a parent, under circumstances indicating abandonment, whereby a child in the care of a relative may remain with that relative while the issue of abandonment by the parent is reviewed and determined by a court of law. The legislature believes that this temporary infringement on the right of a parent to the custody and control of a minor child is justified by the possibility of abandonment by the parent, because the welfare of the child is at stake, and because of the likely violation of the child's rights ensured by Article II, section 15, of the Montana constitution.
 - (2) As used in 40-6-602 and this section, the following definitions apply:
- (a) "Caretaker relative" or "relative" means an individual related to a child by blood, marriage, or adoption by another individual, who has care and custody of a child but who is not a parent, foster parent, stepparent, or legal guardian of the child.
- (b) "Parent" means a biological or adoptive parent or other legal guardian of a child."

Section 3. Section 40-6-602, MCA, is amended to read:

"40-6-602. Caretaker relative rights upon return of parent — continuing custody affidavit — review, finding, and order by district court — limited reconsideration — immunity. (1) If custody of a child has been voluntarily given to a relative of the child by a parent of the child and the child has remained with that relative for at least 6 months under circumstances in which it is unclear whether or when the parent will return and retake custody of the child, the provisions of this section apply unless, during that 6-month period, the parent expresses to the relative a firm intention and a date on which

the parent will return and resume custody of the child and subsequently adheres to that schedule.

- (2) Upon a return of the parent and an expression by the parent of an intent by that parent to reassert the parent's right of custody and control over the child, the caretaker relative may file, without payment of a filing fee, with the district court in the county of the relative's residence a detailed affidavit as provided in this section. The affidavit must contain the following matters, the exclusion of any of which makes the affidavit void:
 - (a) the identification of:
 - (i) the caretaker relative, including the relative's address;
 - (ii) the child in the custody of the relative; and
- (iii) the parent demanding custody of the child, including the parent's address, if known;
 - (b) a statement of the facts, as nearly as can be determined, of:
- (i) the date, time, and circumstances surrounding the voluntary surrender of the custody of the child to the caretaker relative, including any conversation between the relative and the parent concerning the purpose of the parent's absence and when the parent would return and resume custody of the child;
- (ii) the reason for the surrender of the child to the relative, as far as is known by the relative;
 - (iii) the efforts made by the relative to care for the child, including:
- (A) facts explaining the nature and permanency or stability of the home provided by the relative for the child;
 - (B) the schooling of the child while in the relative's custody; and
- (C) the socialization of the child with other children and adults, both inside and outside the family of the caretaker relative; and
- (iv) whether any contact was made by the child's parent with the relative, the child, or both, during the absence of the parent and if so, the date, time, and circumstances of that contact, including any conversation between the relative and the parent concerning when the parent would return and resume custody of the child;
 - (c) a statement by the caretaker relative as to:
 - (i) why the relative wishes to maintain custody of the child: and
- (ii) how the relative has offered and will continue to offer continuity of care by providing permanency or stability in residence, schooling, and activities outside of the home;
- (d) a warning, in at least 14-point type, to the caretaker relative in the following language: "WARNING: DO NOT SIGN THE FOREGOING AFFIDAVIT IF ANY OF THE ABOVE STATEMENTS ARE INCORRECT OR YOU WILL BE COMMITTING AN OFFENSE PUNISHABLE BY FINE, IMPRISONMENT, OR BOTH": and
- (e) a notarized signature of the caretaker relative following a written declaration that the affidavit is made under oath and under penalty of the laws of Montana governing the giving of false sworn testimony and that the information stated by the caretaker relative in the affidavit is true and correct.
- (3) A copy of the affidavit filed with the district court must be provided by the caretaker relative to the child's parent, if the address or location of the parent is

known to the relative, and may be provided to the department of public health and human services. A caretaker relative may maintain temporary custody of the child for 5 days following the return of the parent and the demand by the parent for custody of the child pending completion of the affidavit and the order of the district court. During that 5-day period, the caretaker relative may not be deprived of the custody of the child by a peace officer or by the order of a court unless a court finds, upon petition by the child's parent and after a hearing and upon notice to the caretaker relative as the court shall require, that:

- (a) the child has not been in the custody of the caretaker relative for at least 6 months;
- (b) the caretaker relative has committed child abuse or neglect with regard to the child in the custody of the relative; or
- (c) the action by the caretaker relative to make and file the affidavit with the district court in accordance with this section was not made in good faith.
- (4) Upon receipt of the caretaker relative's affidavit pursuant to subsection (3), the department may proceed pursuant to 41-3-202 as if a report of abandonment of the child had been received.
- (5) (a) Within 48 hours of the filing of the affidavit, the district court shall review the affidavit and determine ex parte whether the affidavit contains prima facie evidence that the child was abandoned by the child's parent. If the court determines that there is prima facie evidence that the child was abandoned by the child's parent, the court shall within 3 business days of its determination of prima facie evidence enter appropriate findings of fact concerning the abandonment and enter an ex parte order approving and ordering continued custody and control of the child by the caretaker relative. An order of the district court pursuant to this subsection approving and ordering continued custody by the caretaker relative is effective for 14 days following entry of the order.
- (b) If the court determines that the affidavit does not provide prima facie evidence of abandonment by the parent, the court shall within 3 business days of its determination make appropriate findings of fact and order the child returned to the parent. Upon receipt of the written findings and order of the court, the caretaker relative shall surrender the custody and control of the child to the child's parent.
- (c) During or after the 14-day period established under subsection (5)(a), the caretaker relative may commence a parenting plan proceeding under 40-4-211 or petition the court to be appointed the guardian of the minor under 72-5-225.
- (6) Upon entry of an order by the district court pursuant to subsection (5)(a), a copy of the order must be sent to the child's parent, if the address of the parent is known.
- (7) The child's parent may, after receipt of the court's findings and order ordering continued custody of a child by a caretaker relative, apply to the court, upon notice to the caretaker relative as the court shall provide, for a reconsideration of the court's order approving continued custody of the child by the relative. The court shall reconsider its order and may reverse its order based upon presentation of evidence of nonabandonment. Pending a reconsideration pursuant to this subsection, custody of the child must remain with the relative unless the order of the district court approving that custody expires or a court has ordered a change of custody pursuant to subsection (3).

- (8) (a) A caretaker relative refusing to surrender custody of a child while acting in good faith and in accordance with this section is immune from civil or criminal action brought because of that refusal.
- (b) A peace officer acting in good faith and taking or refusing to take custody of a child from a relative in accordance with this section and the entity employing the officer is immune from civil or criminal action or professional discipline brought because of the taking of or refusal to take custody of the child.
- (9) Subject to availability of appropriations, the attorney general shall prepare a form for the affidavit provided for in this section and shall distribute the form as the attorney general determines appropriate."

Section 4. Section 41-3-437, MCA, is amended to read:

- "41-3-437. Adjudication temporary disposition findings order. (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.
- (2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a preponderance of the evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that the child is a youth in need of care. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.
- (3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is admissible according to the Montana Rules of Evidence.
- (4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:
- (a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and
- (b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:
- (i) the intent of the parents in placing the child or allowing the child to remain with that person; $\frac{1}{2}$
- (ii) the continuity of care the person has offered the child by providing permanency or stability in residence, schooling, and activities outside of the home; and
- (ii)(iii) the circumstances under which the child was placed or allowed to remain with that other person, including:

- (A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and
- (B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.
- (5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.
- (6) (a) If the court determines that the child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.
- (b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 20 days, as provided in 41-3-438(1), and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).
- (7) (a) Before making an adjudication, the court may make oral findings, and following the adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:
 - (i) which allegations of the petition have been proved or admitted, if any;
- (ii) whether there is a legal basis for continued court and department intervention; and
- (iii) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.
 - (b) The court may order:
- (i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;
- (ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.
- (iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;
- (iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and
 - (v) the department to continue efforts to notify noncustodial parents.
- (8) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child."

Section 5. Section 41-3-438, MCA, is amended to read:

- **"41-3-438. Disposition hearing order.** (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.
- (2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.
- (b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:
- (i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and
 - (ii) the judge has an opportunity to review the reports after the adjudication.
- (c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.
- (3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:
- (a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions and limitations the court may prescribe;
- (b) order the department to evaluate the noncustodial parent as a possible caretaker;
- (c) order the temporary placement of the child with the noncustodial parent, superseding any existing custodial order, and keep the proceeding open pending completion by the custodial parent of any treatment plan ordered pursuant to 41-3-443:
- (d) order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding:
- (e) grant an order of limited emancipation to a child who is 16 years of age or older, as provided in 41-1-501;
 - (f) transfer temporary legal custody to any of the following:
 - (i) the department;
- (ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of the child; or
- (iii) a nonparent relative or other individual who has been evaluated and recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the child:

- (g) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.
- (h) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for the proposed care and treatment. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-446.
- (4) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:
- (i) placement of the abandoned child with the extended family member is in the best interests of the child;
- (ii) the extended family member requests that the child be placed with the family member; and
- (iii) the extended family member is able to offer continuity of care for the child by providing permanency or stability in residence, schooling, and activities outside of the home; and
- (iii)(iv) the extended family member is found by the court to be qualified to receive and care for the child.
- (b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court may award custody to the extended family member who can best meet the child's needs.
- (c) If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member, the department shall investigate and determine if awarding custody to the family member is in the best interests of the child. The department shall provide the reasons for any denial to the court. If the court accepts the department's custody recommendation, the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality laws allow. The court shall include the reasons for denial in the court order if the family member who is denied temporary legal custody requests it to be included.
- (5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.
- (6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection (5) of this section, a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 6. Section 41-3-439, MCA, is amended to read:

- "41-3-439. Department to give placement priority to extended family member of abandoned child. (1) If the department has received temporary legal custody of an abandoned child pursuant to 41-3-438 or permanent legal custody pursuant to 41-3-607, the department shall give priority to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, in determining the person or persons with whom the abandoned child should be placed if:
- (a) placement with the extended family member is in the best interests of the abandoned child;
- (b) the extended family member has requested that the abandoned child be placed with the family member; and
- (c) the extended family member is able to offer the child continuity of care by providing permanency or stability in residence, schooling, and activities outside of the home; and
- (e)(d) the department has determined that the extended family member is qualified to receive and care for the abandoned child.
- (2) If more than one extended family member of the abandoned child has requested that the child be placed with the family member and all are qualified to receive and care for the child, the department may determine which extended family member to place the abandoned child with in the same manner as provided for in 41-3-438(4).
- (3) This part does not affect the department's ability to assess the appropriateness of placement of the child with a noncustodial parent when abandonment has been found against only one parent.
- (4) If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that the child be placed with that family member and the department denies the request, the department shall give that family member a written statement of the reasons for the denial to the extent that confidentiality laws allow."

Section 7. Section 72-5-223, MCA, is amended to read:

"72-5-223. Guardian of minor by court appointment — qualifications — nominee of minor preferred. The court may appoint as guardian any person whose appointment would be in the best interests of the minor, including the minor's interest in continuity of care. The court shall appoint a person nominated by the minor if the minor is 14 years of age or older unless the court finds the appointment contrary to the best interests of the minor."

Section 8. Section 72-5-225, MCA, is amended to read:

- "72-5-225. Procedure for court appointment of guardian of minor—notice—hearing—representation by attorney. (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor must be given by the petitioner in the manner prescribed by 72-1-301 to:
 - (a) the minor, if the minor is 14 years of age or older;
- (b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and

- (c) any living parent of the minor.
- (2) Upon hearing, if the court shall make the appointment if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor, including the need for continuity of care, will be served by the requested appointment, it shall make the appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interests of the minor.
- (3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in 47-1-201, to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

Approved April 15, 2009

CHAPTER NO. 211

[HB 495]

AN ACT CLARIFYING THE RIGHTS OF RESIDENT ASSOCIATIONS IN A MOBILE HOME PARK; PROHIBITING LANDLORD INTERFERENCE WITH AN INVITEE TO RESIDENT ASSOCIATION MEETINGS; CLARIFYING THAT A RESIDENT ASSOCIATION'S MEETING MAY BE HELD RELATING TO THE FUTURE OF THE MOBILE HOME PARK; AMENDING SECTION 70-33-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-33-314, MCA, is amended to read:

- "70-33-314. Resident associations meetings. (1) The membership of a resident association may elect officers of the association at a meeting at which a majority of the members are present. All residents may attend meetings, but the landlord and the landlord's employees may not be members and may not attend meetings unless specifically invited by the tenants' resident association. The landlord may not interfere with or prevent the attendance of an invitee at a resident association's meeting.
- (2) The landlord may not prohibit meetings by a resident association or tenants relating to:
 - (a) mobile home living; or
- (b) the future plans for the mobile home park, including sale or change of use."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2009

CHAPTER NO. 212

[HB 509]

AN ACT REVISING REQUIREMENTS FOR COUNTING VOTES FOR WRITE-IN CANDIDATES; AND AMENDING SECTION 13-15-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-15-206, MCA, is amended to read:

- "13-15-206. Counting votes uniformity rulemaking definitions. (1) When conducting vote counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and determine the validity of each vote in a uniform manner as provided in this section.
 - (2) A manual count or recount of votes must be conducted as follows:
- (a) One election judge on the board shall read the ballot while the two other judges on the board shall each record on an official tally sheet the number of valid votes cast for each individual or ballot issue. Write-in votes must be counted in accordance with *subsection* (5) and rules adopted pursuant to subsection (7). If a vote has not been cast according to instructions, the vote must be considered questionable and the entire ballot must be set aside and votes on the ballot must be handled as provided in subsection (4).
- (b) (i) After the vote count is complete, the tally sheets of the two judges recording the votes must be compared.
 - (ii) If the two tallies match, the judges shall record in the pollbook:
 - (A) the names of all individuals who received votes;
 - (B) the offices for which individuals received votes:
- (C) the total votes received by each individual as shown by the tally sheets; and
 - (D) the total votes received for or against each ballot issue, if any.
- (iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the two tallies match.
 - (3) (a) When a voting system is counting votes:
 - (i) if a vote is recognized and counted by the system, it is a valid vote;
 - (ii) if a vote is not recognized and counted by the system, it is not a valid vote;
- (iii) write-in votes must be counted in accordance with rules adopted pursuant to subsection (7).
- (b) If the voting system cannot process the ballot because of the ballot's condition or if the voting system registers an unvoted ballot or an overvote, which must be considered a questionable vote, the entire ballot must be set aside and the votes on the ballot must be counted as provided in subsection (4).
- (c) If an election administrator or counting board has reason to believe that a voting system is not functioning correctly, the election administrator shall follow the procedures prescribed in 13-15-209.
- (d) After all valid votes have been counted and totaled, the judges shall record in the pollbook the information specified in subsection (2)(b)(ii).
- (4) (a) (i) Before being counted, each questionable vote on a ballot set aside under subsection (2)(a) or (3)(b) must be reviewed by the counting board. The counting board shall evaluate each questionable vote according to rules adopted by the secretary of state.
- (ii) If a majority of the counting board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.
- (iii) If a majority of the counting board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

- (b) If a ballot was set aside under subsection (3)(b) because it could not be processed by the voting system due to the ballot's condition, the counting board shall transfer all valid votes to a new ballot that can be processed by the voting system.
 - (5) A write-in vote may be counted if:
- (a) (i) the write-in vote identifies an individual by a designation filed pursuant to 13-10-211(1)(a); or
- (b)(ii) pursuant to 13-10-211(7), a declaration of nomination was not filed and the write-in vote identifies an individual who is qualified for the office; and
 - (b) the oval, box, or other designated voting area on the ballot is marked.
- (6) A vote is not valid and may not be counted if the elector's choice cannot be determined as provided in this section.
- (7) The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each type of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee that all votes are treated equally among jurisdictions using similar ballot types and voting systems.
- (8) Local election administrators shall adopt policies to govern local processes that are consistent with the provisions of this title and that provide for:
 - (a) the security of the counting process against fraud;
 - (b) the place and time and public notice of each count or recount;
- (c) public observance of each count or recount, including observance by representatives authorized under 13-16-411;
- (d) the recording of objections to determinations on the validity of an individual vote or to the entire counting process; and
 - (e) the keeping of a public record of count or recount proceedings.
- (9) For purposes of this section, "overvote" means an elector's vote that has been interpreted by the voting system as an elector casting more votes than allowable for a particular office or ballot issue."

Approved April 15, 2009

CHAPTER NO. 213

[HB 513]

AN ACT REVISING SCHOOL FINANCE LAWS BY ALLOWING BONDING CAPACITIES TO BE COMBINED IN HIGH SCHOOL DISTRICTS WITH AN ATTACHED ELEMENTARY DISTRICT; ELIMINATING TRANSITION COSTS FROM THE CALCULATION OF THE TOTAL AMOUNT OF THE DISTRICT BUILDING RESERVE FUND; AND AMENDING SECTIONS 20-9-406 AND 20-9-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-406, MCA, is amended to read:

"20-9-406. Limitations on amount of bond issue — definition of federal impact aid basic support payment. (1) (a) Except as provided in subsection (1)(d) (1)(c), the maximum amount for which an elementary district or a high school district may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding

general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district, is 50% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

- (b) Except as provided in subsection (1)(d) (1)(c), the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district, is up to 100% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.
- (e) The total indebtedness of the high school district with an attached elementary district is limited to the sum of 50% of the taxable value of the property for elementary school program purposes and 50% of the taxable value of the property for high school program purposes.
- $\frac{d}{d}(c)$ (i) The maximum amount for which an elementary district or a high school district with a district mill value per elementary ANB or per high school ANB that is less than the facility guaranteed mill value per elementary ANB or high school ANB under 20-9-366 may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district, is 50% of the corresponding facility guaranteed mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, the maximum amount for which the district may become indebted is 50% of the sum of the facility guaranteed mill value per elementary ANB times 1,000 times the elementary ANB of the district and the facility guaranteed mill value per high school ANB times 1,000 times the high school ANB of the district. For the purpose of calculating ANB under this subsection, a district may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.
- (ii) If mutually agreed upon by the affected districts, for the purpose of calculating its maximum bonded indebtedness under this subsection (1)(d) (1)(c), a district may include the ANB of the district plus the number of students residing within the district for which the district or county pays tuition for attendance at a school in an adjacent district. The receiving district may not use out-of-district ANB for the purpose of calculating its maximum indebtedness if the out-of-district ANB has been included in the ANB of the sending district pursuant to the mutual agreement. For the purpose of calculating ANB under this subsection, a district may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.
- (2) The maximum amounts determined in subsection (1) do not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to general obligation bonds issued for the repayment of tax protests lost by the district. All general obligation bonds issued in excess of the amount are void, except as provided in this section.
- (3) The maximum amount of impact aid revenue bonds that an elementary district, high school district, or K-12 school district may issue may not exceed a

total aggregate amount equal to three times the average of the school district's annual federal impact aid basic support payments for the 5 years immediately preceding the issuance of the bonds. However, at the time of issuance of the bonds, the average annual payment of principal and interest on the impact aid bonds each year may not exceed 35% of the total federal impact aid basic support payments of the school district for the current year.

- (4) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.
- (5) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly.
- (6) As used in this part, "federal impact aid basic support payment" means the annual impact aid revenue received by a district under 20 U.S.C. 7703(b) but excludes revenue received for impact aid special education under 20 U.S.C. 7703(d) and impact aid construction under 20 U.S.C. 7707."

Section 2. Section 20-9-502, MCA, is amended to read:

- "20-9-502. Purpose and authorization of building reserve fund by election levy for school transition costs. (1) The trustees of any district, with the approval of the qualified electors of the district, may establish a building reserve for the purpose of raising money for the future construction, equipping, or enlarging of school buildings, for the purpose of purchasing land needed for school purposes in the district, or for the purpose of funding school transition costs as provided in subsections (5) and (6). In order to submit to the qualified electors of the district a building reserve proposition for the establishment of or addition to a building reserve, the trustees shall pass a resolution that specifies:
- (a) the purpose or purposes for which the new or addition to the building reserve will be used;
- (b) the duration of time over which the new or addition to the building reserve will be raised in annual, equal installments;
- (c) the total amount of money that will be raised during the duration of time specified in subsection (1)(b); and
- (d) any other requirements under 15-10-425 and 20-20-201 for the calling of an election.
- (2) The total amount of building reserve, less the amount provided for in subsection (5), when added to the outstanding indebtedness of the district may not be more than the limitations provided in 20-9-406. Except as provided in subsections (5)(b) and (6), a building reserve tax authorization may not be for more than 20 years.
- (3) The election must be conducted in accordance with the school election laws of this title, and the electors qualified to vote in the election must be qualified under the provisions of 20-20-301. The ballot for a building reserve proposition must be substantially in compliance with 15-10-425.
- (4) The building reserve proposition is approved if a majority of those electors voting at the election approve the establishment of or addition to the building reserve. The annual budgeting and taxation authority of the trustees for a building reserve is computed by dividing the total authorized amount by

the specified number of years. The authority of the trustees to budget and impose the taxation for the annual amount to be raised for the building reserve lapses when, at a later time, a bond issue is approved by the qualified electors of the district for the same purpose or purposes for which the building reserve fund of the district was established. Whenever a subsequent bond issue is made for the same purpose or purposes of a building reserve, the money in the building reserve must be used for the purpose or purposes before any money realized by the bond issue is used.

- (5) (a) The trustees may submit a proposition to the qualified electors of the district for a levy to provide funding for transition costs incurred when the trustees:
 - (i) open a new school under the provisions of Title 20, chapter 6;
 - (ii) close a school;
 - (iii) replace a school building; or
- (iv) consolidate with or annex another district under the provisions of Title 20, chapter 6.
- (b) Except as provided in subsections (5)(c) and (6), the total amount the trustees may submit to the electorate for transition costs may not exceed the number of years specified in the proposition times the greater of 5% of the district's maximum general fund budget for the current year or \$250 per ANB for the current year. Except as provided in subsection (6), the duration of the levy for transition costs may not exceed 6 years.
 - (c) If the levy for transition costs is for consolidation or annexation:
- (i) the limitation on the amount levied is calculated using the ANB and the maximum general fund budget for the districts that are being combined; and
- (ii) the proposition must be submitted to the qualified electors in the combined district.
- (d) The levy for transition costs may not be considered as outstanding indebtedness for the purpose of calculating the limitation in 20-9-406.
- (6) The trustees of a K-12 district shall impose a levy for transition costs to fund the payment required by 20-6-326(6)(b) when a proposition to create the K-12 district and to assess the transition levy has been approved pursuant to 20-6-326(2). The levy is limited to the amount required by 20-6-326(6)(b) for a period not to exceed 3 years."

Approved April 15, 2009

CHAPTER NO. 214

[HB 534]

AN ACT REQUIRING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS IN FELONY CASES AND IN YOUTH COURT CASES INVOLVING AN OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The legislature intends to require the electronic recording of custodial interrogations in felony cases based on the finding that properly recorded interrogations:

- (1) provide the best evidence of the communications that occurred during an interrogation;
- (2) prevent disputes about a peace officer's conduct or treatment of a suspect during the course of an interrogation;
- (3) prevent a defendant from lying about the account of events originally provided to law enforcement by the defendant;
- (4) spare judges and jurors the time necessary and the need to assess which account of an interrogation to believe;
 - (5) enhance public confidence in the criminal process; and
- (6) have been encouraged by the Montana supreme court in a written opinion of that court.
- **Section 2. Definitions.** As used in [sections 1 through 6], the following definitions apply:
- (1) "Custodial interrogation" means an interview conducted by a peace officer in a place of detention for the purpose of investigating a felony or, in the case of a youth, an offense that would be a felony if committed by an adult if the interview is reasonably likely to elicit a response from the person being interviewed that may incriminate the person being interviewed with regard to the commission of an offense.
- (2) "Electronic recording" or "electronically recorded" means an audio recording, visual recording, or audiovisual recording, if available, that is an authentic, unaltered record of a custodial interrogation.
- (3) "Place of detention" means a jail, police or sheriff's station, holding cell, correctional or detention facility, office, or other structure in this state where persons are held in connection with criminal charges or juvenile delinquency proceedings.
- (4) "Statement" means an oral, written, sign language, or nonverbal communication.
- **Section 3. Recordings required.** Except as provided in [section 4], all custodial interrogations must be electronically recorded. The recording must contain a peace officer advising the person being interviewed of the person's Miranda rights, a recording of the interview, and a conclusion of the interview.
- Section 4. Exceptions to custodial recording requirements. A judge shall admit statements or evidence of statements that do not conform to [section 3] if, at hearing, the state proves by a preponderance of the evidence that:
 - (1) the statements have been made voluntarily and are reliable; or
- (2) one or more of the following circumstances existed at the time of the custodial interrogation:
- (a) the questions put forth by law enforcement personnel and the person's responsive statements were part of the routine processing or booking of the person;
- (b) before or during a custodial interrogation, the person unambiguously declared that the person would respond to the law enforcement officer's questions only if the person's statements were not electronically recorded;
- (c) the failure to electronically record an interrogation in its entirety was the result of unforeseeable equipment failure and obtaining replacement equipment was not practicable;

- (d) exigent circumstances prevented the making of an electronic recording of the custodial interrogation;
- (e) the person's statements were surreptitiously recorded by or under the direction of law enforcement personnel;
- (f) the person's statement was made during a custodial interrogation that was conducted in another state by peace officers of that state in compliance with the laws of that state; or
- (g) the person's statement was made spontaneously and not in response to a question.
- Section 5. Cautionary jury instruction. If the defendant objects to the introduction of evidence under [section 3] and the court finds by a preponderance of the evidence that the statements are admissible, the judge shall, upon motion of the defendant, provide the jury with a cautionary instruction.
- Section 6. Handling and preservation of electronic recordings. (1) An electronic recording of a custodial interrogation must be clearly identified and catalogued by law enforcement personnel.
- (2) If a criminal or youth court proceeding is brought against a person who was the subject of an electronically recorded custodial interrogation, the electronic recording must be preserved by law enforcement personnel until all appeals and all postconviction and habeas corpus proceedings are final and concluded or until the time within which the proceedings must be brought has expired.
- (3) Upon motion by the defendant, the court may order that a copy of the electronic recording be preserved for any period beyond the expiration of all appeals.
- (4) If a criminal or youth court proceeding is not brought against a person who has been the subject of an electronically recorded custodial interrogation, the related electronic recording must be preserved by law enforcement personnel until all applicable state and federal statutes of limitations bar prosecution of the person.
- **Section 7.** Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 46, chapter 4, and the provisions of Title 46 apply to [sections 1 through 6].

Approved April 15, 2009

CHAPTER NO. 215

[HB 572]

AN ACT ESTABLISHING A PROGRAM AND CRITERIA TO PROVIDE STATE MATCHING GRANTS FOR FEDERAL SMALL BUSINESS INNOVATIVE RESEARCH GRANTS OR FEDERAL SMALL BUSINESS TECHNOLOGY TRANSFER GRANTS; AMENDING SECTION 90-1-147, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Small business state matching grant program — purpose. (1) There is a small business state matching grant program established within the department of commerce to provide guidelines and state matching grants to businesses meeting the criteria in [section 2] that have received phase I funding

for federal small business innovative research grants or small business technology transfer grants and that are applying for phase II federal small business innovative research grants or small business technology transfer grants.

- (2) The state matching grants available for the small business state matching grant program are from any funds received for the program or appropriated to the program by the legislature.
- (3) The purpose of the program is to foster job creation and economic development in the state by providing state matching grants to eligible businesses meeting the criteria described in [section 2].
- **Section 2. Small business eligibility criteria.** To be eligible for a state matching grant under [sections 1 through 3], a business shall provide evidence to the department of commerce that the business meets all of the following criteria:
- (1) the business is a for-profit sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation registered with the secretary of state under Title 35 and has its principal place of business in this state;
- (2) the business has received a phase I award under a small business innovative research grant or small business technology transfer grant from a participating federal agency in response to a specific federal solicitation;
- (3) the business meets all federal eligibility requirements for a small business innovative research grant or a small business technology transfer grant;
- (4) the business is not concurrently receiving funding from other state funding programs that duplicate the purpose stated in [section 1];
- (5) the business certifies that at least 51% of the research described in the business's proposal for phase II funding under a small business innovative research grant or small business technology transfer grant is to be conducted in this state and that the business will remain a Montana-based business for the duration of a phase II project under a small business innovative research grant or small business technology transfer grant; and
- (6) the business demonstrates an ability to conduct research for the business's phase II proposal under the small business innovative research grant or small business technology transfer grant.
- **Section 3. Grant award guidelines.** (1) The department of commerce may award grants of no more than \$100,000 to a business meeting the criteria in [section 2].
- (2) A business may receive a state matching grant for each separate project that is submitted under a federal small business innovative research grant or small business technology transfer grant.
- (3) (a) Upon application from a business that has met the criteria in [section 2], the department may award up to 50% of the grant.
- (b) To receive the remaining 50% of the state matching grant, the business shall submit to the participating federal agency, with copies to the department of commerce, a final phase I project report, a letter of support from the sponsoring agency indicating that the sponsoring agency is interested in the phase II proposal, and an application for phase II funding. The remaining 50% of

the state matching grant is not contingent upon approval of the phase II project by the participating federal agency.

- (c) Upon receipt of the documents listed in subsection (3)(b) and verification by the business of a submitted phase II application to the participating federal agency, the department of commerce shall remit to the business the remaining 50% of the grant to be provided under [sections 1 through 3].
- (4) A business applying for a state matching grant under [sections 1 through 3] shall submit on a form prescribed by the department of commerce an application that contains:
- (a) the name of the business, the form of business organization that is registered with the secretary of state, and the names and addresses of the principals or management of the business;
- (b) proof of receipt of a phase I award under a federal small business innovative research grant or a federal small business technology transfer grant; and
 - (c) any other information required by the department of commerce by rule.

Section 4. Section 90-1-147, MCA, is amended to read:

"90-1-147. Rulemaking. The department of commerce may adopt rules to:

- (1) provide for uniform loan and grant applications, when appropriate;
- (2) coordinate the announcement and marketing of available financial assistance programs that are administered by other state agencies;
- (3) provide for the specific requirements necessary to develop useful and logical navigation pathways and cross-references for a financial assistance program internet website and a standard form of internet links and access, consistent with the financial assistance program website, for individual agency websites that administer financial assistance programs; and
- (4) develop processes and procedures necessary to effectively implement the provisions of 90-1-141 through 90-1-147 and [sections 1 through 3]."
- **Section 5.** Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 90, chapter 1, and the provisions of Title 90, chapter 1, apply to [sections 1 through 3].

Section 6. Effective date. [This act] is effective July 1, 2009.

Approved April 15, 2009

CHAPTER NO. 216

[HB 626]

AN ACT REVISING PROVISIONS RELATED TO THE TRANSFER OF LOCAL POLICE RETIREMENT FUNDS AND MEMBERS TO THE STATEWIDE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; EXTENDING THE TIME ALLOWED FOR THE LOCAL FUND TO PAY LIABILITIES; AMENDING SECTION 19-9-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-9-207, MCA, is amended to read:

"19-9-207. Election to join retirement system — transfer of assets. (1) Cities other than those participating in the statewide police reserve fund

administered by the board in accordance with Chapter 335, Laws of 1974, as of June 30, 1977, may elect to join the retirement system by passing an ordinance stating the election and the consent of the city to be bound by the provisions of this retirement system. Upon the enactment of an ordinance, the provisions of this retirement system become applicable to the city. Any city enacting an election ordinance shall send a certified copy of the ordinance to the board and shall, as soon as possible, deposit all cash and securities held by it in its local police reserve or retirement fund into the municipal police officers' pension trust fund. The value of the securities must be determined by the board.

(2) The trustees or other administrative head of the local plan as of the effective date of the election shall certify the proportion, if any, of the funds of the plan that represents the accumulated contributions of the active members and the relative shares of the members as of that date. The shares must be charged to the employer and credited to the respective members in the retirement system and administered as if the contributions had been made during membership in the retirement system. Any excess of employer credits over charges under this section must be offset, with interest, against future required employer contributions for a period determined by the board. Any excess of employer charges over credits under this section are payable by the employer, with interest, for a period of 10 30 years or less as determined by the board."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2009

CHAPTER NO. 217

[SB 124]

AN ACT CLARIFYING THAT THE DEATH OF A CANDIDATE CREATES AN ERROR OR OMISSION ON A PRINTED ABSENTEE BALLOT; REQUIRING THAT ABSENTEE BALLOTS CAST FOR A DECEASED CANDIDATE BE COUNTED FOR THE DECEASED CANDIDATE; AMENDING SECTIONS 13-13-204 AND 13-15-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-13-204, MCA, is amended to read:

- "13-13-204. Authority to vote in person printing error or ballot destroyed failure to receive ballot effect of absentee elector's death. (1) (a) If an elector has voted by received but not voted an absentee ballot but and the absentee ballot contains printing errors or omissions, except that the name of a candidate who has died since the printing of the ballot and that appears on the ballot does not constitute an error or omission, the elector may receive a replacement or corrected ballot and vote in person in any manner at the elector's polling place at the election administrator's office.
- (b) The death of a candidate after the printing of the ballot constitutes a printing error or omission on the ballot.
- (2) If an elector does not receive an absentee ballot or if the absentee ballot was destroyed, the elector may appear at the appropriate polling place on election day and vote in person after signing an affidavit, in the form prescribed by the secretary of state, swearing that the elector's ballot has not been received

or was destroyed. The ballot must be handled as a provisional ballot under 13-15-107.

(3) If an elector votes by absentee ballot and the ballot has been mailed or otherwise returned to the election administrator but the elector dies between the time of balloting and election day, the deceased elector's ballot must be counted."

Section 2. Section 13-15-106, MCA, is amended to read:

- "13-15-106. Counting of absentee ballot for deceased joint eandidate in general election candidate. (1) An Except as provided in subsection (2) or (3), an absentee ballot voted in a general election, as provided in subsection (2) or (3), for a candidate for governor or lieutenant governor who dies after printing of the ballot but before the election must be counted as provided in subsection (2) or (3) for the deceased candidate.
- (2) A vote for a deceased candidate for governor must be counted as a vote for the lieutenant governor candidate as governor and as a vote for the candidate chosen pursuant to 13-10-328 for lieutenant governor.
- (3) A vote for a deceased candidate for lieutenant governor must be counted as a vote for the candidate chosen pursuant to 13-10-328 for lieutenant governor."

Section 3. Effective date. [This act] is effective on passage and approval. Approved April 15, 2009

CHAPTER NO. 218

[SB 192]

AN ACT PROVIDING SMALL BUSINESSES WITH AN OPPORTUNITY FOR WORKERS' COMPENSATION RELIEF BY ALLOWING POOLED RISK SAFETY GROUPS IN WORKERS' COMPENSATION PLAN NO. 3; PROVIDING AN OPPORTUNITY FOR A RETURN ON PREMIUM BASED ON REDUCED LOSSES TO EMPLOYERS THAT IMPLEMENT CERTAIN SAFETY AND RETURN-TO-WORK PROVISIONS; AMENDING SECTION 39-71-2311, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, Workers' Compensation Plan No. 3, an insurer for all businesses in Montana, is a nonprofit, independent, public corporation that nevertheless is a creation of the state; and

WHEREAS, more than 90% of businesses in Montana have fewer than 20 employees and more than 80% of businesses in Montana have fewer than 10 employees, with many if not most of these small businesses obtaining workers' compensation insurance from the State Fund because not all private insurers write for small businesses; and

WHEREAS, Montana's workers' compensation rates among all insurers are the second highest in the nation and the current economic crisis has the potential to hit all employers hard, but especially small businesses that may have fewer lifelines for survival than larger businesses; and

WHEREAS, the opportunity to pool risk in a group that has made a commitment to safety yields the potential to benefit small businesses by reducing losses and possibly generating a return on premium.

Be it enacted by the Legislature of the State of Montana:

- **Section 1. Workplace safety program.** (1) An employer that is not eligible for the tier with the lowest-rated premium for workers' compensation purposes is eligible to join a state fund pooled risk safety group, as provided in [section 2], if the employer:
- (a) adopts and maintains a written, comprehensive workplace safety program that has been in place for more than 1 year and that meets the criteria established by rule implementing Title 39, chapter 71, part 15.
 - (b) adopts transitional and return-to-work programs;
 - (c) has at least 3 years of experience without losses;
- (d) uses available safety consultation services or programs offered by the department or the state fund. Safety consultation may be provided to individual employers or to groups. The department and the state fund shall notify each employer in a group, as provided in [section 2], regarding the availability of safety and return-to-work resources.
- (e) complies with the terms and conditions of the state fund pooled risk safety group as provided in [section 2].
- (2) The state fund and the department shall share information on workplace safety programs and transitional and return-to-work programs.
- **Section 2. Pooled risk safety group.** (1) The state fund may establish one or more groups of individual policies in a pooled risk safety group to promote safety as a way to reduce losses among members of the pooled risk safety group.
- (2) Each member of a pooled risk safety group must be eligible as provided in [section 1] and must have an individual workers' compensation plan No. 3 policy. An individual policy may be included in only one group.
- (3) The state fund shall annually establish the terms and conditions of the plan that defines the requirements of participation for a pooled risk safety group. The plan must include the criteria to be eligible for an aggregate return of premium and a method for apportioning the return of premium among members of the group.
- (4) The aggregate record of the individual members of the pooled risk safety group is the basis for determining if the members of the pooled risk safety group qualify for a return on premiums.

Section 3. Section 39-71-2311, MCA, is amended to read:

"39-71-2311. Intent and purpose of plan — expense constant defined. (1) It is the intent and purpose of the state fund to allow employers an option to insure their liability for workers' compensation and occupational disease coverage with the state fund. The state fund must be neither more nor less than self-supporting. Premium Premium rates must be set at least annually at a level sufficient to ensure the adequate funding of the insurance program, including the costs of administration, benefits, and adequate reserves, during and at the end of the period for which the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover those costs. The prediction must take into account the goal of pooling risk and may not place an undue burden on employers that are not eligible for the tier with the lowest-rated premium for workers' compensation purposes.

- (2) Unnecessary surpluses that are created by the imposition of premiums found to have been set higher than necessary because of a high estimate of the cost of a factor or factors may be refunded by the declaration of a dividend as provided in this part. For the purpose of keeping the state fund solvent, the board of directors may implement multiple rating tiers as provided in 39-71-2330 and may assess an expense constant, a minimum premium, or both.
- (2)(3) As used in this section, "expense constant" means a premium charge applied to each workers' compensation policy to pay expenses related to issuing, servicing, maintaining, recording, and auditing the policy."
- **Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 1 and 2].

Section 5. Effective date — applicability. [This act] is effective July 1, 2009, and applies to groups formed on or after July 1, 2010.

Approved April 15, 2009

CHAPTER NO. 219

[SB 276]

AN ACT REQUIRING ELECTION ADMINISTRATORS TO MAIL AN ADDRESS CONFIRMATION FORM TO EACH ELECTOR WHO HAS REQUESTED AN ABSENTEE BALLOT FOR SUBSEQUENT ELECTIONS; REVISING THE DURATION FOR WHICH A PROPERLY SUBMITTED ADDRESS CONFIRMATION FORM FOR ABSENTEE VOTERS IS VALID; AMENDING SECTION 13-13-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-13-212, MCA, is amended to read:

- "13-13-212. Application for absentee ballot special provisions. (1) (a) Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a standardized form provided by rule by the secretary of state or by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.
- (b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.
- (2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.
- (b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.
- (c) A request under this subsection (2) must be received by the election administrator within the time period specified in 13-13-211(2).

- (3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.
- (4) (a) When applying for an absentee ballot under this section, an elector may also request to be mailed an absentee ballot, as soon as the ballot becomes available, for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application.
- (b) The election administrator shall mail an address confirmation form in January and July of each year to each elector who has requested an absentee ballot for subsequent elections. The address confirmation form mailed in January is for elections to be held between February 1 following the mailing through July of the same year, and the address confirmation form mailed in July is for elections to be held between August 1 following the mailing through January of the succeeding year. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for each subsequent election.
- (c) An elector who has been removed from the register may subsequently request to be mailed an absentee ballot for each subsequent election."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2009

CHAPTER NO. 220

[SB 405]

AN ACT EXTENDING GRANDPARENT-GRANDCHILD CONTACT RIGHTS TO GREAT-GRANDPARENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Grandparents include great-grandparents. For purposes of this part, the term "grandparent" includes a great-grandparent.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 40, chapter 9, part 1, and the provisions of Title 40, chapter 9, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2009

CHAPTER NO. 221

[SB 447]

AN ACT CLARIFYING PRACTICES RELATED TO THE PRESERVATION AND DISPOSAL OF BIOLOGICAL EVIDENCE IN FELONY CRIMINAL CASES; AND AMENDING SECTION 46-21-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-21-111, MCA, is amended to read:

- "46-21-111. Preservation and disposal of scientific identification biological evidence obtained in criminal proceeding. (1) (a) The state A law enforcement agency shall preserve scientific identification biological evidence that the state agency has reason to believe contains DNA material and that is obtained in connection with a felony for which a conviction is obtained. The state agency shall preserve the evidence for a minimum of 3 years after the conviction in the case becomes final or for any period beyond 3 years that is required by a court order issued within 3 years after the conviction in the case becomes final.
- (2)(b) The state An agency may propose to dispose of scientific identification biological evidence before the expiration of the time period described in subsection (1)(a) if the state agency notifies the convicted person, and any the attorney of record for the convicted person, and the Montana chief public defender. The notification must include a description of the scientific identification biological evidence, a statement that the state agency will dispose of the evidence unless a party files an objection in writing within 120 days from the date of service of the notification in the court that entered the judgment, and the name and mailing address of the court where an objection may be filed. If an objection to the disposition of the evidence is not filed within that the 120-day period, the state agency may dispose of the evidence. If a written objection is filed, the court shall consider the reasons for and against disposition of the evidence, may hold a hearing on the proposed disposition of the evidence, and shall issue an order ruling on the matter as required by the interests of justice and the integrity of the criminal justice system.
- (3)(c) If a party objects to the disposition of the scientific identification biological evidence, the state agency has the burden of proving by a preponderance of the evidence that the evidence should be disposed of.
- (2) Upon completion of laboratory analysis, the laboratory operated by the forensic sciences division of the department of justice shall permanently preserve under laboratory control any remaining biological evidence collected from items submitted to it.
 - (3) For purposes of this section, the following definitions apply:
- (a) "Biological evidence" means any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material, including the contents of a sexual assault examination kit, that is collected as part of a criminal investigation or that may reasonably be used to incriminate or exculpate any person of an offense.
 - (b) "DNA" means deoxyribonucleic acid."

Approved April 15, 2009

CHAPTER NO. 222

[HB 71]

AN ACT REPEALING THE SUNSET PROVISION FOR THE UTILIZATION FEE FOR HOSPITAL INPATIENT BED DAYS; REPEALING SECTION 20, CHAPTER 390, LAWS OF 2003, SECTIONS 4 AND 7, CHAPTER 606, LAWS OF 2005, AND SECTIONS 4, 5, 6, AND 8, CHAPTER 517, LAWS OF 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 20, Chapter 390, Laws of 2003, is repealed.

Section 2. Repealer. Sections 4 and 7, Chapter 606, Laws of 2005, are repealed.

Section 3. Repealer. Sections 4, 5, 6, and 8, Chapter 517, Laws of 2007, are repealed.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 223

[HB 95]

AN ACT EXPANDING THE ENFORCEMENT AUTHORITY FOR COLLECTING PARENTAL COST-OF-CARE CONTRIBUTIONS THAT ARE ORDERED BY A YOUTH COURT; AMENDING SECTIONS 40-5-303, 40-5-601, 40-5-701, AND 41-5-1525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-5-303, MCA, is amended to read:

"40-5-303. Petition for income deduction — who may initiate. (1) If an obligor is exempted from immediate income withholding under 40-5-315 or is not otherwise subject to an income-withholding order, the obligor's income may be withheld for the payment of child support if the obligor becomes delinquent in the payment of support, a person or entity referred to in subsection (2) notifies the obligor that income withholding will be initiated if the delinquent amount is not paid within 8 days of the date of the notice, and the obligor does not pay the delinquent amount within that time. Notification that income withholding will be initiated if a delinquency is not paid within 8 days of the date of the notice is not necessary if such a notice was given for a prior delinquency and the prior delinquency in fact existed. This notice is different from the notice required by 40-5-305.

- (2) Income withholding for the payment of child support may be initiated by:
- (a) the person named as the recipient of the child support payments in the child support order;
 - (b) the child or the guardian of the child named in the child support order; or
 - (c) the department of public health and human services-; or
- (d) the state of Montana, including the department of corrections and respective county attorneys, for the purpose of enforcing contribution orders under 41-5-1525. These contribution orders are considered to be child support orders for purposes of enforcement under this chapter.
- (3) (a) At the request of an initiating party who has determined that an obligor is delinquent, the district court shall issue an order for income deductions for immediate service upon the obligor's payor or payors. The order is limited to current support unless modified to include arrears as provided in 40-5-308.
- (b) At the same time an income deduction order is issued, the requesting party shall notify the obligor as provided in 40-5-305 that income deductions have been initiated.

- (4) Deductions under this section for current support may be terminated only if:
- (a) the district court determines after a hearing that the obligor was not delinquent when the deduction order was issued;
- (b) the obligation to pay support has terminated and all delinquencies are paid in full; or
- (c) the department of public health and human services has superseded the deduction order under authority of Title 40, chapter 5, part 4.
 - (5) As used in this part, the following definitions apply:
 - (a) "Employer" includes a payor.
- (b) (i) "Income" means any form of periodic payment to a person, regardless of source, including commissions, bonuses, workers' compensation, disability benefits, payments under a pension or retirement program, interest and earnings, and wages.
 - (ii) Income does not include:
- (A) an amount, other than creditor claims, required by law to be withheld, including federal, state, and local taxes and social security; or
- (B) an amount exempted from judgment, execution, or attachment by federal or state law.
- (c) "Payor" means any entity that pays income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, or state agency or an agent of any one of them, subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure."

Section 2. Section 40-5-601, MCA, is amended to read:

- "40-5-601. Failure to pay support civil contempt. (1) For purposes of this section, "support" means child support; spousal support; health insurance, medical, dental, and optical payments; day-care expenses; and any other payments due as support under a court or administrative order; and contributions ordered pursuant to 41-5-1525. Submission of health insurance claims is a support obligation if health insurance coverage is ordered.
- (2) If a person obligated to provide support fails to pay as ordered, the payee or assignee of the payee of the support order may petition a district court to find the obligated person in contempt.
 - (3) The petition may be filed in the district court:
 - (a) that issued the support order;
 - (b) of the judicial district in which the obligated person resides; or
- (c) of the judicial district in which the payee or assignee of the payee resides or has an office.
- (4) Upon filing of a verified petition alleging facts constituting contempt of the support order, the district court shall issue an order requiring the obligated person to appear and show cause why the obligated person should not be held in contempt and punished under this section.
 - (5) The obligated person is presumed to be in contempt upon a showing that:
- (a) there is a support order issued by a court or administrative agency of this or another state, an Indian tribe, or a country with jurisdiction to enter the order;

- (b) the obligated person had actual or constructive knowledge of the order; and
 - (c) the obligated person failed to pay support as ordered.
- (6) Certified payment records maintained by a clerk of court or administrative agency authorized by law or by the support order to collect support are admissible in a proceeding under this section and are prima facie evidence of the amount of support paid and any arrearages under the support order.
- (7) Following a showing under subsection (5), the obligated person may move to be excused from the contempt by showing clear and convincing evidence that the obligated person:
 - (a) has insufficient income to pay the arrearages;
- (b) lacks personal or real property that can be sold, mortgaged, or pledged to raise the needed sum;
- (c) has unsuccessfully attempted to borrow the sum from a financial institution;
- (d) has no other source, including relatives, from which the sum can be borrowed or secured;
- (e) does not have a valid out-of-court agreement with the payee waiving, deferring, or otherwise compromising the support obligation; or
 - (f) cannot, for some other reason, reasonably comply with the order.
- (8) In addition to the requirement of subsection (7), the obligated person shall also show by clear and convincing evidence that factors constituting the excuse were not occasioned or caused by the obligated person voluntarily:
- (a) remaining unemployed or underemployed when there is employment suitable to the obligated person's skills and abilities available within a reasonable distance from the obligated person's residence;
- (b) selling, transferring, or encumbering real or personal property for fictitious or inadequate consideration within 6 months prior to a failure to pay support when due;
- (c) selling or transferring real property without delivery of possession within 6 months prior to a failure to pay support when due or, if the sale or transfer includes a reservation of a trust for the use of the obligated person, purchasing real or personal property in the name of another person or entity;
- (d) continuing to engage in an unprofitable business or contract unless the obligated person cannot reasonably be removed from the unprofitable situation; or
- (e) incurring debts subsequent to entry of the support order that impair the obligated person's ability to pay support.
- (9) If the obligated person is not excused under subsections (7) and (8), the district court shall find the obligated person in contempt of the support order. For each failure to pay support under the order, the district court shall order punishment as follows:
 - (a) not more than 5 days incarceration in the county jail;
 - (b) not more than 120 hours of community service work;
 - (c) not more than a \$500 fine; or
 - (d) any combination of the penalties in subsections (9)(a) through (9)(c).

- (10) An order under subsection (9) must include a provision allowing the obligated person to purge the contempt. The obligated person may purge the contempt by complying with an order requiring the obligated person to:
- (a) seek employment and periodically report to the district court all efforts to find employment;
 - (b) meet a repayment schedule;
- (c) compensate the payee for the payee's attorney fees, costs, and expenses for a proceeding under this section;
- (d) sell or transfer real or personal property or transfer real or personal property to the payee, even if the property is exempt from execution;
- (e) borrow the arrearage amount or report to the district court all efforts to borrow the sum;
- (f) meet any combination of the conditions in subsections (10)(a) through (10)(e); or
- (g) meet any other conditions that the district court in its discretion finds reasonable.
- (11) If the obligated person fails to comply with conditions for purging contempt, the district court shall immediately find the obligated person in contempt under this section and impose punishment.
- (12) A proceeding under this section must be brought within 3 years of the date of the last failure to comply with the support order."

Section 3. Section 40-5-701, MCA, is amended to read:

- **"40-5-701. Definitions.** As used in this part, the following definitions apply:
 - (1) (a) "Child" means:
- (i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States;
 - (ii) a person under 19 years of age who is still in high school;
- (iii) a person who is mentally or physically incapacitated when the incapacity began prior to that person reaching 18 years of age; and
 - (iv) in IV-D cases, a person for whom:
 - (A) support rights are assigned under 53-2-613;
 - (B) a public assistance payment has been made;
- (C) the department is providing support enforcement services under 40-5-203; or
- (D) the department has received a referral for IV-D services under the provisions of the Uniform Interstate Family Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Reciprocal Enforcement of Support Act, or Title IV-D of the Social Security Act.
- (b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support extending beyond the time the child reaches 18 years of age.
- (2) "Delinquency" means a support debt or support obligation due under a support order in an amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent to suspend a license.

- (3) "Department" means the department of public health and human services.
- (4) "License" means a license, certificate, registration, permit, or any other authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, profession, recreational activity, or any other privilege that is subject to suspension, revocation, forfeiture, termination, or a declaration of ineligibility to purchase by the licensing authority prior to its date of expiration.
- (5) "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.
 - (6) "Obligee" means:
 - (a) a person to whom a support debt or support obligation is owed; or
- (b) a public agency of this or another state or an Indian tribe that has the right to receive current or accrued support payments or that is providing support enforcement services under this chapter.
- (7) "Obligor" means a person who owes a duty of support or who is subject to a subpoena or warrant in a paternity or child support proceeding.
- (8) "Order suspending a license" means an order issued by a support enforcement entity to suspend a license. The order must contain the name of the obligor, the type of license, and, if known, the social security number of the obligor.
- (9) "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that provides sufficient security to ensure compliance with a support order and that incorporates voluntary or involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a support debt and, if applicable, current and future support.
- (10) "Recreational activity" means an activity for which a license or permit is issued by the department of fish, wildlife, and parks under Title 87, chapter 2, part 6 or 7, except 87-2-708 or 87-2-711, or under 87-2-505, 87-2-507, 87-2-508, or 87-2-510.
- (11) "Subpoena" means a writ or order issued by a court or the department in a proceeding or as part of an investigation related to the paternity or support of a child that commands a person to appear at a particular place and time to testify or produce documents or things under the person's control.
- (12) "Support debt" or "support obligation" means the amount created by the failure to provide or pay:
- (a) support to a child under the laws of this or any other state or under a support order;
- (c) fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and collection of child support or spousal maintenance or support; or
 - (d) contributions ordered pursuant to 41-5-1525.
 - (13) "Support enforcement entity" means:
 - (a) in IV-D cases, the department; or

- (b) in all other cases, the district court that entered the support order or a district court in which the support order is registered.
- (14) (a) "Support order" means an order that provides a determinable amount for temporary or final periodic payment of a support debt or support obligation and that may include payment of a determinable or indeterminable amount for insurance covering the child issued by:
 - (i) a district court of this state;
- (ii) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;
- (iii) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or
- (iv) an administrative agency of another state or an Indian tribe with a hearing function and process similar to those of the department.
- (b) If an action for child support is commenced under this part and the context so requires, support order also includes:
- (i) judgments and orders providing periodic payments for the maintenance or support of the child's custodial parent; and
- (ii) amounts for the recovery of fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and collection of child support or spousal maintenance or support.
- (15) "Suspension" includes the withdrawal, withholding, revocation, forfeiture, or nonissuance of a license and license privileges.
- (16) "Warrant" means a bench warrant, a warrant to appear, an order to show cause, or any other order issued by a court relating to the appearance of a party in a paternity or child support proceeding.
- (17) "IV-D case" means a case in which the department is providing support enforcement services as a result of:
 - (a) an assignment of support rights under 53-2-613;
 - (b) a payment of public assistance;
 - (c) an application for support enforcement services under 40-5-203; or
- (d) a referral for services from an agency of another state or an Indian tribe under the provisions of the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or Title IV-D of the Social Security Act."
 - **Section 4.** Section 41-5-1525, MCA, is amended to read:
- "41-5-1525. Contribution for costs order for contribution exceptions collection. (1) If a youth is placed in substitute care, a youth assessment center, or detention requiring payment by any state or local government agency or committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.
- (2) If the court determines that a youth's parents or guardians are financially able to pay a contribution for adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, or

supervision as provided in subsection (1), the court shall order the youth's parents or guardians to pay a specified amount. The order must state to which state or local government agency all or a part of the contribution is due and in what order the payments must be made.

- (3) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (1), the court shall order the youth's parents or guardians to pay an amount attributable to care, custody, and treatment based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.
- (4) (a) Except as provided in subsection (4)(b), contributions ordered under subsection (3) and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part parts 3 and 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.
- (b) A court-ordered exception from contributions under this section must be in writing and must be included in the order. An exception from the immediate income-withholding requirement may be granted if the court finds that there is:
 - (i) good cause not to require immediate income withholding; or
- (ii) an alternative arrangement between the department and the person who is ordered to pay contributions.
- (c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:
- (i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the youth; and
- (ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.
 - (d) An alternative arrangement must:
 - (i) provide sufficient security to ensure compliance with the arrangement;
- (ii) be in writing and be signed by a representative of the department and the person required to make contributions; and
 - (iii) if approved by the court, be entered into the record of the proceeding.
- (5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (3).
- (6) (a) If the court orders the payment of contributions under this section, the department shall may apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.
- (b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to contribution orders in existence on [the effective date of this act].

Approved April 16, 2009

CHAPTER NO. 224

[HB 103]

AN ACT REQUIRING THAT COMMERCIAL TOW TRUCK OPERATORS FILE PROOF OF INSURANCE WITH THE DEPARTMENT OF JUSTICE RATHER THAN THE PUBLIC SERVICE COMMISSION; AND AMENDING SECTIONS 61-8-906 AND 69-12-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-906, MCA, is amended to read:

- **"61-8-906.** Liability insurance storage requirements. (1) Notwithstanding the provisions of 61-6-301, a commercial tow truck operator shall continuously provide:
- (a) insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property caused by the maintenance or use of a commercial tow truck, as defined in 61-9-416, or occurring on the business premises of a commercial tow truck operator in an amount not less than:
 - (i) \$300,000 for class A tow trucks;
 - (ii) \$500,000 for class B tow trucks; and
 - (iii) \$750,000 for class C tow trucks;
- (b) insurance in an amount not less than \$20,000 to cover the damage to cargo or other property entrusted to the care of the commercial tow truck operator; and
- (c) garage keepers legal liability insurance or on-hook liability insurance in an amount not less than \$50,000.
- (2) A commercial tow truck operator shall provide proof of the insurance required in subsection (1) to the public service commission department.
- (3) A qualified tow truck operator shall provide a storage facility, either a fenced lot or a building, that is:
 - (a) adequate for the secure storage and safekeeping of stored vehicles;
 - (b) located in a place that is reasonably convenient for public access;
- (c) available to public access between 8 a.m. and 5 p.m., Monday through Friday, excluding legal holidays;
- (d) large enough to store all the vehicles towed for law enforcement agencies; and $\,$
- (e) if a fenced lot, constructed of chain link at least 6 feet high or constructed of materials and in a manner sufficient to deter trespassing or vandalism."

Section 2. Section 69-12-102, MCA, is amended to read:

- "69-12-102. Scope of chapter exemptions. (1) This chapter does not affect:
- (a) the operation of school buses that are used in conveying pupils or other students enrolled in classes to and from district or other schools or in

transportation movements related to school activities that are sponsored or supervised by school authorities;

- (b) the transportation by means of motor vehicles in the regular course of business of employees by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees in construction and production is concerned;
- (c) the transportation of household goods and garbage by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas of a city, town, or village with a population of less than 500 persons, as determined by the commission;
- (d) the transportation of newspapers, newspaper supplements, periodicals, or magazines;
- (e) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;
 - (f) ambulances;
- (g) the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also going to or from the driver's place of employment;
 - (h) the operation of:
- (i) a transportation system by a municipality or transportation district as provided in Title 7, chapter 14, part 2;
 - (ii) a municipal bus service pursuant to Title 7, chapter 14, part 44; or
- (iii) any public transportation system recognized by the Montana department of transportation as a federal transit administration provider pursuant to 49 U.S.C. 5311;
- (i) armored motor vehicles used for the transportation of valuable paintings and other items of unusual value requiring special handling and security;
- (j) the transportation of household goods or garbage under an agreement between a motor carrier and an office or agency of the United States government; or
- (k) the transportation of persons provided by private, nonprofit organizations, including those recognized by the Montana department of transportation as federal transit administration providers pursuant to 49 U.S.C. 5310. As used in this subsection, "private, nonprofit organization" means an organization recognized as nonprofit under section 501(c) of the Internal Revenue Code.
- (2) Except for the identification of ownership requirements provided in 69-12-408, this chapter does not affect commercial tow trucks designed and exclusively used in towing wrecked, disabled, or abandoned vehicles or while these tow trucks are rendering assistance to wrecked, disabled, or abandoned vehicles. However, commercial tow truck firms shall file policies of insurance showing coverage required by 61-8-906.
- (3) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

Approved April 16, 2009

CHAPTER NO. 225

[HB 107]

AN ACT CLARIFYING THE DEFINITION OF ENTERPRISE FUNDS SUBJECT TO APPROPRIATION; AMENDING SECTIONS 17-7-111, 17-7-123, AND 17-8-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-111, MCA, is amended to read:

- "17-7-111. Preparation of state budget agency program budgets form distribution and contents. (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.
- (b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:
- (i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and
- (ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.
- (2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2)(a) or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or the instructions given for completing the forms.
- (3) The agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:
- (a) a consolidated agency budget summary of funds subject to appropriation, or enterprise funds that transfer profits to the general fund or to an account subject to appropriation as provided in 17-8-101, for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress;
- (b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for the current biennium and estimated for the subsequent biennium;

- (c) a statement of the agency mission and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives.
- (d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;
- (e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;
- (f) for only agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the budget director. Each agency plan must include base budget reductions that reflect the required percentage reduction by fund type for the general fund and state special revenue fund types. Exempt from the calculations of the 5% target amounts are legislative audit costs, administratively attached entities that hire their own staff under 2-15-121, and state special revenue accounts that do not transfer their investment earnings or fund balances to the general fund. The plan must include:
 - (i) a prioritized list of services that would be eliminated or reduced;
- (ii) for each service included in the prioritized list, the savings that would result from the elimination or reduction; and
- (iii) the consequences or impacts of the proposed elimination or reduction of each service.
- (g) a reference for each new information technology proposal stating whether the new proposal is included in the approved agency information technology plan as required in 2-17-523; and
- (h) other information the budget director feels is necessary for the preparation of a budget.
- (4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:
- (a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.
 - (b) a statewide project budget summary as provided in 2-17-526;
- (c) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.
- (d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.
- (5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system

bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last-completed fiscal year and the fiscal year in progress:

- (a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;
- (b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and
- (c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.
- (6) (a) The department of revenue shall make Montana individual income tax information available by removing names, addresses, and social security numbers and substituting in their place a state accounting record identifier number. Except for the purposes of complying with federal law, the department may not alter the data in any other way.
- (b) The department of revenue shall provide the name and address of a taxpayer on written request of the budget director when the values on the requested return, including estimated payments, are considered necessary by the budget director to properly analyze state revenue and are of a sufficient magnitude to materially affect the analysis and when the identity of the taxpayer is necessary to evaluate the effect of the return or payments on the analysis being performed."

Section 2. Section 17-7-123, MCA, is amended to read:

- "17-7-123. Form of executive budget. (1) The budget submitted must set forth a balanced financial plan for funds subject to appropriation, and enterprise funds that transfer profits to the general fund or to accounts subject to appropriation as provided in 17-8-101, for each accounting entity and for the state government for each fiscal year of the ensuing biennium. The base level plan must consist of:
- (a) a consolidated budget summary setting forth the aggregate figures of the budget in a manner that shows a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by explanatory schedules or statements.
- (b) budget and full-time equivalent personnel position comparisons by agency, program, and appropriated funds for the current and subsequent biennium;
- (c) the departmental mission and a statement of goals and objectives for the department;
- (d) base budget disbursements for the completed fiscal year of the current biennium, estimated comparable disbursements for the current fiscal year, and the proposed present law base budget plus new proposals, if any, for each department and each program of the department;

- (e) a statement containing recommendations of the governor for the ensuing biennium by program and disbursement category, including:
- (i) explanations of appropriation and revenue measures included in the budget that involve policy changes;
- (ii) matters not included as a part of the budget bill but included as a part of the executive budget, such as the state employee pay plan, programs funded through separate appropriations measures, and other matters considered necessary for comprehensive public and legislative consideration of the state budget; and
- (iii) a summary of budget requests that include proposed expenditures on information technology resources. The summary must include funding, program references, and a decision package reference;
 - (f) a report on:
- (i) enterprise funds not subject to the requirements of subsections (1)(a) through (1)(e), including retained earnings and contributed capital, projected operations and charges, and projected fund balances; and
- (ii) fees and charges in the internal service fund type, including changes in the level of fees and charges, projected use of the fees and charges, and projected fund balances. Fees and charges in the internal service fund type must be approved by the legislature in the general appropriations act. Fees and charges in a biennium may not exceed the level approved by the legislature in the general appropriations act effective for that biennium.
- (g) any other financial or budgetary material agreed to by the budget director and the legislative fiscal analyst.
- (2) The statement of departmental goals and objectives and the schedule for each fund required in 17-7-111(3)(b) of the executive budget are not required to be printed but must be available in the office of budget and program planning and on the internet."

Section 3. Section 17-8-101, MCA, is amended to read:

- "17-8-101. Appropriation and disbursement of money from treasury. (1) For purposes of complying with Article VIII, section 14, of the Montana constitution, money deposited in the general fund, the special revenue fund type (except money deposited in the treasury from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation), and the capital projects fund type, with the exception of refunds authorized in subsection (4), may be paid out of the treasury only on appropriation made by law.
- (2) Subject to the provisions of subsection (8), money deposited in the enterprise fund type, debt service fund type, internal service fund type, private purpose trust fund type, agency fund type, and state special revenue fund from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation, may be paid out of the treasury:
 - (a) by appropriation; or
- (b) under general laws, or contracts entered into in pursuance of law, permitting the disbursement if a subclass is established on the state financial system.
- (3) The pension trust fund type is not considered a part of the state treasury for appropriation purposes. Money deposited in the pension trust fund type may

be paid out of the treasury pursuant to general laws, trust agreement, or contract.

- (4) Money paid into the state treasury through error or under circumstances such that the state is not legally entitled to retain it and a refund procedure is not otherwise provided by law may be refunded upon the submission of a verified claim approved by the department.
- (5) Authority to expend appropriated money may be transferred from one state agency to another, provided that the original purpose of the appropriation is maintained. The office of budget and program planning shall report semiannually to the legislative finance committee concerning all appropriations transferred under the provisions of this section.
- (6) Fees and charges for services deposited in the internal service fund type must be based upon commensurate costs. The legislative auditor, during regularly scheduled audits of state agencies, shall audit and report on the reasonableness of internal service fund type fees and charges and on the fund equity balances.
- (7) The creation of accounts in the enterprise fund or the internal service fund must be approved by the department, using conformity with generally accepted accounting principles as the primary approval criteria. The department shall report annually to the office of budget and program planning and the legislative finance committee on the nature, status, and justification for all new accounts in the enterprise fund and the internal service fund.
- (8) Enterprise and internal service funds must be appropriated if they are used as a part of a program that is not an enterprise or internal service function and that otherwise requires an appropriation. An enterprise fund that transfers its ending fund balance to the general fund is required by law to transfer money to the general fund or to any other appropriated fund is subject to appropriation. The payment of funds into an internal service fund must be authorized by law."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 226

[HB 112]

AN ACT INCREASING THE THRESHOLD AMOUNT CONSTITUTING A SIGNIFICANT CHANGE IN AN AGENCY OR PROGRAM'S OPERATING BUDGET SUBJECT TO REVIEW BY THE LEGISLATIVE FISCAL ANALYST; INCREASING THE THRESHOLD AMOUNT CONSTITUTING A SIGNIFICANT CHANGE IN AN AGENCY OR PROGRAM'S BUDGET TRANSFERS SUBJECT TO REVIEW BY THE LEGISLATIVE FISCAL ANALYST; AMENDING SECTIONS 17-7-138 AND 17-7-139, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-138, MCA, is amended to read:

"17-7-138. Operating budget. (1) (a) Expenditures by a state agency must be made in substantial compliance with the budget approved by the legislature. Substantial compliance may be determined by conformity to the conditions contained in the general appropriations act and to legislative intent as established in the narrative accompanying the general appropriations act. An

explanation of any significant change in agency or program scope must be submitted on a regular basis to the interim committee that has program evaluation and monitoring functions for the agency pursuant to Title 5, chapter 5, part 2. An explanation of any significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. A significant change may not conflict with a condition contained in the general appropriations act. If the approving authority certifies that a change is time-sensitive, the approving authority may approve the change prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee. Except as provided in subsection (2), the expenditure of money appropriated in the general appropriations act is contingent upon approval of an operating budget by August 1 of each fiscal year. An approved original operating budget must comply with state law and conditions contained in the general appropriations act.

- (b) For the purposes of this subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:
 - (i) the operating budget change exceeds \$1 million; or
- (ii) the operating budget change exceeds 25% of a budget category and the change is greater than \$25,000 \$75,000. If there have been other changes to the budget category in the current fiscal year, all the changes, including the change under consideration, must be used in determining the 25% and \$25,000 \$75,000 threshold.
- (2) The expenditure of money appropriated in the general appropriations act to the board of regents, on behalf of the university system units, as defined in 17-7-102, is contingent upon approval of a comprehensive operating budget by October 1 of each fiscal year. The operating budget must contain detailed revenue and expenditures and anticipated fund balances of current funds, loan funds, endowment funds, and plant funds. After the board of regents approves operating budgets, transfers between units may be made only with the approval of the board of regents. Transfers and related justification must be submitted to the office of budget and program planning and to the legislative fiscal analyst.
- (3) The operating budget for money appropriated by the general appropriations act must be separate from the operating budget for money appropriated by another law except a law appropriating money for the state pay plan or any portion of the state pay plan. The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation. Each operating budget must include expenditures for each agency program, detailed at least by first-level categories as provided in 17-1-102(3). Each agency shall record its operating budget for all funds, other than higher education funds, and any approved changes on the statewide budget and accounting state financial system. Documents implementing approved changes must be signed. The operating budget for higher education funds must be recorded on the university financial system, with separate

accounting categories for each source or use of state government funds. State sources and university sources of funds may be combined for the general operating portion of the current unrestricted funds."

Section 2. Section 17-7-139, MCA, is amended to read:

"17-7-139. Program transfers. (1) Unless prohibited by law or a condition contained in the general appropriations act, the approving authority may approve agency requests to transfer appropriations between programs within each fund type within each fiscal year. The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation. An explanation of any significant transfer must be submitted on a regular basis to the interim committee that has program evaluation and monitoring functions for the agency pursuant to Title 5, chapter 5, part 2. An explanation of any transfer that involves a significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. If the approving authority certifies that a request for a transfer representing a significant change in agency or program scope, objectives, activities, or expenditures is time-sensitive, the approving authority may approve the transfer prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee. All program transfers must be completed within the same fund from which the transfer originated. A request for a transfer accompanied by a justification explaining the reason for the transfer must be submitted by the requesting agency to the approving authority and the office of budget and program planning. Upon approval of the transfer in writing, the approving authority shall inform the legislative fiscal analyst of the approved transfer and the justification for the transfer. If money appropriated for a fiscal year is transferred to another fiscal year, the money may not be retransferred, except that money remaining from projected costs for spring fires estimated in the last quarter of the first year of a biennium may be retransferred.

- (2) For the purposes of subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:
 - (a) the budget transfer exceeds \$1 million; or
- (b) the budget transfer exceeds 25% of a program's total operating plan and the transfer is greater than \$25,000 \$75,000. If there have been other transfers to or from the program in the current fiscal year, all the transfers, including the transfer under consideration, must be used in determining the 25% and \$25,000 \$75,000 threshold."

Section 3. Effective date. [This act] is effective on passage and approval. Approved April 16, 2009

CHAPTER NO. 227

[HB 127]

AN ACT CREATING A STATE SPECIAL REVENUE ACCOUNT FOR THE PURCHASE OF LAND FOR THE MONTANA NATIONAL GUARD FROM FUNDS DERIVED FROM THE STATE'S SALE OF ARMORIES; AMENDING SECTIONS 10-1-108 AND 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-108, MCA, is amended to read:

- "10-1-108. Armories acquisition and sale proceeds account.

 (1) A county, city, or town may convey or lease real property to the state for armories or other military facilities.
- (2) A county, city, or town in which a unit of the national guard is organized and regularly stationed may provide any part of the funds to build an armory. The armory must be of sufficient size and suitable for the drill of the unit.
- (3) (a) There is a Montana national guard land purchase account in the state special revenue fund. If the state sells an armory, the money from the sale must be deposited in the account.
- (b) Money in the account is statutorily appropriated, as provided in 17-7-502, for the purposes described in subsection (4).
- (c) Any interest and income accruing on the account must be deposited in the state general fund.
- (4) Money in the account may be used only for preparations to purchase or the purchase of land necessary for the Montana national guard's mission and is expendable solely upon the authorization of the governor."
 - Section 2. Section 17-7-502, MCA, is amended to read:
- "17-7-502. Statutory appropriations definition requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.
- (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:
- (a) The law containing the statutory authority must be listed in subsection (3).
- (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.
- $\begin{array}{c} (3) \quad \text{The following laws are the only laws containing statutory appropriations: } 2\text{-}17\text{-}105; 5\text{-}11\text{-}120; 5\text{-}11\text{-}407; 5\text{-}13\text{-}403; 7\text{-}4\text{-}2502; } 10\text{-}1\text{-}108; \\ 10\text{-}1\text{-}1202; 10\text{-}1\text{-}1303; 10\text{-}2\text{-}603; 10\text{-}3\text{-}203; 10\text{-}3\text{-}310; 10\text{-}3\text{-}312; 10\text{-}3\text{-}314; \\ 10\text{-}4\text{-}301; 15\text{-}1\text{-}121; 15\text{-}1\text{-}218; 15\text{-}23\text{-}706; 15\text{-}31\text{-}906; 15\text{-}35\text{-}108; 15\text{-}36\text{-}332; \\ 15\text{-}37\text{-}117; 15\text{-}39\text{-}110; 15\text{-}65\text{-}121; 15\text{-}70\text{-}101; 15\text{-}70\text{-}369; 15\text{-}70\text{-}601; 16\text{-}11\text{-}509; \\ 17\text{-}3\text{-}106; 17\text{-}3\text{-}212; 17\text{-}3\text{-}222; 17\text{-}3\text{-}241; 17\text{-}6\text{-}101; 17\text{-}7\text{-}304; 18\text{-}11\text{-}112; 19\text{-}3\text{-}319; \\ 19\text{-}6\text{-}404; 19\text{-}6\text{-}410; 19\text{-}9\text{-}702; 19\text{-}13\text{-}604; 19\text{-}17\text{-}301; 19\text{-}18\text{-}512; 19\text{-}19\text{-}305; \\ 19\text{-}19\text{-}506; 19\text{-}20\text{-}604; 19\text{-}20\text{-}607; 19\text{-}21\text{-}203; 20\text{-}8\text{-}107; 20\text{-}9\text{-}534; 20\text{-}9\text{-}622; \\ 20\text{-}26\text{-}1503; 22\text{-}3\text{-}1004; 23\text{-}4\text{-}105; 23\text{-}4\text{-}202; 23\text{-}4\text{-}204; 23\text{-}4\text{-}302; 23\text{-}4\text{-}304; \\ 23\text{-}5\text{-}306; 23\text{-}5\text{-}409; 23\text{-}5\text{-}612; 23\text{-}7\text{-}301; 23\text{-}7\text{-}402; 37\text{-}43\text{-}204; 37\text{-}51\text{-}501; \\ 39\text{-}71\text{-}503; 41\text{-}5\text{-}2011; 42\text{-}2\text{-}105; 44\text{-}1\text{-}504; 44\text{-}12\text{-}206; 44\text{-}13\text{-}102; 50\text{-}4\text{-}623; \\ \end{array}$

53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 228

[HB 177]

AN ACT DEFINING A "CONDITIONAL DISCHARGE" FOR PROBATION AND PAROLE PURPOSES; AND ESTABLISHING GROUNDS FOR REVOKING A CONDITIONAL DISCHARGE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Conditional discharge — definition — revocation. (1) (a) A conditional discharge granted under 46-23-1011 or 46-23-1021 is:

- (i) a discharge from supervision by the department for the time remaining on the sentence imposed if the probationer or parolee complies with all the conditions imposed by the district court or the board; and
- (ii) a release from the obligation to pay supervision fees imposed as part of a sentence or as terms of parole or probation.
- (b) If an individual who has been granted a conditional discharge under 46-23-1011 or 46-23-1021 becomes a resident of another state, the conditional discharge must be construed as a discharge of the imposed sentence subject to revocation as provided in subsection (2).
- (2) A conditional discharge may be revoked if, within the time remaining on the sentence that was conditionally discharged, the individual:
 - (a) is charged with a felony offense;
- (b) is charged with a misdemeanor offense for which the individual could be sentenced to incarceration for a period of more than 6 months; or
 - (c) violates any condition imposed by the district court or the board.

(3) A sexual or violent offender who is subject to lifetime supervision by the department is not eligible for a conditional discharge from supervision.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 23, part 10, and the provisions of Title 46, chapter 23, part 10, apply to [section 1].

Approved April 16, 2009

CHAPTER NO. 229

[HB 218]

AN ACT GENERALLY REVISING FISH AND GAME LAWS; CLARIFYING PROHIBITIONS ON THE USE OF PROJECTED ARTIFICIAL LIGHT TO HUNT AND ON THE WASTE OF FUR-BEARING ANIMALS; DEFINING "PELT"; AMENDING SECTIONS 87-1-102, 87-3-101 AND 87-3-506, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-102, MCA, is amended to read:

- "87-1-102. Penalties violation of state law. (1) A person who purposely, knowingly, or negligently violates a provision of this title or any other state law pertaining to fish and game is guilty of a misdemeanor, except if a felony is expressly provided by law, and shall be fined an amount of not less than \$50 or more than \$1,000, or be imprisoned in the county detention center for not more than 6 months, or both, unless a different punishment is expressly provided by law for the violation. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of that person's license and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in T7-1-101, for recreational purposes for a period set by the court. If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss of privileges as imposed by the court. The person shall surrender all licenses, as ordered by the court, to the department within 10 days.
- (2) (a) A person convicted of unlawfully taking, killing, possessing, or transporting a bighorn sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals shall be fined an amount of not less than \$500 or more than \$2,000, or be imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.
- (b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, or mountain lion or any part of these animals shall be fined an amount of not less than \$300 or more than \$1,000, or be imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of

conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

- (c) A person convicted of unlawfully attempting to trap or hunt a game animal shall be fined an amount of not less than \$200 or more than \$600, or be imprisoned in the county detention center for not more than 60 days, or both.
- (d) A person convicted of purposely, knowingly, or negligently taking, killing, trapping, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined an amount of not less than \$100 or more than \$1,000, be imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current license and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period, and any pelts possessed unlawfully must be confiscated. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.
- (e) A person convicted of hunting, fishing, or trapping while that person's license is forfeited or a privilege is denied shall be imprisoned in the county detention center for not less than 5 days or more than 6 months. In addition, that person may be fined an amount *of* not less than \$500 or more than \$2,000.
- (3) If a person is convicted of illegally taking an animal described in 87-1-111 or 87-1-115 through the use of spotlights projected artificial light, nightscopes, or infrared scopes, the person is prohibited from fishing or hunting in the state for an additional 5 years following the ending date of the original prohibition period. In addition, the person, upon conviction or forfeiture of bond or bail, shall successfully complete, at the person's own expense, a department-sponsored hunter education course.
- (4) A person convicted or who has forfeited bond or bail under this section and whose license privileges are forfeited may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or permit during the period when license privileges have been forfeited. A person convicted of unlawfully purchasing, acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping license during the period when license privileges have been forfeited shall be fined an amount of not less than \$500 or more than \$2,000, be imprisoned in the county jail for not more than 60 days, or both.
- (5) A person convicted or who has forfeited bond or bail under this section and who has been ordered to pay restitution under the provisions of 87-1-111 or 87-1-115 may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later. If the violation involved the unlawful taking of a moose, a bighorn sheep, or a mountain goat, the person may not apply for a special license or enter a drawing for a special license or permit for the same species of game animal that was unlawfully taken for an additional period of 5 years following the ending date of the first 5-year period. A person convicted of unlawfully applying for any special license under Title 87, chapter 2, part 7, or unlawfully entering a drawing for a special license or permit shall be fined an amount of not less than \$500 or more than \$2,000, be imprisoned in the county detention center for not more than 60 days, or both.

- (6) (a) A person convicted of a second offense of any of the following offenses within 10 years of the first conviction or who is convicted of two or more of the following offenses at different times within a 10-year period is subject to the penalties provided in subsection (6)(b):
 - (i) hunting during a closed season;
- (ii) spotlighting taking an animal or hunting while using projected artificial light;
 - (iii) hunting without a license;
 - (iv) unlawful taking of more than double the legal bag limit;
 - (v) unlawful possession of more than double the legal bag limit; and
 - (vi) waste of game by abandonment in the field.
- (b) (i) A person convicted of the offenses in subsection (6)(a) in the time periods specified in subsection (6)(a) shall be fined an amount of not less than \$2,000 or more than \$5,000, or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit all current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for 60 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period.
 - (ii) The department shall notify the offender of the loss of privileges.
- (iii) The offender shall surrender all hunting, fishing, and trapping licenses to the department within 10 days after having received notice from the department that privileges have been revoked.
- (7) (a) A person convicted of a third offense of any of the following offenses within 10 years of the first conviction is subject to the penalties provided in subsection (7)(b):
 - (i) hunting during a closed season;
- (ii) $spotlighting\ taking\ an\ animal\ or\ hunting\ while\ using\ projected\ artificial\ light;$
 - (iii) hunting without a license; and
 - (iv) unlawful taking of more than double the legal bag limit.
- (b) (i) A person convicted of the offenses in subsection (7)(a) in the time period specified in subsection (7)(a) shall be fined an amount of not less than \$5,000 or more than \$10,000, or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit all current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for life.
 - (ii) The department shall notify the offender of the loss of privileges.
- (iii) The offender shall surrender all hunting, fishing, and trapping licenses to the department within 10 days after having received notice from the department that privileges have been revoked.
- (8) Subject to sentencing restrictions, the court shall order a person who is convicted pursuant to this section to pay the costs of imprisonment under this section.
- (9) A mandatory forfeiture of privileges imposed pursuant to this section does not apply to juveniles. However, the court may, at its discretion, order forfeiture of a juvenile's license and privilege to hunt, fish, or trap upon conviction or forfeiture of bond or bail for a violation of this title.

- (10) Notwithstanding the provision of subsection (1), the penalties provided by this section are in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2.
- (11) If an administrative authority suspends a license, permit, or privilege to obtain a license or permit issued under this title, the administrative authority or the department shall notify the person of the suspension and the person shall surrender the license or permit to the department within 10 days.
- (12) For the purposes of this section, the terms "knowingly", "negligently", and "purposely" have the same meaning as meanings provided in 45-2-101."

Section 2. Section 87-3-101, MCA, is amended to read:

- ****87-3-101. General restrictions.** Except as provided in 87-2-803(4), it is unlawful for anyone to hunt or attempt to hunt any game animal or game bird:
 - (1) from any self-propelled or drawn vehicle;
- (2) on, from, or across any public highway or the shoulder, berm, or barrow pit right-of-way of any public highway, as defined in 61-1-101, in the state of Montana; or
- (3) by the aid or with the use of any set gun, jacklight, spotlight or other projected artificial light, trap, snare (except as allowed in 87-3-127 and 87-3-128), salt lick, or bait."

Section 3. Section 87-3-506, MCA, is amended to read:

- **"87-3-506. Wasting of fur-bearing animals.** (1) A person commits the offense of wasting a fur-bearing animal if that person purposely or knowingly: who
- (a) fails to pick up traps or snares at the end of the trapping season so that the pelt of a fur-bearing animal is wasted; σ
 - (b) attends $\frac{1}{1}$ traps or snares so that fur-bearing animals are wasted; or
- (c) wastes the pelt of any fur-bearing animal is guilty of a misdemeanor and upon conviction shall be punished as provided by law.
- (2) The department of fish, wildlife, and parks shall enforce the provisions of this section.
- (3) (a) Federal, state, and county predator control programs are exempt from this section.
- (b) Pelts of muskrat and beaver killed pursuant to 87-3-501(2) are exempt from this section.
- (4) As used in this section, "pelt" means the pelt, skin, or fur of a fur-bearing animal."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 230

[HB 328]

AN ACT ELIMINATING THE REQUIREMENT FOR SIGNATURES ON A PETITION FOR NOMINATION TO AN ELECTIVE PUBLIC OFFICE FOR WHICH NO SALARY OR FEES ARE PAID TO THE PERSON ELECTED; AND AMENDING SECTION 13-14-113, MCA.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Section 13-14-113, MCA, is amended to read:
- **"13-14-113. Filing for offices without salary or fees.** (1) Candidates for nonpartisan offices for which a salary or fees are not paid shall file with the appropriate official a petition for nomination containing the same information and the oath of the candidate required for a declaration of nomination in a form prescribed by the secretary of state.
- (2) The petition must contain the signatures of registered electors of the election district in which the office will be on the ballot. The number of signatures must be equal to 5% of the total vote cast for the successful candidate for that office at the last general election, but may not be less than five signatures.
- (3) The number of signatures necessary for a petition for nomination for an office not previously on the ballot or for which the election district boundaries have changed since the last general election must be determined by the secretary of state.
- (4)(2) Petitions for nomination must be filed at the same time provided in 13-10-201 for other candidates and offices.
 - (5)(3) A candidate may not file for more than one public office."

Approved April 16, 2009

CHAPTER NO. 231

[HB 338]

AN ACT PROVIDING COMMON CARRIER STATUS TO PIPELINES MOVING CARBON DIOXIDE PRODUCED IN THE COMBUSTION OR GASIFICATION OF FOSSIL FUELS; AND AMENDING SECTIONS 69-13-101, 69-13-102, 69-13-201, 69-13-301, 69-13-302, AND 69-13-303, MCA. Be it enacted by the Legislature of the State of Montana:

- **Section 1.** Section 69-13-101, MCA, is amended to read:
- **"69-13-101. Common carrier pipeline.** (1) The following are hereby declared to be common carriers and subject to the provisions of this chapter: every *A* person, firm, corporation, limited partnership, joint-stock association, or association of any kind whatever is a common carrier if it engages in:
- (a) owning, operating, or managing any pipeline or any part of any pipeline within the state for the transportation of crude petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels to or for the public for hire or engaging in the business of transporting crude petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels by pipelines;
- (b) owning, operating, or managing any pipeline or any part of any pipeline for the transportation of crude petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels to or for the public for hire, which when the pipeline is constructed or maintained upon, along, over, or under any public road or highway;
- (c) owning, operating, or managing any pipeline or any part of any pipeline for transportation to or for the public for hire of crude petroleum, coal, or the

products thereof, which of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels when the pipeline is or may be constructed, operated, or maintained across, upon, along, over, or under the right-of-way of any railroad, corporation, or other common carrier required by law to transport crude petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels as a common carrier;

- (d) owning, operating, or managing or participating in ownership, operation, or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipeline or any part of any pipeline for the transportation from any oil field, coal mine or field, or place of production within the this state to any distributing, refining, or marketing center or reshipping point thereof, within this state, of crude petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels, bought of from others; or
- (e) made a common carrier by or under the terms of contract with or in pursuance of the law of the United States.
 - (2) The provisions of this chapter shall do not apply to:
- (a) those pipelines which that are limited in their use to the wells, stations, plants, and refineries of the owner and which that are not a part of the pipeline transportation system of any common carrier, as herein defined; nor shall such provisions apply to or
- (b) any property of such a common carrier which that is not a part of or necessarily incident to its pipeline transportation system."
 - Section 2. Section 69-13-102, MCA, is amended to read:
- "69-13-102. Scope of chapter enforcement. (1) It is declared that the operation of these pipelines, to which this chapter applies, for the transportation of crude petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels, in connection with the purchase or purchase and sale of such crude petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels, is a business in mode of the conduct of which the public is interested and as such is subject to regulation by law. The business of purchasing or of purchasing and selling crude petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels, using in connection with such that business a pipeline of the class subject to this chapter to transport the crude petroleum, coal, or the products thereof so of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels bought or sold shall may not be conducted unless such the pipeline so used in connection with such that business is a common carrier within the purview of this law chapter and subject to the jurisdiction herein conferred upon the commission.
- (2) It shall be is the duty of the attorney general to enforce this provision by injunction or other adequate remedy."
 - Section 3. Section 69-13-201, MCA, is amended to read:
- **"69-13-201.** Establishment of rates and operating rules. (1) The commission shall have the power to *may* establish and enforce rates of charges and regulations for gathering, transporting, loading, and delivering crude

petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels by such common carrier in this state and for the use of storage facilities necessarily incident to such the transportation and to may prescribe and enforce rules for the government and control of such common carriers in respect to their pipelines and receiving, transferring, and loading facilities. It shall be its duty to The commission shall exercise such the power upon petition by any person showing a substantial interest in the subject.

- (2) No An order establishing or prescribing rates and rules shall may not be made except after hearing and at least 10 days' and not more than 30 days' notice to the person, firm, corporation, partnership, joint-stock association, or association owning or controlling and operating the pipeline or pipelines affected
- (3) In the event any If a rate shall be is filed by any pipeline and a complaint against the same rate or a petition to reduce the same shall be rate is filed by any shipper and such complaint be is sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipeline shall have the right to reparation or reimbursement of all excess in transportation charges so paid, over and above the proper rate as finally determined, on all shipments made after the date of the filing of such the complaint."

Section 4. Section 69-13-301, MCA, is amended to read:

- "69-13-301. Records and reports. (1) Such common Common carriers of crude petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels shall make and publish their tariffs under such rules as that may be prescribed by said the commission. The commission shall require them the common carriers to make reports and may investigate their books and records kept in connection with such the business.
- (2) The commission shall require of such common carrier pipelines to make monthly reports, duly verified under oath, of the total quantities of crude petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels owned by such the pipelines, of that held by them in storage for others, and of their unfilled storage capacity. No publicity shall Publicity may not be given by the commission to the reports as to stock of crude petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels on hand of any particular pipeline, but the commission in its discretion may make public the aggregate amounts held by all the pipelines making such the reports and of their aggregate storage capacity."

Section 5. Section 69-13-302, MCA, is amended to read:

"69-13-302. Connection and interchange facilities. (1) Every Each common carrier shall exchange crude petroleum tonnage, coal tonnage, or petroleum or coal products tonnage, or carbon dioxide volume with each like similar common carrier. The commission shall have the power to may require such connections and facilities for the interchange of such the tonnage and volume to be made at every locality reached by both pipelines whenever a necessity therefor for the connections and facilities exists, subject to such rates and regulations as that may be made by the commission. Any such common carrier under like similar rules shall must be required to install and maintain facilities for the receipt and delivery of crude petroleum, coal, or the products

thereof of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels of patrons at all points on such the pipeline.

- (2) No A carrier shall may not be required to receive or transport any crude petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels except such as may be marketable under rules to be prescribed by the commission, which they are hereby empowered and required to prescribe. The commission is also empowered and required to shall make rules for the ascertainment of the amount of water and other foreign matter in crude oil, coal, or the products thereof of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels tendered for transportation, for deduction therefor for water and foreign matter, and for the amount of deduction to be made for temperature, leakage, and evaporation.
- (3) The recital herein of particular powers on delegated to the part of said commission shall in this section may not be construed to limit the general powers conferred by this chapter."

Section 6. Section 69-13-303, MCA, is amended to read:

- "69-13-303. Prohibition of discrimination in rates or service. (1) Except as provided in subsection (2), no such a common carrier in its operations as such shall may not discriminate between or against shippers in regard to facilities furnished, service rendered, or rates charged under the same or similar circumstances in the transportation of crude petroleum, coal, or the products thereof; nor shall there of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels. There may not be any discrimination in the transportation of crude petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels produced or purchased by itself the common carrier directly or indirectly. In this connection the pipeline shall must be considered as a shipper of the crude petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels produced or purchased by itself the pipeline directly or indirectly and handled through its facilities. No such A carrier in such the operation shall may not directly or indirectly charge, demand, collect, or receive from any one a greater or lesser compensation for any service rendered than from another for a like and contemporaneous service. Subject to the provisions of this chapter and the rules which that may be prescribed by the commission, every such common carrier shall receive and transport crude petroleum, or coal, the products of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels delivered to it for transportation and shall so receive and transport the same products and perform its other duties with respect thereto to the products without discrimination.
- (2) The provisions of subsection (1) shall do not limit the right of the commission to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine.; nor shall any A carrier be is not guilty of discrimination when obeying any order of the commission. When there shall be is offered for transportation more crude petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels than can be immediately transported, the same shall products must be equitably apportioned. The commission may make and enforce general or specific regulations in this regard. No such A common carrier shall may not at any time be required to receive petroleum or petroleum products for shipments

exceeding 3,000 barrels of petroleum or the products thereof in any one day from any person, firm, corporation, or association of persons."

Approved April 16, 2009

CHAPTER NO. 232

[HB 343]

AN ACT REVISING DEFINITIONS FOR THE ADMINISTRATION OF THE RENEWABLE RESOURCE STANDARD FOR PUBLIC UTILITIES AND ELECTRICITY SUPPLIERS; ALLOWING ELIGIBLE RENEWABLE RESOURCES OWNED BY A PUBLIC UTILITY TO BE USED TO COMPLY WITH THE COMMUNITY RENEWABLE ENERGY PROJECT REQUIREMENTS IN THE RENEWABLE RESOURCE STANDARD; REQUIRING A UTILITY TO CONSIDER DISPATCH ABILITY AND SEASONALITY IN MEETING THE RENEWABLE RESOURCE STANDARD; AMENDING SECTIONS 69-3-2003, 69-3-2005, 90-3-1003, AND 90-4-1202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-2003, MCA, is amended to read:

"69-3-2003. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

- (1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric power other than simple generation, transmission, or distribution. Ancillary services related to transmission services include energy losses, energy imbalances, scheduling and dispatching, load following, system protection, *spinning reserves and nonspinning reserves*, and reactive power.
- (2) "Balancing authority" means a transmission system control operator who balances electricity supply and load at all times to meet transmission system operating criteria and to provide reliable electric service to customers.
- (2)(3) "Common ownership" means the same or substantially similar persons or entities that maintain a controlling interest in more than one community renewable energy project even if the ownership shares differ between two community renewable energy projects. Two community renewable energy projects may not be considered to be under common ownership simply because the same entity provided debt or equity or both debt and equity to both projects.
- (3)(4) "Community renewable energy project" means an eligible renewable resource that:
- (a) is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 5 megawatts in total calculated nameplate capacity; or
- $\it (b)$ is owned by a public utility and has less than or equal to 25 megawatts in total nameplate capacity.
- (4)(5) "Competitive electricity supplier" means any person, corporation, or governmental entity that is selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or cooperative.

- (5)(6) "Compliance year" means each calendar year beginning January 1 and ending December 31, starting in 2008, for which compliance with this part must be demonstrated.
 - (6)(7) "Cooperative utility" means:
- (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or
 - (b) an existing municipal electric utility as of May 2, 1997.
- (8) "Dispatch ability" means the ability of either a balancing authority or the owner of an electric generating resource to rapidly start, stop, increase, or decrease electricity production from that generating resource in order to respond to the balancing authority's need to match supply resources to loads on the transmission system.
- (9) "Electric generating resource" means any plant or equipment used to generate electricity by any means.
- (7)(10) "Eligible renewable resource" means a facility either located within Montana or delivering electricity from another state into Montana that commences commercial operation after January 1, 2005, and that produces electricity from one or more of the following sources:
 - (a) wind;
 - (b) solar;
 - (c) geothermal;
 - (d) water power, in the case of a hydroelectric project that:
- (i) does not require a new appropriation, diversion, or impoundment of water and that has a nameplate rating of 10 megawatts or less; or
- (ii) is installed at an existing reservoir or on an existing irrigation system that does not have hydroelectric generation as of [the effective date of this act] and has a nameplate capacity of 15 megawatts or less;
 - (e) landfill or farm-based methane gas;
 - (f) gas produced during the treatment of wastewater;
- (g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;
- (h) hydrogen derived from any of the sources in this subsection (7) (10) for use in fuel cells; and
- (i) the renewable energy fraction from the sources identified in subsections (7)(a) through (7)(h) (10)(a) through (10)(j) of electricity production from a multiple-fuel process with fossil fuels; and
- (j) compressed air derived from any of the sources in this subsection (10) that is forced into an underground storage reservoir and later released, heated, and passed through a turbine generator.
 - (8)(11) "Local owners" means:
 - (a) Montana residents or entities composed of Montana residents;
 - (b) Montana small businesses;
 - (c) Montana nonprofit organizations;
 - (d) Montana-based tribal councils;

- (e) Montana political subdivisions or local governments;
- (f) Montana-based cooperatives other than cooperative utilities; or
- (g) any combination of the individuals or entities listed in subsections (8)(a) through (8)(f) (11)(a) through (11)(f).
- (12) "Nonspinning reserve" means offline generation that can be ramped up to capacity and synchronized to the grid within 10 minutes and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.
- (9)(13) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on January 1, 2005, including the public utility's successors or assignees.
- (10)(14) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity generated by an eligible renewable resource that is tracked and verified by the commission and includes all of the environmental attributes associated with that 1 megawatt-hour unit of electricity production.
- (15) "Seasonality" means the degree to which an electric generating resource is capable of producing electricity in each of the seasons of the year.
- (11)(16) "Small customer" means a retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts.
- (17) "Spinning reserve" means the online reserve capacity that is synchronized to the grid system and immediately responsive to frequency control and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.
- (12)(18) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the community renewable energy project and other eligible renewable resources that are:
 - (a) located within 5 miles of the project;
 - (b) constructed within the same 12-month period; and
 - (c) under common ownership."

Section 2. Section 69-3-2005, MCA, is amended to read:

- **"69-3-2005. Procurement cost recovery reporting.** (1) In meeting the requirements of this part, a public utility shall:
- (a) conduct conduct renewable energy solicitations under which the public utility offers to purchase renewable energy credits, either with or without the associated electricity, under contracts of at least 10 years in duration; and
- (b) consider the importance of geographically diverse rural economic development when procuring renewable energy credits; and
- (c) consider the importance of dispatch ability, seasonality, and other attributes of the eligible renewable resource contained in the commission's supply procurement rules when considering the procurement of renewable energy or renewable energy credits.
- (2) A public utility that intends to enter into contracts of less than 10 years in duration shall demonstrate to the commission that these contracts will provide a lower long-term cost of meeting the standard established in 69-3-2004.
- (3) (a) Contracts signed for projects located in Montana must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects

if the Montana residents have substantially equal qualifications to those of nonresidents.

- (b) Contracts signed for projects located in Montana must require all contractors to pay the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), during the construction phase of the project.
- (4) All contracts signed by a public utility to meet the requirements of this part are eligible for advanced approval under procedures established by the commission. Upon advanced approval by the commission, these contracts are eligible for cost recovery from ratepayers, except that nothing in this part limits the commission's ability to subsequently, in any future cost-recovery proceeding, inquire into the manner in which the public utility has managed the contract and to disallow cost recovery if the contract was not reasonably administered.
- (5) A public utility or competitive electricity supplier shall submit renewable energy procurement plans to the commission in accordance with rules adopted by the commission. The plans must be submitted to the commission on or before:
 - (a) January 1, 2007, for the standard required in 69-3-2004(2);
 - (b) June 1, 2008, for the standard required in 69-3-2004(3);
 - (e)(a) June 1, 2013, for the standard required in 69-3-2004(4); and
 - (d)(b) any additional future dates as required by the commission.
- (6) A public utility or competitive electricity supplier shall submit annual reports, in a format to be determined by the commission, demonstrating compliance with this part for each compliance year. The reports must be filed by March 1 of the year following the compliance year.
- (7) For the purpose of implementing this part, the commission has regulatory authority over competitive electricity suppliers."
 - **Section 3.** Section 90-3-1003, MCA, is amended to read:
- "90-3-1003. Research and commercialization account use. (1) The research and commercialization account provided for in 90-3-1002 is statutorily appropriated, as provided in 17-7-502, to the board of research and commercialization technology, provided for in 2-15-1819, for the purposes provided in this section.
- (2) The establishment of the account in 90-3-1002 is intended to enhance the economic growth opportunities for Montana and constitute a public purpose.
 - (3) The account may be used only for:
- (a) loans that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana;
- (b) grants that are to be used for production agriculture research and commercialization projects, clean coal research and development projects, or renewable resource research and development projects to be conducted at research and commercialization centers located in Montana;
- (c) matching funds for grants from nonstate sources that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana; or
- (d) administrative costs that are incurred by the board in carrying out the provisions of this part.
- (4) At least 20% of the account funds approved for research and commercialization projects must be directed toward projects that enhance production agriculture.

- (5) (a) At least 30% of the account funds approved for research and commercialization projects must be directed toward projects that enhance clean coal research and development or renewable resource research and development.
- (b) If the board is not in receipt of a qualified application for a project to enhance clean coal research and development or renewable resource research and development, subsection (5)(a) does not apply.
- (6) An applicant for a grant shall provide matching funds from nonstate sources equal to 25% of total project costs. The requirement to provide matching funds is a qualifier, but not a criterion, for approval of a grant.
- (7) The board shall establish policies, procedures, and criteria that achieve the objectives in its research and commercialization strategic plan for the awarding of grants and loans. The criteria must include:
- (a) the project's potential to diversify or add value to a traditional basic industry of the state's economy;
- (b) whether the project shows promise for enhancing technology-based sectors of Montana's economy or promise for commercial development of discoveries;
- (c) whether the project employs or otherwise takes advantage of existing research and commercialization strengths within the state's public university and private research establishment;
- (d) whether the project involves a realistic and achievable research project design;
 - (e) whether the project develops or employs an innovative technology;
 - (f) verification that the project activity is located within the state;
- (g) whether the project's research team possesses sufficient expertise in the appropriate technology area to complete the research objective of the project;
- (h) verification that the project was awarded based on its scientific merits, following review by a recognized federal agency, philanthropic foundation, or other private funding source; and
 - (i) whether the project includes research opportunities for students.
- (8) The board shall direct the state treasurer to distribute funds for approved projects. Unallocated interest and earnings from the account must be retained in the account. Repayments of loans and any agreements authorizing the board to take a financial right to licensing or royalty fees paid in connection with the transfer of technology from a research and commercialization center to another nonstate organization or ownership of corporate stock in a private sector organization must be deposited in the account.
- (9) The board shall refer grant applications to external peer review groups. The board shall compile a list of persons willing to serve on peer review groups for purposes of this section. The peer review group shall review the application and make a recommendation to the board as to whether the application for a grant should be approved. The board shall review the recommendation of the peer review group and either approve or deny a grant application.
- (10) The board shall identify whether a grant or loan is to be used for basic research, applied research, or some combination of both. For the purposes of this section, "applied research" means research that is conducted to attain a specific benefit or solve a practical problem and "basic research" means research that is conducted to uncover the basic function or mechanism of a scientific question.

- (11) For the purposes of this section:
- (a) "clean coal research and development" means research and development of projects that would advance the efficiency, environmental performance, and cost-competitiveness of using coal as an energy source well beyond the current level of technology used in commercial service;
- (b) "renewable resource research and development" means research and development that would advance:
- (i) the use of any of the sources of energy listed in 69-3-2003(6) 69-3-2003(10) to produce electricity; and
- (ii) the efficiency, environmental performance, and cost-competitiveness of using renewable resources as an energy source well beyond the current level of technology used in commercial service."

Section 4. Section 90-4-1202, MCA, is amended to read:

"90-4-1202. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

- (1) "Ancillary services" has the meaning provided in 69-3-2003.
- (2) "Bond" means bond, note, or other obligation.
- (3) "Clean renewable energy bonds" means one or more bonds issued by a governmental body pursuant to section 54 of the Internal Revenue Code, 26 U.S.C. 54, and this part.
- (4) "Commission" means the public service commission provided for in 69-1-102.
- (5) "Governing authority" means a council, board, or other body governing the affairs of the governmental body.
- (6) "Governmental body" means a city, town, county, school district, consolidated city-county, Indian tribal government, or any other political subdivision of the state, however organized.
- (7) "Intermittent generation resource" means a generator that operates on a limited and irregular basis due to the inconsistent nature of its fuel supply, which is primarily wind or solar power.
 - (8) "Internal Revenue Code" has the meaning provided in 15-30-101.
 - (9) "Project" means:
- (a) a facility qualifying as a "qualified project" within the meaning of section 54(d)(2) of the Internal Revenue Code, 26 U.S.C. 54(d)(2);
- (b) a community renewable energy project as defined in 69-3-2003 69-3-2003(4)(a); or
 - (c) an alternative renewable energy source as defined in 15-6-225."

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to the compliance year beginning January 1, 2009.

Approved April 16, 2009

CHAPTER NO. 233

[HB 373]

AN ACT CREATING GOLD STAR FAMILY SPECIAL LICENSE PLATES; AMENDING SECTIONS 49-4-302, 49-4-304, 61-3-407, 61-3-426, 61-3-458, AND 61-3-459, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-4-302, MCA, is amended to read:

- "49-4-302. Privileges of permitholder privilege for disabled veteran exemptions from time limits requirements for special parking spaces. (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in a special parking space reserved for a person with a disability, whether on public property or on private property available for public use, when the person for whom the permit was issued is using the special parking space to enter or exit the vehicle.
- (2) A vehicle may not be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by a person with a disability unless:
- (a) the vehicle is lawfully displaying a parking permit issued under this part, a distinguishing license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring parking privileges similar to those conferred in subsection (1), or a specially inscribed license plate displaying the letters "DV" issued under 61-3-458(3)(b)(4)(b) or (3)(i)(4)(i) or displaying a wheelchair as provided in 61-3-332(9); and
- (b) the reserved parking space is being used by the person for whom the permit, plate, or placard was issued to enter or exit the vehicle.
- (3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates displaying the letters "DV" issued under 61-3-458(3)(b)(4)(b) or (3)(i) (4)(i) or displaying a wheelchair as provided in 61-3-332(9) and parked in public places along public streets from any time limitation imposed upon parking, except in areas where:
 - (a) stopping, standing, or parking of all vehicles is prohibited;
 - (b) only special vehicles may be parked; or
- (c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.
- (4) In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for a person with a disability or a permitholder on ways of this state open to the public, as defined in 61-8-101:
- (a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.
- (b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.
- (c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and

each other angle parking space designated for a person with a disability must be at least 13 feet wide.

(d) A parking space reserved for a person with a disability must be designated by a sign showing the international symbol of accessibility, indicating that a permit is required, and stating the penalty for a violation. In order to meet the penalty statement requirement, signs existing on October 1, 1993, must have attached a decal stating the penalty for a violation. The sign must be attached to a wall or post in a way that it is not obscured by a vehicle parked in the space."

Section 2. Section 49-4-304, MCA, is amended to read:

- "49-4-304. Special license plate or card to be provided and displayed additional cards allowed for owners of more than one vehicle. (1) Except as authorized in 49-4-303, unless the department of justice issued a special license plate under 61-3-332(9) or 61-3-458(3)(b)(4)(b) or (3)(i) (4)(i) indicating a special parking privilege, the department shall provide a card to be displayed on or in a motor vehicle to indicate a parking privilege granted under this part. The special license plate must be affixed to the vehicle according to 61-3-301, or the card must be prominently displayed in the windshield of a vehicle when the parking privilege is being used by the person with a disability in a vehicle other than the one to which a special license plate is affixed.
- (2) Subject to the provisions of 49-4-301 through 49-4-305, a person who is eligible to receive a special parking permit and who owns more than one motor vehicle may request and the department of justice shall provide additional cards described in subsection (1) to equal the number of motor vehicles, other than commercial vehicles, owned by the person.
- (3) Upon application under 49-4-301, a person with a disability who does not hold a driver's license or does not own a vehicle may receive a card described in subsection (1) to be displayed in a vehicle in which the person with a disability is being conveyed when the parking privilege is being used.
- (4) The card must bear a representation of a wheelchair as the symbol of a person with a disability."

Section 3. Section 61-3-407, MCA, is amended to read:

"61-3-407. Personalized license plates for disabled — **special veteran and generic specialty license plates.** Subject to the provisions of 61-3-405 and 61-3-406, an application for standard license plates bearing a wheelchair as the symbol of a person with a disability under 61-3-332(9), special veteran license plates under 61-3-458(3)(4), or generic specialty license plates under 61-3-472 through 61-3-481 may be combined with an application for personalized plates. The application must be made on a form supplied by the department."

Section 4. Section 61-3-426, MCA, is amended to read:

- **"61-3-426. Combined license plates.** (1) An application for license plates for amateur radio operators may be combined with an application for the special license plates issued under 61-3-458(3)(4) or with an application for special license plates issued to a person with a disability who complies with the provisions in 61-3-332(9).
 - (2) Issuance of combined license plates is subject to 61-3-422.
- (3) The combined license plates must display the official amateur radio call letters of the owner as assigned to the owner by the federal communications

commission. The plates must also display the design or decal provided for in 61-3-332(9) or 61-3-458(3)(4)."

Section 5. Section 61-3-458, MCA, is amended to read:

- "61-3-458. Special plates for military personnel, veterans, and spouses, and gold star families. (1) (a) Active military personnel, veterans, or the surviving spouse of an eligible veteran, if the spouse has not remarried, may be issued special military or veteran license plates as provided in this section.
- (b) Family members of a member of the U.S. armed forces who are eligible for a "Gold Star Lapel Button" may be issued special gold star family license plates as provided in subsection (3).
- (b)(c) Subject to the provisions of 61-3-332 and except as otherwise provided in this chapter, special license plates issued pursuant to this section must be numbered in sets of two with a different number on each set and must be properly displayed as provided in 61-3-301. Special military, Θ veteran, or gold star family license plates may not be issued for a motorcycle, quadricycle, semitrailer, or pole trailer. Special military, Θ veteran, or gold star family license plates bearing a wheelchair as the symbol of a person with a disability may be issued to a person who meets the qualifications under 61-3-332(9) and this section.
- (2) (a) Upon application, after paying all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees and special license plate fees and providing an official certificate from the applicant's unit commander verifying the individual's eligibility and authorizing the department to issue the plates to the individual, eligible military personnel may be issued one set of special military license plates as provided in this subsection (2).
- (b) A member of the Montana national guard who is a state resident may be issued special license plates with a design or decal displaying the letters "NG". However, the member shall surrender the plates to the department when the member becomes ineligible.
- (c) A member of the reserve armed forces of the United States who is a state resident may be issued special license plates according to the member's branch of service verified in the application with a design or decal displaying one of the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); or United States marine corps reserve, MCR (globe and anchor). However, the member shall surrender the plates to the department when the member becomes ineligible.
- (d) An active member of the regular armed forces of the United States who is a state resident may be issued special license plates inscribed with a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the member's branch of service verified in the application. However, the member shall surrender the plates to the department upon becoming ineligible.
- (3) Upon application, after paying all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees and special license plate fees and providing a department of defense form 3 (DD Form 3) or its successor or documents showing the person's eligibility for a "Gold Star Lapel Button", a family member of a member of the U.S. armed services who is eligible to receive a "Gold Star Lapel Button" as provided in Public Law 534 89th Congress may be

issued special license plates inscribed with a blue-bordered gold star with the words "Gold Star Family" inscribed beneath the registration number.

- (3)(4) (a) Upon application, after presenting proper identification and a department of defense form 214 (DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment verifying the applicant's eligibility and paying the veterans' cemetery fee specified in 61-3-459 and all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees under this chapter, subject to the provisions of 61-3-460, an eligible veteran must be issued any set and more than one set of the special license plates provided for in this subsection (3) (4) that the member requests and is eligible to receive.
- (b) A veteran may be issued special license plates displaying the letters "DV", which entitles the veteran to the parking privileges allowed to a person with a special parking permit issued under Title 49, chapter 4, part 3, if the veteran:
- (i) has been awarded the purple heart and has been rated by the U.S. department of veterans affairs as 50% or more disabled because of a service-connected injury; or
- (ii) is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability.
- (c) A veteran who has been awarded the purple heart may be issued special license plates with the purple heart decal displaying the words "combat wounded".
- (d) A veteran who was captured and held prisoner by the military force of a foreign nation may be issued special license plates with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.
- (e) If the veteran was a member of the United States armed forces on December 7, 1941, and during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) was on station at Pearl Harbor on the island of Oahu or was offshore from Pearl Harbor at a distance of not more than 3 miles, the veteran may be issued special license plates designed to show that the veteran is a survivor of the Pearl Harbor attack.
- (f) A person who is a member of the legion of valor may be issued special plates displaying a design or decal depicting the recognized legion of valor medallion.
- (g) A veteran may be issued special license plates displaying the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the veteran's service record verified in the application.
- (h) A member or a former member of the Montana national guard eligible to receive a military retirement may be issued special license plates displaying the Montana national guard insignia and the words "National Guard veteran".
- (i) A veteran who qualifies under subsections (3)(b) (4)(b) and (3)(c) (4)(c) may be issued special combination license plates displaying the letters "DV" and displaying a purple heart decal with the words "combat wounded". A person who receives the combination plates is entitled to the same parking privileges as provided in subsection (3)(b) (4)(b).
- (4)(5) Upon request, after paying the veterans' cemetery fee provided in 61-3-459 and all applicable vehicle registration fees under this chapter, subject

to the provisions of 61-3-460, the surviving spouse of an eligible veteran, if the spouse has not remarried, may retain the special license plates issued to the deceased veteran, except the special "DV" plates provided for under subsection $\frac{3}{b}$ (4)(b) or the combination plates provided for in subsection $\frac{3}{b}$ (4)(i).

(5)(6) For purposes of this section, "veteran" has the meaning provided in 10-2-101."

Section 6. Section 61-3-459, MCA, is amended to read:

- "61-3-459. Veterans' cemetery fee for special veteran license plates disposition. (1) Except as provided in 61-3-460, an applicant for special veteran license plates provided for under 61-3-458(3)(4) shall pay \$10 for each set issued, renewed, or transferred, in addition to any other taxes or fees applicable under this chapter.
- (2) Fees collected under this section must be deposited in the state general fund and transferred as provided in 15-1-122 to the special revenue account for state veterans' cemeteries established in 10-2-603."

Section 7. Effective date. [This act] is effective January 1, 2010.

Approved April 16, 2009

CHAPTER NO. 234

[HB 378]

AN ACT EXEMPTING FROM THE WORKERS' COMPENSATION ACT THE EMPLOYMENT OF PERSONS PERFORMING THE SERVICES OF AN INTRASTATE OR INTERSTATE COMMON OR CONTRACT MOTOR CARRIER IF HIRED BY A FREIGHT FORWARDER; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-401, MCA, is amended to read:

- "39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.
- (2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:
 - (a) household or domestic employment;
 - (b) casual employment;
- (c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;
- (d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

- (e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;
 - (f) employment as a direct seller as defined by 26 U.S.C. 3508:
- (g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;
- (h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;
- (i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;
- (j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event:
- (k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection (2)(k):
- (i) "freelance correspondent" means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and
 - (ii) "newspaper carrier":
- (A) means a person who provides a newspaper with the service of delivering newspapers singly or in bundles; and
- (B) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.
- (l) cosmetologist's services and barber's services as referred to in 39-51-204(1)(e);
- (m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation:
- (n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;
- (o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;
- (p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;
- (q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:
- (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;
- (ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

- (iii) performs all services as an independent contractor pursuant to a written contract.
- (r) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:
- (i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties:
- (ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;
 - (iii) the officer or manager either:
- (A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or
- (B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or
- (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(r)(iii)(A) or (2)(r)(iii)(B);
- (s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;
- (t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;
- (u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;
- (v) employment of a person performing the services of an intrastate or interstate common or contract motor carrier when hired by an individual or entity who meets the definition of a broker *or freight forwarder*, as provided in 49 U.S.C. 13102:
- (w) employment of a person who is not an employee or worker in this state as defined in 39-71-118(10);
- (x) employment of a person who is working under an independent contractor exemption certificate;
- (y) employment of an athlete by or on a team or sports club engaged in a contact sport. As used in this subsection, "contact sport" means a sport that includes significant physical contact between the athletes involved. Contact sports include but are not limited to football, hockey, roller derby, rugby, lacrosse, wrestling, and boxing.
- (3) (a) (i) A person who regularly and customarily performs services at locations other than the person's own fixed business location shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 unless the person has waived the rights and benefits of the Workers'

Compensation Act by obtaining an independent contractor exemption certificate from the department pursuant to 39-71-417.

- (ii) Application fees or renewal fees for independent contractor exemption certificates must be deposited in the state special revenue account established in 39-9-206 and must be used to offset the certification administration costs.
- (b) A person who holds an independent contractor exemption certificate may purchase a workers' compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.
- (c) For the purposes of this subsection (3), "person" means a sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company.
- (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:
- (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or
- (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.
- (b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.
- (5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.
- (6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

Section 2. Effective date. [This act] is effective on passage and approval. Approved April 16, 2009

CHAPTER NO. 235

[HB 380]

AN ACT ALLOWING THE PURCHASER OF A MOTOR VEHICLE SOLD WITHOUT A MANUFACTURER'S CERTIFICATE OF ORIGIN TO TITLE THE VEHICLE UPON PURCHASING A SURETY BOND, EQUIPPING THE MOTOR VEHICLE WITH CERTAIN REQUIRED EQUIPMENT, AND OBTAINING A LAW ENFORCEMENT INSPECTION; AMENDING SECTION 61-3-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-208, MCA, is amended to read:

- **"61-3-208.** Affidavit and bond for certificate of title. (1) If an applicant for a certificate of title cannot provide the department with the certificate of title that assigns the prior owner's interest in the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile to the applicant, the department may issue a certificate of title if subsection (2) is complied with.
- (2) (a) The applicant shall submit an affidavit in a form prescribed by the department that must be signed and sworn to before an officer authorized to administer oaths and affirmations. The affidavit must accompany the application for the certificate of title and must:
- (i) include the facts and circumstances through which the applicant acquired ownership and possession of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile;
- (ii) disclose security interests, liens, or encumbrances that are known to the applicant and that are outstanding against the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile:
 - (iii) state that the applicant has the right to have a certificate of title issued.
 - (b) The application must satisfy one of the following conditions:
- (i) The vehicle for which the application is being made must be a camper, off-highway vehicle, motorboat, personal watercraft, sailboat 12 feet in length or longer, or snowmobile, and the loss of the certificate of title must be established by the applicant to the department's satisfaction.
- (ii) If application is being made for a certificate of title to a motor vehicle, trailer, semitrailer, or pole trailer with a value of \$500 or less, the applicant shall establish the loss of the certificate of title to the department's satisfaction and either provide evidence of the average trade-in or wholesale value of the motor vehicle, trailer, semitrailer, or pole trailer as determined by the applicable national appraisal guide for the vehicle as of January 1 for the year in which the application is made or, if a national appraisal guide is not available for a motor vehicle, trailer, semitrailer, or pole trailer, the applicant shall certify that the value of the motor vehicle, trailer, semitrailer, or pole trailer is \$500 or less.
- (iii) If application is being made for a motor vehicle, trailer, semitrailer, or pole trailer with a value that exceeds \$500, the applicant shall provide a bond, in a form prescribed by the department, issued by a surety company authorized to do business in this state, in an amount equal to the value of the motor vehicle, trailer, semitrailer, or pole trailer for which the application is being made as

determined by the applicant, based on information from the applicable national appraisal guide for the motor vehicle, trailer, semitrailer, or pole trailer as of January 1 for the year in which the application is made or, if a national appraisal guide is not available for a motor vehicle, trailer, semitrailer, or pole trailer, according to the applicant's knowledge and belief. The bond is conditioned to indemnify a prior owner, lienholder, subsequent purchaser, secured creditor, or encumbrancer of the motor vehicle, trailer, semitrailer, or pole trailer and any respective successors in interest against expenses, losses, or damages, including reasonable attorney fees, caused by the issuance of the certificate of title or by a defect in or undisclosed security interest upon the right, title, and interest of the applicant in the motor vehicle, trailer, semitrailer, or pole trailer.

- (iv) If the application is being made for a motor vehicle sold without a manufacturer's certificate of origin, the applicant shall:
- (A) purchase and install all equipment required for the motor vehicle pursuant to Title 61, chapter 9, part 2;
- (B) obtain an inspection by a law enforcement agent to verify that all required equipment is present and operational;
- (C) provide a bond, in a form prescribed by the department, issued by a surety company authorized to do business in this state, in an amount equal to the full retail price of the motor vehicle for which the application is being made. The bond is conditioned to indemnify a prior owner, lienholder, subsequent purchaser, secured creditor, or encumbrancer of the motor vehicle and any respective successors in interest against expenses, losses, or damages, including reasonable attorney fees, caused by the issuance of the certificate of title or by a defect in or undisclosed security interest upon the right, title, and interest of the applicant in the motor vehicle.
- (3) Any interested person has a right of action to recover on the bond furnished under this section for a breach of its conditions, but the aggregate liability of the surety to all persons may not exceed the amount of the bond.
- (4) Unless the department has been notified of a pending action to recover the bond furnished under this section, the department shall return the bond at the earlier of:
 - (a) 3 years from the date of issuance of the certificate of title; or
- (b) the date of surrender of the valid certificate of title to the department if the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile is no longer required to have a certificate of title in this state."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 236

[HB 477]

AN ACT ADOPTING THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTIONS ACT; AMENDING SECTIONS 72-5-102 AND 72-5-304, MCA; AND REPEALING SECTIONS 72-5-232 AND 72-5-323, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 22] may be cited as the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act".

Section 2. Definitions. In [sections 1 through 22]:

- (1) "Adult" means an individual who has attained 18 years of age.
- (2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under 53-20-141, 53-21-141, or Title 72, chapter 5, part 4.
- (3) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Title 72, chapter 5, part 3.
 - (4) "Guardianship order" means an order appointing a guardian.
- (5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.
- (6) "Incapacitated person" means an adult for whom a guardian has been appointed.
- (7) "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.
- (8) "Person", except in the term incapacitated person or protected person, means an individual, a corporation, a business trust, an estate, a trust, a partnership, a limited liability company, an association, a joint venture, a public corporation, a government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (9) "Protected person" means an adult for whom a protective order has been issued.
- (10) "Protective order" means an order appointing a conservator or other order related to management of an adult's property.
- (11) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.
- (12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (13) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.
- (14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.
- **Section 3. International application.** A court of this state may treat a foreign country as if it were a state for the purpose of applying [sections 1 through 17, 21, and 22].
- **Section 4. Communication between courts.** (1) A court of this state may communicate with a court in another state concerning a proceeding arising under [sections 1 through 22]. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (2), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

- (2) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.
- Section 5. Cooperation between courts. (1) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:
 - (a) hold an evidentiary hearing;
- (b) order a person in that state to produce evidence or give testimony pursuant to procedures of that state;
 - (c) order that an evaluation or assessment be made of the respondent;
 - (d) order any appropriate investigation of a person involved in a proceeding;
- (e) forward to the court of this state a certified copy of the transcript or other record of a hearing under subsection (1)(a) or any other proceeding, any evidence otherwise produced under subsection (1)(b), and any evaluation or assessment prepared in compliance with an order under subsection (1)(c) or (1)(d);
- (f) issue any order necessary to ensure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person;
- (g) issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. 164.504.
- (2) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (1), a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.
- Section 6. Taking testimony in another state. (1) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.
- (2) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.
- (3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.
- Section 7. Definitions significant connection factors. (1) In [sections 7 through 15]:
- (a) "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf.
- (b) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months immediately before the filing of a petition for a protective order or the

appointment of a guardian, or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months ending within the 6 months prior to the filing of the petition.

- (c) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.
- (2) In determining under [sections 9 and 16(5)] whether a respondent has a significant connection with a particular state, the court shall consider:
- (a) the location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;
- (b) the length of time the respondent at any time was physically present in the state and the duration of any absence;
 - (c) the location of the respondent's property; and
- (d) the extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

Section 8. Exclusive basis. [Sections 7 through 15] provide the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

Section 9. Jurisdiction. A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

- (1) this state is the respondent's home state;
- (2) on the date the petition is filed, this state is a significant-connection state and:
- (a) the respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or
- (b) the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and before the court makes the appointment or issues the order:
- (i) a petition for an appointment or order is not filed in the respondent's home state;
- (ii) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and
- (iii) the court in this state concludes that it is an appropriate forum under the factors set forth in [section 12];
- (3) this state does not have jurisdiction under either subsection (1) or (2), the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or
 - (4) the requirements for special jurisdiction under [section 10] are met.
- **Section 10. Special jurisdiction.** (1) A court of this state lacking jurisdiction under [section 9(1) through (3)] has special jurisdiction to do any of the following:

- (a) appoint a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically present in this state;
- (b) issue a protective order with respect to real or tangible personal property located in this state;
- (c) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to [section 16].
- (2) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.
- Section 11. Exclusive and continuing jurisdiction. Except as otherwise provided in [section 10], a court that has appointed a guardian or issued a protective order consistent with [sections 1 through 22] has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.
- **Section 12. Appropriate forum.** (1) A court of this state having jurisdiction under [section 9] to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.
- (2) If a court of this state declines to exercise its jurisdiction under subsection (1), it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.
- (3) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:
 - (a) any expressed preference of the respondent;
- (b) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;
- (c) the length of time the respondent was physically present in or was a legal resident of this or another state;
 - (d) the distance of the respondent from the court in each state;
 - (e) the financial circumstances of the respondent's estate;
 - (f) the nature and location of the evidence;
- (g) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
- (h) the familiarity of the court of each state with the facts and issues in the proceeding; and
- (i) if an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.
- **Section 13. Jurisdiction declined by reason of conduct.** (1) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:
 - (a) decline to exercise jurisdiction;

- (b) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or
 - (c) continue to exercise jurisdiction after considering:
- (i) the extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;
- (ii) whether it is a more appropriate forum than the court of any other state under the factors set forth in [section 12(3)]; and
- (iii) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of [section 9].
- (2) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than [sections 1 through 22].
- **Section 14. Notice of proceeding.** If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.
- **Section 15. Proceedings in more than one state.** Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under [section 10(1)(a) or (1)(b)], if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:
- (1) If the court in this state has jurisdiction under [section 9], it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to [section 9] before the appointment or issuance of the order.
- (2) If the court in this state does not have jurisdiction under [section 9], whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.
- Section 16. Transfer of guardianship or conservatorship to another state. (1) A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.
- (2) Notice of a petition under subsection (1) must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

- (3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (1).
- (4) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:
- (a) the incapacitated person is physically present in or is reasonably expected to move permanently to the other state;
- (b) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and
- (c) plans for care and services for the incapacitated person in the other state are reasonable and sufficient.
- (5) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:
- (a) the protected person is physically present in or is reasonably expected to move permanently to the other state or the protected person has a significant connection to the other state considering the factors in [section 7(2)];
- (b) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and
- (c) adequate arrangements will be made for management of the protected person's property.
- (6) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:
- (a) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred that is issued under provisions similar to [section 17]; and
- (b) the documents required to terminate a guardianship or conservatorship in this state.
- Section 17. Accepting guardianship or conservatorship transferred from another state. (1) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to [section 16], the guardian or conservator shall petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.
- (2) Notice of a petition under subsection (1) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.
- (3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (1).

- (4) The court shall issue an order provisionally granting a petition filed under subsection (1) unless:
- (a) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or
 - (b) the guardian or conservator is ineligible for appointment in this state.
- (5) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to [section 16] transferring the proceeding to this state.
- (6) Not later than 90 days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.
- (7) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.
- (8) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under Title 72, chapter 5, part 3 or 4, if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.
- Section 18. Registration of guardianship orders. If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.
- **Section 19. Registration of protective orders.** If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.
- **Section 20.** Effect of registration. (1) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.
- (2) A court of this state may grant any relief available under [sections 1 through 22] and other law of this state to enforce a registered order.
- **Section 21. Uniformity of application and construction.** In applying and construing [sections 1 through 22], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 22. Relation to electronic signatures in global and national commerce act. [Sections 1 through 22] modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Section 23. Transitional provision. (1) [Sections 1 through 22] apply to guardianship and protective proceedings begun on or after [the effective date of this act].

(2) [Sections 1 through 6 and 16 through 22] apply to proceedings begun before [the effective date of this act], regardless of whether a guardianship or protective order has been issued.

Section 24. Section 72-5-102, MCA, is amended to read:

- "72-5-102. Jurisdiction of subject matter consolidation Consolidation of proceedings. (1) The court has jurisdiction over protective proceedings and guardianship proceedings.
- (2) When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated."

Section 25. Section 72-5-304, MCA, is amended to read:

"72-5-304. Objection by alleged incapacitated person to testamentary appointment. Upon the filing in the court in which the will was probated or, in the case of a nontestamentary nominating instrument, in the court at the place where the incapacitated person resides or is present, of written objection to the appointment by the incapacitated person for whom a parental or spousal appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the parental or spousal nominee or any other suitable person upon an adjudication of incapacity in proceedings under 72-5-305, 72-5-306, 72-5-311 through 72-5-322, 72-5-324, and 72-5-325."

Section 26. Repealer. Sections 72-5-232 and 72-5-323, MCA, are repealed.

Section 27. Codification instruction. [Sections 1 through 22] are intended to be codified as an integral part of Title 72, chapter 5, and the provisions of Title 72, chapter 5, apply to [sections 1 through 22].

Approved April 16, 2009

CHAPTER NO. 237

[HB 504]

AN ACT PROVIDING THAT A COURT MAY NOT GRANT A FULL GUARDIAN AUTHORITY TO CONSENT TO THE WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING TREATMENT IF IT CONFLICTS WITH THE WARD'S WISHES; DEFINING "SUBSTITUTED JUDGMENT"; AMENDING SECTIONS 72-5-101 AND 72-5-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-5-101, MCA, is amended to read:

- "72-5-101. **Definitions.** Unless otherwise apparent from the context, in this code chapters 1 through 5 and chapter 16, part 6, the following definitions apply:
- (1) "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, (except minority), to the extent that he the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his the person or which cause has so impaired the person's judgment that he the person is incapable of realizing and making a rational decision with respect to his the person's need for treatment.
- (2) "Protected person" means a minor or other person for whom a conservator has been appointed or other protective order has been made.
- (3) "Protective proceeding" means a proceeding under the provisions of 72-5-409 to determine that a person cannot effectively manage or apply his the person's estate to necessary ends, either because he the person lacks the ability or is otherwise inconvenienced or because he the person is a minor, and to secure administration of his the person's estate by a conservator or other appropriate relief
- (4) "Substituted judgment" means the judgment that an incapacitated person would make if restored to capacity based upon:
- (a) the person's present preference or, if the person is incapable of indicating the person's preference, the person's prior expressed preference;
 - (b) the person's personal, moral, and religious convictions;
 - (c) the person's relationship with family members;
 - (d) the consequences if the action proposed is not taken;
 - (e) the consequences if the action proposed is taken; and
 - (f) other relevant factors.
- (4)(5) "Ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority."

Section 2. Section 72-5-321, MCA, is amended to read:

- "72-5-321. Powers and duties of guardian of incapacitated person.
 (1) The powers and duties of a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to report the condition of the incapacitated person and of the estate that has been subject to the guardian's possession and control, as required by the court or by court rule.
- (2) A full guardian of an incapacitated person has the same powers, rights, and duties respecting the ward that a parent has respecting an unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular and without qualifying the foregoing, a full guardian has the following powers and duties, except as limited by order of the court:
- (a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, the full guardian is entitled to custody of the person of the ward and may establish the ward's place of residence within or outside of this state.

- (b) If entitled to custody of the ward, the full guardian shall make provision for the care, comfort, and maintenance of the ward and whenever appropriate arrange for the ward's training and education. Without regard to custodial rights of the ward's person, the full guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of the ward is in need of protection.
- (c) A full guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service. This subsection (2)(c) does not authorize a full guardian to consent to the withholding or withdrawal of life-sustaining treatment or to a do not resuscitate order if the full guardian does not have authority to consent pursuant to the Montana Rights of the Terminally Ill Act, Title 50, chapter 9, or to the do not resuscitate provisions of Title 50, chapter 10. A full guardian may petition the court for authority to consent to the withholding or withdrawal of life-sustaining treatment or to a do not resuscitate order. The court may not grant that authority only upon finding that consent to the withholding or withdrawal of life-sustaining treatment or the do not resuscitate order is consistent if it conflicts with the ward's wishes to the extent that those wishes can be determined. To determine the ward's wishes, the court shall determine by a preponderance of evidence if the ward's substituted judgment, as applied to the ward's current circumstances, conflicts with the withholding or withdrawal of life-sustaining treatment or a do not resuscitate order.
- (d) If a conservator for the estate of the ward has not been appointed, a full guardian may:
- (i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform that person's duty;
- (ii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward. However, the full guardian may not use funds from the ward's estate for room and board that the full guardian, the full guardian's spouse, parent, or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the incompetent ward, if notice is possible. The full guardian must exercise care to conserve any excess for the ward's needs.
- (e) Unless waived by the court, a full guardian is required to report the condition of the ward and of the estate which has been subject to the full guardian's possession or control annually for the preceding year. A copy of the report must be served upon the ward's parent, child, or sibling if that person has made an effective request under 72-5-318.
- (f) If a conservator has been appointed, all of the ward's estate received by the full guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this chapter, and the full guardian must account to the conservator for funds expended.
- (3) Upon failure, as determined by the clerk of court, of the guardian to file an annual report, the court shall order the guardian to file the report and give good cause for the guardian's failure to file a timely report.
- (4) Any full guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall control those aspects of the

custody and care of the ward over which the limited guardian is given authority by the order establishing the limited guardianship. The full guardian or limited guardian is entitled to receive reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The full guardian or limited guardian authorized to oversee the incapacitated person's care may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

- (5) A full guardian or limited guardian may not involuntarily commit for mental health treatment or for treatment of a developmental disability or for observation or evaluation a ward who is unwilling or unable to give informed consent to commitment, except as provided in 72-5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed. This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and 21.
- (6) Upon the death of a full guardian's or limited guardian's ward, the full guardian or limited guardian, upon an order of the court and if there is no personal representative authorized to do so, may make necessary arrangements for the removal, transportation, and final disposition of the ward's physical remains, including burial, entombment, or cremation, and for the receipt and disposition of the ward's clothing, furniture, and other personal effects that may be in the possession of the person in charge of the ward's care, comfort, and maintenance at the time of the ward's death."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 238

[HB 517]

AN ACT ESTABLISHING THE CRITICAL INCIDENT STRESS MANAGEMENT ACT; REQUIRING THAT CRITICAL INCIDENT MEETINGS BE CLOSED TO THE PUBLIC AND OTHERS; REQUIRING THAT CERTAIN INFORMATION PROVIDED DURING CRITICAL INCIDENT STRESS MANAGEMENT AND RESPONSE BE KEPT CONFIDENTIAL; PROVIDING DEFINITIONS; PROVIDING EXCEPTIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, it is in the public interest to promote the mental health and well-being of emergency responders and to protect their ability to cope with abnormally tragic events.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 5] may be cited as the "Critical Incident Stress Management Act".

Section 2. Policy. In order to promote the resiliency and well-being of Montana emergency service providers, it is the policy of the state of Montana to encourage the practice of critical incident stress management.

Section 3. Purpose. (1) It is the purpose of [sections 1 through 5] to recognize the importance of critical incident stress management and to protect the integrity of the critical incident stress management process.

- (2) The legislature finds that, in some cases of dealing with extreme psychological stress or trauma that has resulted from a response to a critical incident, the privacy of the emergency service provider exceeds the merits of public disclosure.
- **Section 4. Definitions.** As used in [sections 1 through 5], the following definitions apply:
- (1) "Critical incident" means an event that results in acute or cumulative psychological stress or trauma to an emergency service provider as a result of response to the incident.
- (2) "Critical incident stress" means an unusually strong emotional, cognitive, or physical reaction that has the potential to interfere with normal functioning and that results from the response to a critical incident. This may include but is not limited to physical and emotional illness, failure of usual coping mechanisms, loss of interest in the job, personality changes, or loss of ability to function.
- (3) "Critical incident stress management" means a process of crisis intervention designed to assist emergency service personnel in coping with the psychological trauma resulting from response to a critical incident.
- (4) "Critical incident stress management and response services" means consultation, counseling, debriefing, defusing, intervention services, management, prevention, and referral provided by a critical incident stress management team member to emergency service personnel.
- (5) "Critical incident stress management team" means the group of one or more trained volunteers or paid professionals who offer critical incident stress management and response services following a critical incident.
- (6) "Critical incident stress management team member" or "team member" means an individual specially trained to provide critical incident stress management and response services as a member of an organized team or emergency services provider agency.
- (7) "Emergency service provider" or "emergency service personnel" means a law enforcement officer, firefighter, emergency medical service provider, dispatcher, rescue service provider, or other personnel who provide emergency response services.
- Section 5. Critical incident meetings closed confidentiality exceptions. (1) To protect the privacy rights of an emergency service provider in receiving critical incident stress management and response services, critical incident stress management debriefing meetings and other critical incident stress management and response services meetings are closed to the general public and may be closed to anyone who was not directly involved in the critical incident that is the subject of the meeting.
- (2) Any information divulged to the team during the provision of critical incident stress management and response services must be kept confidential and may not be disclosed to a third party or in a criminal, civil, or administrative proceeding, unless the merits of disclosure exceed the demands of an individual's privacy. Records kept by critical incident stress management team members are not subject to subpoena, discovery, or introduction into evidence in a criminal, civil, or administrative action.
- (3) The confidentiality privilege provided in subsections (1) and (2) does not apply:

- (a) for the appropriate referral to or consultation with other critical incident stress management team members or related qualified professionals;
- (b) if the emergency service provider conveys that the provider is an imminent threat to the provider or anyone else or if the provider appears to be an imminent threat to the provider or anyone else;
- (c) if the emergency services provider divulges information regarding a past, present, or future criminal act that does not involve the critical incident;
- (d) if the emergency service provider or the provider's legal guardian gives consent:
 - (e) if the emergency service provider is deceased; or
- (f) to the facts divulged by the emergency service provider concerning a person injured in a critical incident and the services and care provided to or withheld from that person by an emergency service provider.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 39, and the provisions of Title 39 apply to [sections 1 through 5].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 239

[HB 529]

AN ACT REVISING ENVIRONMENTAL REVIEW LAWS RELATED TO ENERGY DEVELOPMENT PROJECTS; LIMITING THE SCOPE OF ENVIRONMENTAL REVIEW UNDER THE MONTANA ENVIRONMENTAL POLICY ACT FOR CERTAIN ENERGY DEVELOPMENT PROJECTS ON STATE LANDS; AMENDING SECTION 77-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Environmental review of energy development projects on state land. (1) Except as provided in subsection (2), the scope of any environmental review under Title 75, chapter 1, parts 1 and 2, for a proposed action on state land is limited to the impacts of the proposed action within the boundaries of the state land parcel or parcels in which the proposed state action is taking place if the:
- (a) board or the department, pursuant to Title 77, is proposing a sale or exchange or to issue a right-of-way, easement, placement of improvement, lease, license, or permit or if the department or board is acting in response to an application for an authorization for a proposal; and
- (b) state action is part of a larger energy development project that includes private or federal land that is not subject to permitting or certification under Title 75 or Title 82.
- (2) If more than 33% of the total land area physically occupied by the proposed energy development project provided for in subsection (1) is state land, then the scope of the environmental review under Title 75, chapter 1, parts 1 and 2, for the proposed action must include the total land area, including federal and private land, that will be occupied by the proposed energy development project.

Section 2. Section 77-1-121, MCA, is amended to read:

- **"77-1-121. Environmental review compliance exemptions.** (1) Except as provided in *[section 1] and* subsection (2) *of this section*, the department and board are required to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77 only if the department is actively proposing to issue a sale, or exchange, or to issue a right-of-way, easement, placement of improvement, lease, license, or permit, or is acting in response to an application for an authorization for such a proposal.
- (2) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when issuing any lease or license that expressly states that the lease or license is subject to further permitting under any of the provisions of Title 75 or 82.
- (3) Except for rulemaking and as provided in subsection (1), the department and board are otherwise exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77, including but not limited to the issuance of lease renewals. The department and board do not have an obligation to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77 if the department or board chooses not to take any action, even though either may have the authority to take an action.
- (4) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when taking actions, including preparing plans or proposals, in relation to and in compliance with the following local government actions:
- (a) development or adoption of a growth policy or a neighborhood plan pursuant to Title 76, chapter 1;
 - (b) development or adoption of zoning regulations;
 - (c) review of a proposed subdivision pursuant to Title 76, chapter 3;
 - (d) actions related to annexation;
 - (e) development or adoption of plans or reports on extension of services; and
 - (f) other actions that are related to local planning."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 77, chapter 1, part 1, and the provisions of Title 77, chapter 1, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to environmental reviews pursuant to Title 75, chapter 1, part 2, initiated on or after [the effective date of this act].

Approved April 16, 2009

CHAPTER NO. 240

[HB 542]

AN ACT REVISING MOTORSPORTS MANUFACTURER UNFAIR TRADE PRACTICES LAW; REVISING DEFINITIONS; REVISING WHAT CONSTITUTES UNFAIR TRADE PRACTICES WITH RESPECT TO THE RELATIONSHIP BETWEEN MOTORSPORTS MANUFACTURERS AND MOTORSPORTS DEALERS; CLARIFYING INJUNCTION AND DAMAGES

PROVISIONS AND ELIMINATING THE VENUE REQUIREMENT WITH RESPECT TO THE PROPER PLACE TO BRING A CLAIM FOR AN UNFAIR TRADE PRACTICE BY A MOTORSPORTS MANUFACTURER; AMENDING SECTIONS 30-14-2501, 30-14-2502, AND 30-14-2503, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE.

WHEREAS, the Legislature finds and declares that the distribution and sale of motorsports vehicles in this state affects the general economy of the state and the public interest, safety, and welfare and that the maintenance of strong and sound motorsports dealerships is essential to provide continuing and necessary reliable services to the consuming public in this state and to provide stable employment to the citizens of this state; and

WHEREAS, the Legislature finds that there can be a substantial disparity in bargaining power between motorsports manufacturers and their motorsports dealers and that in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate the relationship between motorsports manufacturers and motorsports dealers doing business in this state, not only for the protection of motorsports dealers but also for the benefit of the public in ensuring the continued availability and servicing of motorsports vehicles sold to the public; and

WHEREAS, the Legislature recognizes it is in the best interest of motorsports manufacturers and motorsports dealers to conduct business with each other in a fair, efficient, and competitive manner, and the Legislature has determined that the public interest is best served by motorsports dealers being assured of the ability to manage their business enterprises without unreasonable interference by motorsports manufacturers.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-14-2501, MCA, is amended to read:

"30-14-2501. Definitions. As used in this part, the following definitions apply:

- (1) "Actual price" means the price to be paid by the a motorsports dealer to a motorsports manufacturer for a motorsports product less any incentive paid pecuniary benefit relating to a motorsports product paid or credited by the motorsports manufacturer, whether paid to the motorsports dealer or the ultimate purchaser of the motorsports vehicle product.
- (2) "Confidential or proprietary information" means trade secrets as defined in 30-14-402 and includes business plans, marketing plans or strategies, customer lists, contracts, sales data, revenue, or other financial information.
 - (2)(3) "Control" or "controlling" means:
- (a) the possession of, title to, or control of 10% or more of the voting equity interest in a person, whether directly or indirectly through a fiduciary, agent, or other intermediary; or
- (b) the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, through director control, by contract, or otherwise, except as expressly provided under the franchise agreement.
 - (4) "Department" means the department of justice created in 2-15-2001.

- (5) "Fleet" means a group of 15 or more new motorsports vehicles that are sold or leased by a motorsports dealer at one time under a single purchase or lease agreement for use as part of a fleet.
- (3) "Line-make" means a type of motorsports vehicle produced by a manufacturer-
- (6) "Motorsports dealer" means a new motor vehicle dealer, as defined in 61-4-201, who sells motorsports vehicles.
- (7) "Motorsports manufacturer" means a manufacturer, distributor, distributor branch, factory branch, or importer, as those terms are defined in 61-4-201, who sells motorsports vehicles to motorsports dealers within this state.
- (4)(8) "Motorsports vehicle" means a personal watercraft as defined in 23-2-502, a snowmobile as defined in 23-2-601, a motorcycle as defined in 61-1-101, a motor-driven cycle as defined in 61-1-101, an off-highway vehicle as defined in 61-1-101.
- (5)(9) "Operate" means to manage a motorsports dealership, whether directly or indirectly.
- (6)(10) "Own" or "ownership" means to hold the beneficial ownership of 1% or more of any class of equity interest in a *motorsports* dealership, whether the interest is that of a shareholder, partner, limited liability company member, or otherwise. To hold an ownership interest means to have possession of, title to, or control of the ownership interest, whether directly or indirectly through a fiduciary, agent, or other intermediary.
 - (7)(11) "Person" has the meaning provided in 30-14-102."

Section 2. Section 30-14-2502, MCA, is amended to read:

- "30-14-2502. Unfair trade practices relationship between motorsports vehicle manufacturers and motorsports dealers. (1) In addition to the prohibited practices provided for in 30-14-103 and 61-4-208 and notwithstanding the terms of a franchise agreement, a motorsports manufacturer, distributor, factory branch, or factory representative or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a motorsports manufacturer, distributor, factory branch, or factory representative may not:
 - (1)(a) discriminate between motorsports dealers by:
- (i) selling or offering to sell a like motorsports vehicle to one motorsports dealer at a lower actual price than the actual price offered to another motorsports dealer for the same model similarly equipped;
- (2)(ii) discriminate between dealers by selling or offering to sell parts or accessories to one *motorsports* dealer at a lower actual price than the actual price offered to another *motorsports* dealer;
- (3)(iii) discriminate between dealers by using a promotion plan, marketing plan, allocation plan, flooring assistance plan, or other similar device that results in a lower actual price on *motorsports* vehicles, parts, or accessories being charged to one *motorsports* dealer over another *motorsports* dealer; or
- (4)(iv) discriminate between dealers by adopting using a method or changing an existing method for the allocation of allocating, scheduling, or delivery of delivering new motorsports vehicles, parts, or accessories to its motorsports dealers that is not fair, reasonable, and equitable. Upon the request of a motorsports dealer, a motorsports manufacturer shall disclose in writing to the

dealer the method by which new motorsports vehicles, parts, and accessories are allocated, scheduled, or delivered to its *motorsports* dealers handling the same line or make of vehicles.

- (5)(b) give preferential treatment to some motorsports dealers over others by:
- (i) refusing or failing to deliver to any of its motorsports dealers, in reasonable quantities and within a reasonable time after receipt of an order, to a dealer holding a franchise for a line or make of motorsports vehicles sold or distributed by the manufacturer a new any motorsports vehicle, parts, or accessories, if the motorsports vehicle, parts, or accessories that are being delivered to other motorsports dealers; or require
- (ii) requiring a motorsports dealer to purchase unreasonable advertising displays or other materials; or
- (iii) unreasonably require requiring a motorsports dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of motorsports vehicles;
- (6)(c) except as provided in 61-4-208(3)(b) or (3)(c), compete with a motorsports dealer by acting in the capacity of a motorsports dealer or by owning, operating, or controlling, whether directly or indirectly, a motorsports dealership in this state;
- (7)(d) compete with a *motorsports* dealer by owning, operating, or controlling, whether directly or indirectly, a service facility in this state for the repair or maintenance of motorsports vehicles under the *motorsports* manufacturer's new motorsports vehicle warranty and extended warranty. However, a *motorsports* manufacturer may own or operate a service facility for the purpose of providing or performing maintenance, repair, or service work on motorsports vehicles that are owned by the *motorsports* manufacturer.
- (8)(e) use confidential or proprietary information obtained from a motorsports dealer to unfairly compete with the motorsports dealer without the prior written consent of the motorsports dealer.; For purposes of this subsection, "confidential or proprietary information" means trade secrets as defined in 30-14-402 and includes business plans, marketing plans or strategies, customer lists, contracts, sales data, revenue, or other financial information.
- (9)(f) coerce, threaten, intimidate, or require, either directly or indirectly, a *motorsports* dealer to:
- (i) accept, buy, or order any motorsports vehicle, part, accessory, or any other commodity or service not voluntarily ordered or requested; or to
- (ii) buy, order, or pay anything of value other than the purchase price for the items in order to obtain a motorsports vehicle, part, accessory, or other commodity that has been voluntarily ordered or requested;
- (10)(iii) coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to enter into any agreement that violates this chapter; or
- (iv) order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the motorsports vehicle as advertised by the motorsports manufacturer, except items that:
 - (A) have been voluntarily requested or ordered by the motorsports dealer; or
 - (B) are required by law;
- (11) require a change in capital structure or means of financing for the dealership if the dealer at all times meets the reasonable, written, and uniformly applied capital standards determined by the manufacturer;

- (12)(g) require a change or prevent or attempt to prevent a motorsports dealer from making reasonable changes in the capital structure of a dealership or the means by which the dealership is financed of financing for a motorsports dealership if the motorsports dealer at all times meets the reasonable, written, and uniformly applied capital requirements standards determined by the motorsports manufacturer;
- (13) unreasonably require the dealer to change the location or require any substantial alterations to the place of business;
- (14) condition a renewal or extension of the franchise on the dealer's substantial renovation of the existing place of business or on the construction, purchase, acquisition, or re-lease of a new place of business unless written notice is first provided 180 days before the date of renewal or extension and the manufacturer demonstrates the reasonableness of the requested actions. The manufacturer shall agree to supply the dealer with an adequate quantity of motorsports vehicles, parts, and accessories to meet the sales level necessary to support the overhead resulting from substantial construction, acquisition, or lease of a new place of business.
- (15) coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the vehicle as advertised by the manufacturer, except items:
 - (a) that have been voluntarily requested or ordered by the dealer; and
 - (b) required by law;
- (16)(h) fail to hold harmless and indemnify a motorsports dealer against losses, including lawsuits and court attorney fees and costs incurred by a motorsports dealer, arising from:
- (a)(i) any lawsuit relating to the manufacture or performance of a motorsports vehicle, part, or accessory if the lawsuit involves representations by the motorsports manufacturer on relating to the manufacture or performance of a motorsports vehicle, part, or accessory if there is no allegation of without negligence on the part of the motorsports dealer;
- (b)(ii) damage to merchandise in transit when the *motorsports* manufacturer specifies the carrier;
- (e)(iii) the motorsports manufacturer's failure to jointly defend product liability suits concerning the a motorsports vehicle, part, or accessory that the motorsports manufacturer provided to the motorsports dealer; or
 - (d)(iv) any other act performed by the *motorsports* manufacturer;
- (17)(i) unfairly prevent or attempt to prevent a motorsports dealer from receiving reasonable compensation for the value of a motorsports vehicle products;
- (18)(j) fail to pay to a *motorsports* dealer, within a reasonable time after receipt of a valid claim, a payment agreed to be made by the *motorsports* manufacturer on grounds that a new motorsports vehicle or a prior year's model is in the dealer's inventory at the time of introduction of new model motorsports vehicles:
- (19)(k) deny a motorsports dealer the right of free association with any other motorsports dealer for any lawful purpose;
- (20)(l) charge increased prices without having given written notice to the *motorsports* dealer at least 15 days before the effective date of the price increases;

- (21)(m) permit factory authorized warranty service to be performed upon motorsports vehicles or accessories by persons other than its franchised motorsports dealers;
- (22)(n) require or coerce a motorsports dealer to sell, assign, or transfer a retail sales installment contract or require the motorsports dealer to act as an agent for a the motorsports manufacturer in the securing of a promissory note, and a security agreement given in connection with the sale of a motorsports vehicle, or a policy of insurance for a motorsports vehicle. The manufacturer may not or condition delivery of any motorsports vehicle, parts, or accessories upon the motorsports dealer's assignment, sale, or other transfer of sales installment contracts to specific finance companies;
- (23)(o) except as provided in 61-4-141, require or coerce a motorsports dealer to grant a the motorsports manufacturer a right of first refusal or other preference to purchase the motorsports dealer's franchise dealership or place of business, or both;
- (24)(p) deny a motorsports dealer the right of lawfully selling or offering to sell motorsports vehicles to customers who reside in another country;
- (25)(q) require a motorsports dealer to accept delivery of a number or percentage of motorsport vehicles during a specific period of a sales order;
- (26) use a manufacturer order or allocation formula that is not based on actual local area sales and local area market data;
- (27)(r) require a motorsports dealer to maintain an inventory in excess of the inventory needed for a period of 90 days; or
- (s) refuse to allocate, sell, or deliver motorsports vehicles, may not charge back or withhold payments or other things of value for which the motorsports dealer is otherwise eligible under a sales promotion, program, or contest, and may not prevent the motorsports dealer from participating in any promotion, program, or contest based on the motorsports dealer's selling of a motorsports vehicle to a customer who was present at the dealership if the motorsports dealer did not know or could not have reasonably known that the motorsports vehicle would be shipped to a foreign country. There is a rebuttable presumption that the motorsports dealer did not know or could not have reasonably known that the motorsports vehicle would be shipped to a foreign country if the motorsports vehicle is titled in the United States.
- $\frac{(28)}{(t)}$ require that any arbitration proceedings or legal action between the parties take place in a venue other than the state of Montana.
- (2) Subsection (1)(a) does not apply to a sale to a motorsports dealer for resale to a federal, state, or local governmental agency if:
- (a) the motorsports vehicle will be sold or donated for use in a program of driver's education;
- (b) the sale is made under a manufacturer's bona fide fleet vehicle discount program; or
- (c) the sale is made under a volume discount program that is uniformly available to all the motorsports dealers of a motorsports manufacturer."
 - **Section 3.** Section 30-14-2502, MCA, is amended to read:
- "30-14-2502. Unfair trade practices relationship between motorsports vehicle manufacturers and motorsports dealers. (1) In addition to the prohibited practices provided for in 30-14-103 and 61-4-208 and notwithstanding the terms of a franchise agreement, a motorsports

manufacturer, distributor, factory branch, or factory representative or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a motorsports manufacturer, distributor, factory branch, or factory representative may not:

- (1)(a) discriminate between *motorsports* dealers by:
- (i) selling or offering to sell a like motorsports vehicle to one motorsports dealer at a lower actual price than the actual price offered to another motorsports dealer for the same model similarly equipped;
- (2)(ii) discriminate between dealers by selling or offering to sell parts or accessories to one *motorsports* dealer at a lower actual price than the actual price offered to another *motorsports* dealer;
- (3)(iii) discriminate between dealers by using a promotion plan, marketing plan, allocation plan, flooring assistance plan, or other similar device that results in a lower actual price on *motorsports* vehicles, parts, or accessories being charged to one *motorsports* dealer over another *motorsports* dealer; or
- (4)(iv) discriminate between dealers by adopting using a method or changing an existing method for the allocation of allocating, scheduling, or delivery of delivering new motorsports vehicles, parts, or accessories to its motorsports dealers that is not fair, reasonable, and equitable. Upon the request of a motorsports dealer, a motorsports manufacturer shall disclose in writing to the dealer the method by which new motorsports vehicles, parts, and accessories are allocated, scheduled, or delivered to its motorsports dealers handling the same line or make of vehicles.
- (5)(b) give preferential treatment to some *motorsports* dealers over others by:
- (i) refusing or failing to deliver to any of its motorsports dealers, in reasonable quantities and within a reasonable time after receipt of an order, to a dealer holding a franchise for a line or make of motorsports vehicles sold or distributed by the manufacturer a new any motorsports vehicle, parts, or accessories, if the motorsports vehicle, parts, or accessories that are being delivered to other motorsports dealers; or require
- (ii) requiring a motorsports dealer to purchase unreasonable advertising displays or other materials; or
- (iii) unreasonably require requiring a motorsports dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of motorsports vehicles;
- (6)(c) except as provided in 61-4-208(3)(b) or (3)(c), compete with a motorsports dealer by acting in the capacity of a motorsports dealer or by owning, operating, or controlling, whether directly or indirectly, a motorsports dealership in this state;
- (7)(d) compete with a *motorsports* dealer by owning, operating, or controlling, whether directly or indirectly, a service facility in this state for the repair or maintenance of motorsports vehicles under the *motorsports* manufacturer's new motorsports vehicle warranty and extended warranty. However, a *motorsports* manufacturer may own or operate a service facility for the purpose of providing or performing maintenance, repair, or service work on motorsports vehicles that are owned by the *motorsports* manufacturer.
- (8)(e) use confidential or proprietary information obtained from a *motorsports* dealer to unfairly compete with the *motorsports* dealer without the

prior written consent of the *motorsports* dealer.; For purposes of this subsection, "confidential or proprietary information" means trade secrets as defined in 30-14-402 and includes business plans, marketing plans or strategies, customer lists, contracts, sales data, revenue, or other financial information.

- (9)(f) coerce, threaten, intimidate, or require, either directly or indirectly, a motorsports dealer to:
- (i) accept, buy, or order any motorsports vehicle, part, accessory, or any other commodity or service not voluntarily ordered or requested; or to
- (ii) buy, order, or pay anything of value other than the purchase price for the items in order to obtain a motorsports vehicle, part, accessory, or other commodity that has been voluntarily ordered or requested;
- (10)(iii) coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to enter into any agreement that violates this chapter; or
- (iv) order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the motorsports vehicle as advertised by the motorsports manufacturer, except items that:
 - (A) have been voluntarily requested or ordered by the motorsports dealer; or
 - (B) are required by law;
- (11) require a change in capital structure or means of financing for the dealership if the dealer at all times meets the reasonable, written, and uniformly applied capital standards determined by the manufacturer;
- (12)(g) require a change or prevent or attempt to prevent a motorsports dealer from making reasonable changes in the capital structure of a dealership or the means by which the dealership is financed of financing for a motorsports dealership if the motorsports dealer at all times meets the reasonable, written, and uniformly applied capital requirements standards determined by the motorsports manufacturer;
- (13) unreasonably require the dealer to change the location or require any substantial alterations to the place of business;
- (14) condition a renewal or extension of the franchise on the dealer's substantial renovation of the existing place of business or on the construction, purchase, acquisition, or re-lease of a new place of business unless written notice is first provided 180 days before the date of renewal or extension and the manufacturer demonstrates the reasonableness of the requested actions. The manufacturer shall agree to supply the dealer with an adequate quantity of motorsports vehicles, parts, and accessories to meet the sales level necessary to support the overhead resulting from substantial construction, acquisition, or lease of a new place of business.
- (15) coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the vehicle as advertised by the manufacturer, except items:
 - (a) that have been voluntarily requested or ordered by the dealer; and
 - (b) required by law;
- (16)(h) fail to hold harmless and indemnify a motorsports dealer against losses, including lawsuits and court attorney fees and costs incurred by a motorsports dealer, arising from:

- (a)(i) any lawsuit relating to the manufacture or performance of a motorsports vehicle, part, or accessory if the lawsuit involves representations by the motorsports manufacturer on relating to the manufacture or performance of a motorsports vehicle, part, or accessory if there is no allegation of without negligence on the part of the motorsports dealer;
- (b)(ii) damage to merchandise in transit when the *motorsports* manufacturer specifies the carrier;
- (e)(iii) the motorsports manufacturer's failure to jointly defend product liability suits concerning the a motorsports vehicle, part, or accessory that the motorsports manufacturer provided to the motorsports dealer; or
 - (d)(iv) any other act performed by the motorsports manufacturer;
- (17)(i) unfairly prevent or attempt to prevent a motorsports dealer from receiving reasonable compensation for the value of a motorsports vehicle products;
- (18)(j) fail to pay to a *motorsports* dealer, within a reasonable time after receipt of a valid claim, a payment agreed to be made by the *motorsports* manufacturer on grounds that a new motorsports vehicle or a prior year's model is in the dealer's inventory at the time of introduction of new model motorsports vehicles;
- (19)(k) deny a motorsports dealer the right of free association with any other motorsports dealer for any lawful purpose;
- (20)(l) charge increased prices without having given written notice to the motorsports dealer at least 15 days before the effective date of the price increases:
- (21)(m) permit factory authorized warranty service to be performed upon motorsports vehicles or accessories by persons other than its franchised motorsports dealers;
- (22)(n) require or coerce a motorsports dealer to sell, assign, or transfer a retail sales installment contract or require the motorsports dealer to act as an agent for a the motorsports manufacturer in the securing of a promissory note, and a security agreement given in connection with the sale of a motorsports vehicle, or a policy of insurance for a motorsports vehicle. The manufacturer may not or condition delivery of any motorsports vehicle, parts, or accessories upon the motorsports dealer's assignment, sale, or other transfer of sales installment contracts to specific finance companies;
- (23)(o) except as provided in 61-4-141, require or coerce a motorsports dealer to grant a the motorsports manufacturer a right of first refusal or other preference to purchase the motorsports dealer's franchise dealership or place of business, or both;
- (24)(p) deny a motorsports dealer the right of lawfully selling or offering to sell motorsports vehicles to customers who reside in another country;
- (25)(q) require a motorsports dealer to accept delivery of a number or percentage of motorsport vehicles during a specific period of a sales order;
- (26) use a manufacturer order or allocation formula that is not based on actual local area sales and local area market data;
- (27)(r) require a motorsports dealer to maintain an inventory in excess of the inventory needed for a period of 90 days; or
- (28)(s) require that any arbitration proceedings or legal action between the parties take place in a venue other than the state of Montana.;

- (t) (i) offer a program where a Montana motorsports dealer would be eligible for a benefit or advantage that lowers the actual price of a motorsports vehicle, part, or accessory only if the motorsports dealer purchases from the motorsports manufacturer a quantity of motorsports vehicles, parts, or accessories as determined by the motorsports manufacturer unless:
- (A) the motorsports dealer agrees in writing to the quantity of motorsports vehicles, parts, or accessories to be purchased as determined by the motorsports manufacturer; or
- (B) the quantity determined by the motorsports manufacturer for each motorsports dealer is reasonable, fair, and equitable based upon the motorsports dealer's purchase history, the history of motorsports sales in the motorsports dealer's community, the motorsports dealer's present inventory of similar motorsports vehicles, parts, and accessories, the market conditions as of the effective date of the offer, and all other factors that are brought to the attention of the motorsports manufacturer by the motorsports dealer. For each offer to which this subsection (1)(t) applies the motorsports manufacturer shall, if requested, provide the motorsports dealer with a statement in writing specifying the sales goal or objective relating to the offer for each of the motorsports manufacturer's Montana motorsports dealers, identifying each factor that was considered in determining each Montana motorsports dealer's sales goal and objective and explaining how each factor was evaluated and applied in determining the sales goal or objective for each Montana motorsports dealer.
- (ii) For the purposes of this subsection (1)(t) "community" has the meaning provided in 61-4-201.
- (u) refuse to allocate, sell, or deliver motorsports vehicles, may not charge back or withhold payments or other things of value for which the motorsports dealer is otherwise eligible under a sales promotion, program, or contest, and may not prevent the motorsports dealer from participating in any promotion, program, or contest based on the motorsports dealer's selling of a motorsports vehicle to a customer who was present at the dealership if the motorsports dealer did not know or could not have reasonably known that the motorsports vehicle would be shipped to a foreign country. There is a rebuttable presumption that the motorsports dealer did not know or could not have reasonably known that the motorsports vehicle would be shipped to a foreign country if the motorsports vehicle is titled in the United States.
- (2) (a) Subsection (1)(a) does not apply to a sale to a motorsports dealer for resale to a federal, state, or local governmental agency if:
- (i) the motorsports vehicle will be sold or donated for use in a program of driver's education;
- (ii) the sale is made under a manufacturer's bona fide fleet vehicle discount program; or
- (iii) the sale is made under a volume discount program that is uniformly available to all the motorsports dealers of a motorsports manufacturer.
- (b) Subsection (1)(a) does not apply to sales to a motorsports dealer pursuant to a motorsports manufacturer's promotional or incentive program under which eligibility for any benefit or advantage that would reduce the actual price of motorsports products to a motorsports dealer is determined based on the motorsports dealer meeting any sales goals or objectives if the motorsports dealer agrees in writing with the sales goals or objectives or the sales goals or objectives are reasonable, fair, and equitable and meet all of the requirements of subsection (1)(t)."

Section 4. Section 30-14-2503, MCA, is amended to read:

- "30-14-2503. Injunction damages venue. (1) A person who is injured by a violation of 30-14-2502 motorsports dealer may maintain an action to enjoin a the continuance of an any act in violation of the provisions of 30-14-2502 and to recover damages. A court, upon finding that the defendant motorsports manufacturer is violating or has violated the provisions of 30-14-2502, shall enjoin the defendant motorsports manufacturer from continuing the violation. It To obtain an injunction it is not necessary for the motorsports dealer to allege or prove actual damages to the plaintiff arising from the violation.
- (2) In addition to injunctive relief, the plaintiff may any motorsports dealer who incurs pecuniary loss due to a violation of 30-14-2502 by a motorsports manufacturer is entitled to recover from the defendant three times the amount of actual damages sustained plus attorney fees and pecuniary loss together with costs, of suit including attorney fees.
- (3) The proper place for trial of an action based on a claim of a violation of 30-14-2502 is the district court for Lewis and Clark County or the county in which the alleged violation occurred.
- (3) A violation of 30-14-2502 also constitutes a violation of 30-14-103, and the department may bring an action to restrain any unlawful act pursuant to the provisions of 30-14-111."
- **Section 5.** Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.
- Section 6. Effective date contingent effective date contingent termination date. (1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval.
- (2) [Section 3] is effective contingent upon a final court ruling that [section 2(1)(a)] is invalid or unconstitutional. If [section 2(1)(a)] is found to be invalid or unconstitutional the department of justice shall notify the code commissioner when the contingency has been met.
- (3) [Section 2] terminates if [section 2(1)(a)] is found to be invalid or unconstitutional as provided for in subsection (2).
- **Section 7. Applicability.** [This act] applies to motorsports manufacturers and motorsports dealer transactions that occur on or after [the effective date of this section].

Approved April 16, 2009

CHAPTER NO. 241

[HB 563]

AN ACT ESTABLISHING A PROCESS FOR A DISTRICT COURT TO RECOGNIZE A ROUTE OF A COUNTY ROAD AS THE LEGAL ROUTE IF CERTAIN CONDITIONS EXIST; AND AMENDING SECTIONS 7-14-2101 AND 60-1-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Recognition of county road route by district court. (1) The county commission or a directly affected person, if the person has appeared

before a regular meeting of the county commission to notify the commission of the person's intent, may request that a district court recognize a route of a county road that is maintained by the county and used by the public as the legal route if any of the following conditions exist:

- (a) there is doubt about the legal establishment or evidence of establishment of the county road;
- (b) the location of the county road cannot be accurately determined because of:
 - (i) numerous alterations to the road;
 - (ii) a defective survey of the road or adjacent property; or
 - (iii) loss or destruction of the original survey of the road; or
- (c) the road as traveled and used for 10 years or more does not conform to the location of the road as described in county records.
- (2) The county commission or the directly affected person requesting recognition of a route shall provide to the court:
 - (a) the reason for the request and the condition that exists;
 - (b) the location of the portion of the road that is the subject of the request;
- (c) any maps or historical use information that may assist the court in determining whether or not to recognize a route; and
 - (d) any other information requested by the court.
- (3) Upon receipt of a request and consideration of the information provided and any other information that the court considers appropriate, the court may, subject to subsection (4), recognize a route of a county road as the legal route. The route as recognized by the court is considered to be a county road.
- (4) The court shall provide notice and the opportunity for a public hearing to affected landowners, the county commission, and directly affected persons before recognizing or declining to recognize a route of a county road as the legal route.
- (5) This section does not apply to county roads established by prescriptive easement.

Section 2. Section 7-14-2101, MCA, is amended to read:

- "7-14-2101. General powers of county relating to roads and bridges definitions. (1) The board of county commissioners, under the limitations and restrictions that are prescribed by law, may:
- (a) (i) lay out, maintain, control, and manage county roads and bridges within the county;
- (ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, and management of the county roads and bridges within the county as provided by law;
- (b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county roads and bridges in adjacent counties, wholly or in part as agreed upon between the boards of the counties concerned;
- (ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, management, and improvement of county roads and bridges in adjacent counties or shared jointly with other counties, as agreed upon between the boards of the counties concerned and as provided by law;

- (c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward the cost of joint highway or bridge construction projects entered into in cooperation with other counties, the state, or the United States;
- (ii) subject to 15-10-420, place a joint project in the budget and levy taxes for a joint project as provided by law.
- (2) Unless the context requires otherwise, for the purposes of this chapter, the following definitions apply:
- (a) "Bridge" includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills.
 - (b) "County road" means:
- (i) a road that is petitioned by freeholders, approved by resolution, and opened by a board of county commissioners in accordance with this title;
- (ii) a road that is dedicated for public use in the county and approved by resolution by a board of county commissioners;
- (iii) a road that has been acquired by eminent domain pursuant to Title 70, chapter 30, and accepted by resolution as a county road by a board of county commissioners; or
- (iv) a road that has been gained by the county in an exchange with the state as provided in 60-4-201; or
- (v) a road that has been the subject of a request under [section 1] and for which a legal route has been recognized by a district court as provided in [section 1].
- (3) (a) Following a public hearing, a board of county commissioners may accept by resolution a road that has not previously been considered a county road but that has been laid out, constructed, and maintained with state department of transportation or county funds.
- (b) A survey is not required of an existing county road that is accepted by resolution by a board of county commissioners.
- (c) A road that is abandoned by the state may be designated as a county road upon the acceptance and approval by resolution of a board of county commissioners."
 - Section 3. Section 60-1-201, MCA, is amended to read:
- **"60-1-201. Classification**—**highways and roads.** (1) Public highways of this state are classified as follows:
 - (a) federal-aid highways;
 - (b) state highways;
 - (c) county roads;
 - (d) city streets.
- (2) All highways that are not designated, selected, or established by the commission or constructed or maintained by the department may be designated as county roads or city streets upon the acceptance of the county or city.
- (3) County roads are those *that are* opened, established, constructed, maintained, changed, abandoned, or discontinued by a county in accordance with Title 7, chapter 14, or that have been the subject of a request under [section 1] and for which a legal route has been recognized by a district court as provided in [section 1].

(4) City streets are those public highways under the jurisdiction of municipal officials."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 14, part 26, and the provisions of Title 7, chapter 14, part 26, apply to [section 1].

Approved April 16, 2009

CHAPTER NO. 242

[HB 591]

AN ACT PROVIDING THAT ONE MEMBER OF THE BOARD OF PARDONS AND PAROLE MUST BE AN ENROLLED MEMBER OF A STATE-RECOGNIZED OR FEDERALLY RECOGNIZED INDIAN TRIBE LOCATED WITHIN THE BOUNDARIES OF THE STATE OF MONTANA; AMENDING SECTION 2-15-2302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2302, MCA, is amended to read:

"2-15-2302. Board of pardons and parole — composition — allocation — quasi-judicial. (1) There is a board of pardons and parole.

- (2) The board consists of three members and four auxiliary members, each of whom must have knowledge of American Indian culture and problems gained through training as required by rules adopted by the board. One member must be an enrolled member of a state-recognized or federally recognized Indian tribe located within the boundaries of the state of Montana. The tribal member may not be required to hear and act on all American Indian applications before the board. Members of the board, including the auxiliary members, must possess academic training that has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements.
- (3) An auxiliary member shall attend any meeting that a regular board member is unable to attend, and at that time, the auxiliary member has all the rights and responsibilities of a regular board member.
- (4) Board members and auxiliary members shall serve staggered 4-year terms. The governor shall appoint one member and two auxiliary members in January of the first year of the governor's term, one member and one auxiliary member in January of the second year of the governor's term, and one member and one auxiliary member in January of the third year of the governor's term.
- (5) The The terms of board members and auxiliary members run with the position, and if a vacancy occurs, the governor shall appoint a person to fill the unexpired portion of the term.
- (6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.
- (7) The board, including the auxiliary members, is designated as a quasi-judicial board for purposes of 2-15-124, except board members must be compensated as provided by legislative appropriation and the terms of board members must be staggered as provided in subsection (4).

(8) The provisions of 2-15-124(2) do not apply to the board."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 243

[SB 68]

AN ACT CREATING AN EXCEPTION TO THE UNLAWFUL DISPOSITION OF DEAD ANIMALS FOR LICENSED COMPOSTING FACILITIES; AMENDING SECTION 75-10-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-213, MCA, is amended to read:

"75-10-213. Unlawful disposition of dead animals — exception. It is unlawful to:

- (1) place all or any part of a dead animal in any lake, river, creek, pond, reservoir, road, street, alley, lot, or field;
- (2) place all or any part of a dead animal within 1 mile of the residence of any person unless the dead animal or part of a dead animal is:
 - (a) burned or buried at least 2 feet underground; or
- (b) placed in an animal composting facility that is licensed under Title 75, chapter 10, part 2; or
- (3) being the owner, permit all or any part of a dead animal to remain in the places specified in subsections (1) and (2) of this section except as provided in subsection (2) of this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 244

[SB 136]

AN ACT CLARIFYING THE EXCEPTION TO AN ORDER ESTABLISHING TEMPORARY OR PERMANENT OIL AND GAS WELL SPACING UNITS; AMENDING SECTION 82-11-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-11-201, MCA, is amended to read:

"82-11-201. Establishment of well spacing units. (1) To prevent or to assist in preventing waste of oil or gas prohibited by this chapter, to avoid the drilling of unnecessary wells, or to protect correlative rights, the board, upon its

own motion or upon application of an interested person, after hearing, may by order establish:

- (a) temporary spacing units on a statewide basis or for defined areas within the state for oil, gas, or oil and gas wells drilled to varying depths; and
- (b) permanent spacing units for a discovered pool, except in those pools that, prior to April 1, 1953, have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units at the existing stage of development.
- (2) The size and the shape of temporary spacing units must be established to promote the orderly development of unproven areas and must be uniform throughout the surface area and depths covered by the unit. A temporary spacing unit must remain in effect until superseded by an order issued by the board or until a permanent spacing unit is established.
- (3) Permanent spacing units do not need to be uniform in size or shape but must result in the efficient and economic development of the pool as a whole. In establishing permanent spacing units, the acreage to be embraced within a unit and the shape of the unit must be determined by the board based upon evidence introduced at the hearing. The board may divide a pool into zones and establish spacing units for each zone if necessary for a purpose mentioned in subsection (1) or to facilitate production through the use of innovative drilling and completion methods. The spacing units within the zone may differ in size and shape from spacing units in any other zone but may not be smaller than the maximum area that can be efficiently and economically drained by one well.
- (4) An order establishing temporary or permanent spacing units may permit only one well to be drilled and produced from the common source of supply on any spacing unit₇. and the *The* well must be drilled at a location authorized by the order, with an exception as may be reasonably necessary. The *well location* exception may be included in the request to establish permanent or temporary spacing units if, upon application, notice, and hearing, the board finds that the spacing unit is located on the edge of a pool or field and adjacent to a producing unit or, for some other reason, that the requirement to drill the well at the authorized location on the spacing unit would be inequitable or unreasonable. The board shall take action to offset any advantage that the person securing the exception may have over other producers by reason of drilling the well as an exception. The order must include provisions to prevent production from the spacing unit from being more than its just and equitable share of the producible oil and gas in the pool.
- (5) An order establishing temporary or permanent spacing units for a pool must cover all lands determined or believed to be underlaid by the pool and may be modified after notice and hearing by the board to include additional areas subsequently determined to be underlaid by the pool.
- (6) The board, upon application, notice, and hearing, may increase or decrease the size of a temporary or permanent spacing unit or permit the drilling of additional wells in a spacing unit for a purpose mentioned in subsection (1)."

Section 2. Effective date. [This act] is effective on passage and approval. Approved April 16, 2009

CHAPTER NO. 245

[SB 200]

AN ACT BANNING THE SALE OF PHOSPHORUS-CONTAINING HOUSEHOLD CLEANING PRODUCTS IN CERTAIN COUNTIES FOR WATER QUALITY REASONS; PROVIDING FOR ENFORCEMENT; AMENDING SECTION 75-7-411, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 5] may be cited as the "Phosphorus Ban Act".

Section 2. Findings — **purpose.** (1) The legislature finds that:

- (a) high levels of phosphorus in water bodies results in heavy growths of algae;
- (b) excessive algae growth degrades aquatic habitats, decreases diversity in aquatic invertebrate communities, and places stress on native fish populations;
- (c) municipal wastewater treatment plants and individual septic systems are sources of phosphorus, an ingredient in many household cleaning products; and
 - (d) Montana has adopted numeric water quality standards for phosphorus.
- (2) Consistent with the policy established in 75-5-101 to conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses, the purpose of [sections 1 through 5] is to limit the introduction of phosphorus into water bodies from municipal point source discharges or the cumulative effect of individual septic system discharges.
- **Section 3. Definitions.** As used in [sections 1 through 5], the following definitions apply:
- (1) "Commercial establishment" means any premises used for the purpose of carrying on or exercising any trade, business, profession, vocation, or commercial or charitable activity, including but not limited to laundries, hospitals, hotels, motels, and food or restaurant establishments.
- (2) (a) "Household cleaning product" means any product, including but not limited to soaps and detergents, used for domestic cleaning purposes, which include but are not limited to the cleaning of fabrics, dishes, food utensils, and household premises.
- (b) The term does not mean food, drugs, cosmetics, or personal care items such as toothpaste, shampoo, or hand soap.
- (3) "Phosphorus" means the element phosphorus as indicated in the periodic table of elements.
- (4) "Trace quantity" means an incidental amount of phosphorus that is not part of a household cleaning product formulation, that is present only as a consequence of manufacturing, and that does not exceed 0.5% of the content of the product by weight expressed as the element phosphorus.
- Section 4. Applicability to counties notification. (1) The provisions of [section 5] apply to counties where one or more surface water bodies exceed

the numeric algal biomass or total phosphorus standards adopted pursuant to 75-5-301.

- (2) The department shall notify counties that meet the provisions of subsection (1) that they are subject to the provisions of [section 5].
- (3) The governing body of a county that does not meet the provisions of subsection (1) may adopt an ordinance pursuant to Title 75, chapter 7, part 4.
- **Section 5. Prohibitions and exceptions.** (1) In counties that meet the requirements of [section 4], a household cleaning product may not be distributed, sold, offered, or exposed for sale if it contains phosphorus in concentrations in excess of a trace quantity.
- (2) The following cleaning agents and other products containing phosphorus are exempt from the provisions of this section:
 - (a) those used in food or beverage processing;
 - (b) those used by health care services and facilities;
 - (c) those used by institutional or commercial establishments;
 - (d) those used for industrial processes; and
 - (e) those used for agricultural operations.

Section 6. Section 75-7-411, MCA, is amended to read:

- "75-7-411. County regulation of sale and distribution of certain phosphorus compounds. (1) The governing body of a county may adopt, through the procedures of 7-5-103 through 7-5-107, an ordinance prohibiting the sale and distribution of certain phosphorus compounds used for cleaning purposes. The governing body may rescind, modify, or repeal the ordinance at any time by use of the same procedures.
- (2) An ordinance prohibiting the sale and distribution of certain phosphorus compounds used for cleaning purposes may be adopted only if:
- (a) the county has a natural lake, whether or not it is fitted with a dam, for which the department of environmental quality or the governing body of the county has determined that eutrophication enhanced by human activity is occurring and that phosphorus is the limiting factor; and
- (b) other efforts are being undertaken in the county to reduce the amount of phosphorus entering surface waters.
- (3) Any ordinance adopted by the governing body of a county must contain standards designated by the model rule adopted by the department of environmental quality under 75-7-401 and in effect at the time of the adoption of the county ordinance.
- (4) Any ordinance adopted by the governing body of a county must be enforced by the county.
- (5) The provisions of this part do not apply to counties where the sale of phosphorus-containing household cleaning products is banned pursuant to [sections 4 and 5]."
- Section 7. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 75, chapter 5, and the provisions of Title 75, chapter 5, apply to [sections 1 through 5].

Section 8. Effective date. [This act] is effective July 1, 2010.

Approved April 16, 2009

CHAPTER NO. 246

[SB 261]

AN ACT ENABLING A CITY OR TOWN COUNCIL OR COMMISSION TO ADOPT ORDINANCES OR RESOLUTIONS TO PROVIDE FOR THE SAFE OPERATION OF THE MUNICIPAL BUSLINE TRANSPORTATION SYSTEM AND TO PROVIDE FOR THE ENFORCEMENT OF THOSE ADOPTED ORDINANCES OR RESOLUTIONS; AND AMENDING SECTION 7-14-4403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-4403, MCA, is amended to read:

- **"7-14-4403. Operation of municipal busline.** The city or town council or commission shall have has authority to provide for the:
- (1) management and operation of the system authorized by 7-14-4401(1) and to do all things necessary for the successful operation of said that transportation system;
- (2) safe operation of the transportation system, including the adoption of ordinances or resolutions to require motor vehicles to yield the right-of-way to buses reentering the traffic flow; and
- (3) enforcement of ordinances or resolutions adopted under subsection (2)." Approved April 16, 2009

CHAPTER NO. 247

[SB 275]

AN ACT ADDING AN ADDITIONAL PHARMACIST TO THE BOARD OF PHARMACY; AND AMENDING SECTION 2-15-1733, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1733, MCA, is amended to read:

- "2-15-1733. Board of pharmacy. (1) There is a board of pharmacy.
- (2) The board consists of six seven members appointed by the governor with the consent of the senate. Three Four members must be licensed pharmacists, one member must be a registered pharmacy technician, and two members must be from the general public.
- (a) Each licensed pharmacist member must have graduated and received the first professional undergraduate degree from the school of pharmacy of the university of Montana-Missoula or from an accredited pharmacy degree program that has been approved by the board. Each licensed pharmacist member must have at least 5 consecutive years of practical experience as a pharmacist immediately before appointment to the board. A licensed pharmacist member who, during the member's term of office, ceases to be actively engaged in the practice of pharmacy in this state must be automatically disqualified from membership on the board.
- (b) A registered pharmacy technician member must have at least 5 consecutive years of practical experience as a pharmacy technician immediately before appointment to the board. A registered pharmacy technician member who, during the member's term of office, ceases to be actively engaged as a

pharmacy technician in this state must be automatically disqualified from membership on the board.

- (c) Each public member of the board must be a resident of the state and may not be or ever have been:
- (i) a member of the profession of pharmacy or the spouse of a member of the profession of pharmacy;
- (ii) a person having any material financial interest in the providing of pharmacy services; or
- (iii) a person who has engaged in any activity directly related to the practice of pharmacy.
- (3) Members shall serve staggered 5-year terms. A member may not serve more than two consecutive full terms. For the purposes of this section, an appointment to fill an unexpired term does not constitute a full term.
 - (4) A member must be removed from office by the governor:
- (a) upon proof of malfeasance or misfeasance in office, after reasonable notice of charges against the member and after a hearing; or
- (b) upon refusal or inability to perform the duties of a board member in an efficient, responsible, and professional manner.
- (5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Approved April 16, 2009

CHAPTER NO. 248

[SB 294]

AN ACT INCLUDING STREETS AND ROADS AMONG THE UNDERTAKINGS FOR WHICH A MUNICIPALITY MAY ISSUE REVENUE BONDS; AMENDING SECTIONS 7-7-4402 AND 7-7-4424, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-4402, MCA, is amended to read:

- "7-7-4402. **Definitions.** Whenever used in this part, unless a different meaning clearly appears from the context, the following definitions apply:
- (1) The term "governing "Governing body" shall include bodies and boards, by whatsoever names they may be known, having means a body or board that has charge of finances and management of a municipality.
- (2) The term "municipality" shall include any "Municipality" means a city or any town, however organized.
- (3) The term "undertaking" shall mean any "Undertaking" means one or a combination of the following:
- (a) water and sewer systems, together with all parts thereof of the systems and appurtenances thereto to the systems, including but not limited to supply and distribution systems, reservoirs, dams, and sewage treatment and disposal works:
 - (b) public airport construction and public airport building;
 - (c) convention facilities;

- (d) public recreation facilities; and
- (e) streets and roads; and
- (e)(f) public parking facilities, solid waste management systems, or other revenue-producing facilities and services authorized in these codes for cities and towns."
 - **Section 2.** Section 7-7-4424, MCA, is amended to read:
- "7-7-4424. Undertakings to be self-supporting. (1) (a) The Except as provided in subsections (1)(b) and (1)(c), the governing body of a municipality issuing bonds pursuant to this part shall prescribe and collect reasonable rates, fees, or charges for the services, facilities, and commodities of the undertaking and shall revise the rates, fees, or charges from time to time whenever necessary so that the undertaking is and remains self-supporting.
- (b) The property taxes specifically authorized to be levied for the general purpose served by an undertaking or resort taxes approved, levied, and appropriated to an undertaking in compliance with 7-6-1501 through 7-6-1509 constitute revenue of the undertaking and may not result in an undertaking being considered not self-supporting.
- (c) Revenue from assessments and fees enacted by local ordinance constitutes revenue of the undertaking and may not result in an undertaking being considered not self-supporting.
- (2) The rates, fees, or charges prescribed, along with any appropriated property or resort tax collections, must produce revenue at least sufficient to:
- (a) pay when due all bonds and interest on the bonds, *for* the payment of which the revenue has been pledged, charged, or otherwise encumbered, including reserves for the bonds; and
- (b) provide for all expenses of operation and maintenance of the undertaking, including reserves."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 16, 2009

CHAPTER NO. 249

[SB 311]

AN ACT ELIMINATING THE REQUIREMENT THAT A MEDICAL CERTIFICATE BE ATTACHED TO A DECLARATION OF MARRIAGE; AND AMENDING SECTION 40-1-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-1-311, MCA, is amended to read:

- "40-1-311. Declaration of marriage without solemnization. (1) Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in 40-1-301 shall, prior to executing the declaration, secure the medical certificate required by this chapter, which The declaration and the certificate or the waiver provided for in 40-1-203 must be firmly attached to the declaration and must be filed by the clerk of the district court in the county where the contract was executed.
 - (2) A declaration of marriage must contain substantially the following:
 - (a) the names, ages, and residences of the parties;

- (b) the fact of marriage;
- (c) the name of father and maiden name of mother of both parties and address of each:
- (d) a statement that both parties are legally competent to enter into the marriage contract.
- (3) The declaration must be subscribed by the parties and attested by at least two witnesses and formally acknowledged before the clerk of the district court of the county.
- (4) The fee for filing a declaration is \$53 and must be paid to the clerk at time of filing."

Approved April 16, 2009

CHAPTER NO. 250

[HB 23]

AN ACT REMOVING STATUTORY REFERENCES TO THE LEGISLATIVE ADMINISTRATION COMMITTEES; AMENDING SECTIONS 5-2-202 AND 5-11-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-202, MCA, is amended to read:

- "5-2-202. Presession activity. (1) Members of the legislature nominated to leadership positions during the presession caucus provided for in 5-2-201 and members nominated or appointed to the legislative administration committees, committee on committees, and rules committees may meet and perform necessary organizational tasks prior to the regular session, including but not limited to appointing committees, hiring staff, and assigning space and seating.
- (2) Members of the house appropriations committee and of the senate finance and claims committee named prior to the regular session may begin reviewing requests for appropriations immediately and may visit state agencies and institutions to discuss requests."

Section 2. Section 5-11-402, MCA, is amended to read:

- **"5-11-402. Legislative branch computer system planning council.** There is a legislative branch computer system planning council composed of:
- (1) the secretary of the senate or another representative of the senate designated by the president;
- (2) the chief clerk of the house of representatives or another representative of the house designated by the speaker;
- (3) the sergeants-at-arms in the two houses or another representative of each house designated by the presiding officer of the legislative administration committee of that house;
- (4) the executive director of the legislative services division, who shall chair the planning council;
 - (5) the legislative auditor;
 - (6) the legislative fiscal analyst;
 - (7) the consumer counsel; and

(8) a person designated by the director of the department of administration to represent the information technology responsibilities of the department, who shall serve as a nonvoting member of the planning council."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2009

CHAPTER NO. 251

[HB 40]

AN ACT REVISING THE WATER PERMIT AND CHANGE IN APPROPRIATION RIGHT PROCESS; CLARIFYING THE DEFINITION OF "CORRECT AND COMPLETE"; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ISSUE A PRELIMINARY DETERMINATION ON A WATER RIGHT PERMIT OR A CHANGE IN APPROPRIATION RIGHT; REQUIRING PERMIT OR CHANGE IN APPROPRIATION RIGHT DECISIONS WITHIN 90 DAYS AFTER CLOSE OF ADMINISTRATIVE RECORD; AMENDING SECTIONS 85-2-102, 85-2-307, 85-2-308, 85-2-309, 85-2-310, 85-2-401, AND 85-2-804, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. **Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Appropriate" means:
- (a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;
- (b) in the case of a public agency, to reserve water in accordance with 85-2-316;
- (c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;
 - (d) in the case of the United States department of agriculture, forest service:
 - (i) instream flows and in situ use of water created in 85-20-1401, Article V; or
- (ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320:
- (e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;
- (f) a use of water for aquifer recharge or mitigation as provided in 85-2-360 and 85-2-362; or
- (g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.
- (2) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

- (3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.
 - (4) "Beneficial use", unless otherwise provided, means:
- (a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;
- (b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;
- (c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;
- (d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;
- (e) a use of water for a quifer recharge or mitigation as provided in 85-2-360 and 85-2-362; or
- (f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.
 - (5) "Certificate" means a certificate of water right issued by the department.
- (6) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.
- (7) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.
- (8) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information for the department to begin evaluating the information.
- (9) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.
- (10) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.
- (11) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.
- (12) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.
 - (13) "Ground water" means any water that is beneath the ground surface.

- (14) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.
- (15) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.
- (16) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.
- (17) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.
- (18) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.
- (19) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.
 - (b) The term does not mean a private corporation, association, or group.
- (20) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.
- (21) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.
- (22) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.
- (23) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.
- (24) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.
 - (25) "Water division" means a drainage basin as defined in 3-7-102.
 - (26) "Water judge" means a judge as provided for in Title 3, chapter 7.
 - (27) "Water master" means a master as provided for in Title 3, chapter 7.
- (28) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.
- (29) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."
 - Section 2. Section 85-2-307, MCA, is amended to read:
- "85-2-307. Notice of application for permit or change in appropriation right. (1) Upon receipt of an application for a permit or a change in appropriation right, the department shall publish notice of receipt of the application on the department's website.

- (1)(2) (a) Upon Within 120 days of the receipt of a correct and complete application for a permit or change in appropriation right, the department:
- (i) may meet informally with the applicant, the persons listed in subsection (2)(d), and persons who may claim standing pursuant to 85-2-308 to discuss the application;
- (ii) shall make a written preliminary determination as to whether or not the application satisfies the applicable criteria for issuance of a permit or change in appropriation right; and
- (iii) may include conditions in the written preliminary determination to satisfy applicable criteria for issuance of a permit or change in appropriation right.
- (b) If the preliminary determination proposes to grant an application, the department shall prepare a notice containing the facts pertinent to the application, including the summary of the preliminary determination and any conditions, and shall publish the notice once in a newspaper of general circulation in the area of the source.
- (c) If the preliminary determination proposes to deny an application, the process provided in 85-2-310 must be followed.
- (b)(d) Before the date of publication, the department shall also serve the notice by first-class mail upon:
- (i) an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation;
- (ii) any purchaser under contract for deed, as defined in 70-20-115, of property that, according to the records of the department, may be affected by the proposed appropriation; and
- (iii) any public agency that has reserved waters in the source under 85-2-316.
- (e)(e) The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation.
- (e)(f) The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.
- (2)(3) The notice shall must state that by a date set by the department, (not less than 15 days or more than 60 days after the date of publication), persons may file with the department written objections to the application.
- (3)(4) The requirements of subsections (1)(2) and (2)(3) do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons."
 - **Section 3.** Section 85-2-308, MCA, is amended to read:
- "85-2-308. Objections. (1) (a) An objection to an application under this chapter must be filed by the date specified by the department under 85-2-307(2)(3).
- (b) The objection to an application for a permit must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-311 are not met.

- (2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-320, if applicable, 85-2-402, 85-2-407, 85-2-408, and 85-2-436, if applicable, are not met.
- (3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.
- (4) For an application for a reservation of water, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-316 are not met.
- (5) An objector to an application under this chapter shall file a correct and complete objection on a form prescribed by the department within the time period stated on the public notice associated with the application. In order to assist both applicants and objectors, the department shall adopt rules in accordance with this chapter delineating the components of a correct and complete objection. For instream flow water rights for fish, wildlife, and recreation, the rules must require the objector to describe the reach or portion of the reach of the stream or river subject to the instream flow water right and the beneficial use that is adversely affected and to identify the point or points where the instream flow water right is measured and monitored. The department shall notify the objector of any defects in an objection. An objection not corrected or completed within 15 days from the date of notification of the defects is terminated.
- (6) An objection is valid if the objector has standing pursuant to subsection (3), has filed a correct and complete objection within the prescribed time period, and has stated the applicable information required under this section and rules of the department."

Section 4. Section 85-2-309, MCA, is amended to read:

- "85-2-309. Hearings on objections jurisdiction. (1) If the department determines that an objection to an application for a permit under 85-2-311 or change approval in appropriation right under 85-2-402 states a valid objection, it shall hold a contested case hearing, pursuant to Title 2, chapter 4, part 6, on the objection within 60 days from the date set by the department for the filing of objections, contested case hearing, pursuant to Title 2, chapter 4, part 6, on the objection within 90 days from the date set by the department for the filing of objections after serving notice of the hearing by first-class mail upon the applicant and the objector, unless the department certifies an issue to the district court for determination by a water judge under subsection (2). The department may consolidate hearings if more than one objection is filed to an application. The department may extend the 90-day deadline for good cause shown or upon request of the applicant and all objectors. The department shall file in its records proof of the service by affidavit of the department.
- (2) (a) At any time prior to commencement or before the conclusion of a hearing as provided in subsection (1), the department may in its discretion certify to the district court all factual and legal issues involving the adjudication or determination of the water rights at issue in the hearing, including but not limited to issues of abandonment, quantification, or relative priority dates. Certified controversies must be given priority by a water judge over all other adjudication matters.
- (b) If the department fails to certify an issue as provided in this section after a timely request by a party to the hearing, the department shall include its denial to certify as part of the record of the hearing.

- (c) Upon determination of the issues certified to it by the department, the court shall remand the matter to the department for further processing of the application under this chapter.
- (3) Subsection (2) does not apply in the case of a matter considered at a hearing under this section pursuant to 85-2-316 or 85-2-322."

Section 5. Section 85-2-310, MCA, is amended to read:

- Action on application for permit or change in appropriation right. (1) (a) The department shall grant, deny, or condition an application for a permit or change in appropriation right in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, may be extended by not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons for the extension by first-class mail upon the applicant and each person who has filed an objection as provided by 85-2-308. If the department proposes to deny an application for a permit or a change in appropriation right under 85-2-307, unless the applicant withdraws the application, the department shall hold a hearing pursuant to 2-4-604 after serving notice of the hearing by first-class mail upon the applicant for the applicant to show cause by a preponderance of the evidence as to why the permit or change in appropriation right should not be denied.
- (b) (i) Upon request from the applicant, the department shall appoint a hearing examiner who did not participate in the preliminary determination.
- (ii) The applicant may make only one request pursuant to this subsection (1)(b) for a different hearing examiner.
- (2) A proposal to grant an application with or without conditions following a hearing on a proposal to deny the application must proceed as if the department proposed to grant the application in its preliminary determination pursuant to 85-2-307.
- (3) If valid objections are not received on an application or if valid objections are unconditionally withdrawn and the department preliminarily determined to grant the permit or change in appropriation right, the department shall grant the permit or change in appropriation right as proposed in the preliminary determination pursuant to 85-2-307.
- (4) If valid objections to an application are received and withdrawn with conditions stipulated with the applicant and the department preliminarily determined to grant the permit or change in appropriation right, the department shall grant the permit or change in appropriation right subject to conditions as necessary to satisfy applicable criteria.
- (5) The department shall deny or grant with or without conditions a permit under 85-2-311 or a change in appropriation right under 85-2-402 within 90 days after the administrative record is closed.
- (2)(6) If an application is to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, any application approved by the department is subject to any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation,

withdrawal, use, or distribution of the water applied for and any terms, conditions, and limitations related to the use of water contained in any special use authorization required by federal law.

- (3)(7) Except as provided in subsection (2) (6), an application may not be denied or approved in a modified form or upon terms, conditions, or limitations specified by the department, unless the applicant is first granted an opportunity to be heard. If an objection is not filed against the application but the department is of the opinion that the application should be denied or approved in a modified form or upon terms, conditions, or limitations specified by it, the department shall prepare a statement of its opinion and its reasons for the opinion. The department shall serve a statement of its opinion by first-class mail upon the applicant, with a notice that the applicant may obtain a hearing by filing a request within 30 days after the notice is mailed. The notice must further state that the application will be modified in a specified manner or denied unless a hearing is requested.
- (4)(8) The department may cease action upon an application for a permit or change in appropriation right and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for either of these reasons must be accompanied by a statement of the reasons for which it was returned, and for a permit application there is not a right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection is a final decision of the department.
- (5)(9) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:
 - (a) an application is not corrected and completed as required by 85-2-302;
 - (b) the appropriate filing fee is not paid;
 - (c) the application does not document:
 - (i) a beneficial use of water;
 - (ii) the proposed place of use of all water applied for;
- (iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable timeline for the completion of the project and the actual application of the water to a beneficial use.
- (iv) for appropriations not covered in subsection (4)(e)(iii) (9)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and
- (v) if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:
- (A) each person who will use the water and the amount of water each person will use;
 - (B) the proposed place of use of all water by each person;
- (C) the nature of the relationship between the applicant and each person using the water; and
- (D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement costs or fees, if any, are not paid as required by 85-2-124."

Section 6. Section 85-2-401, MCA, is amended to read:

- "85-2-401. Priority recognition and confirmation of changes in appropriations issued after July 1, 1973. (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow or the lowering of a water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise the water right under the changed conditions.
- (2) Priority of appropriation made under this chapter dates from the filing of an application for a permit with the department, except as otherwise provided in 85-2-301 through 85-2-303, 85-2-306, 85-2-310(4) 85-2-310(8), and 85-2-313.
- (3) Priority of appropriation perfected before July 1, 1973, must be determined as provided in part 2 of this chapter.
- (4) All changes in appropriation rights actions of the department after July 1, 1973, are recognized and confirmed subject to this part and any terms, conditions, and limitations placed on a change in appropriation authorization by the department."

Section 7. Section 85-2-804, MCA, is amended to read:

- "85-2-804. Application notice objections hearing. (1) Any appropriator proposing to divert from the basin water allocated to Montana under the terms of the compact or divert from the basin unallocated compact water within Montana shall file an application with the department. The application must state the name and address of the applicant and facts tending to show that:
- (a) the diversion and ultimate use of the water in Montana is for a beneficial use of water:
- (b) the diversion and ultimate use of water will not adversely affect the water rights of other persons;
- (c) the proposed means of diversion, construction, and operation are adequate;
- (d) the diversion and ultimate use will not interfere unreasonably with other planned uses or developments for which a water right has been established or a permit has been issued or for which water has been reserved;
- (e) the diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states;
- (f) the diversion and ultimate use of the water are in the public interest of Montana; and
- (g) the applicant intends to comply with the laws of the signatory states to the compact.
- (2) Any appropriator proposing to divert from the basin water allocated to North Dakota or Wyoming under the terms of the compact or divert from the basin unallocated compact water within North Dakota or Wyoming shall file an application with the department. The application must state the name and address of the applicant and facts tending to show that:
- (a) the proposed means of diversion, construction, and operation are adequate;

- (b) the diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states; and
 - (c) the applicant intends to comply with the compact.
- (3) Notice of the proposed diversion must be given by the department in the same manner as provided in subsections (1) and (2) of 85-2-307(1) through (3).
- (4) An objection to an application must be filed by the date specified by the department in the notice.
- (5) The objector to an application under subsection (1) shall state his name and address and facts tending to show that:
- (a) the diversion and ultimate use of the water in Montana are not for a beneficial use of water;
- (b) the property, rights, or interests of the objector would be adversely affected by the proposed diversion or ultimate use of the water;
- (c) the proposed means of diversion, construction, and operation are not adequate;
- (d) the diversion and ultimate use will interfere unreasonably with the objector's planned uses or development for which the objector has a water right, a permit, or a reserved water right;
- (e) the diversion and ultimate use of the water will exceed the allocated share under the compact of any signatory state; or
- (f) the diversion and ultimate use of the water are not in the public interest of Montana.
- (6) The objector to an application under subsection (2) shall state his name and address and facts tending to show that:
- (a) the property, rights, or interests of the objector would be adversely affected by the proposed diversion or ultimate use of the water;
- (b) the proposed means of diversion, construction, and operation are not adequate; or
- (c) the diversion and ultimate use of the water will exceed the allocated share under the compact of any signatory state.
- (7) If the department receives an objection to an application, it shall hold a hearing on the application within 60 days from the date set by the department for filing objections. Service of notice of the hearing must be made by certified mail upon the applicant and the objector.
- (8) The hearing shall be conducted under the contested case procedures of the Montana Administrative Procedure Act in Title 2, chapter 4, part 6."

Section 8. Effective date. [This act] is effective July 1, 2009.

Section 9. Applicability. [This act] applies to applications received by the department after [the effective date of this act].

Approved April 17, 2009

CHAPTER NO. 252

[HB 147]

AN ACT REVISING DISCLOSURE AND REPORTING OF CERTAIN CAMPAIGN EXPENDITURES, INCLUDING EXPENDITURES BY

INDEPENDENT COMMITTEES, MADE AFTER THE CLOSING DATE OF THE PREELECTION REPORTING PERIOD; AND AMENDING SECTIONS 13-37-226 AND 13-37-228, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-226, MCA, is amended to read:

- **"13-37-226. Time for filing reports.** (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports:
- (a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot:
- (b) on the 10th day of March and September in each year that an election is to be held;
- (c) and on the 15th and 5th days preceding the date on which an election is held:
- (d) and within 24 hours after receiving a contribution of \$200 or more if received between the 10th day before the election and the day of the election,;
 - (e)(e) not more than 20 days after the date of the election; and
- (d)(f) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).
- (2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:
- (a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which the text of the proposed ballot issue is submitted for review and approval pursuant to 13-27-202 during the year or years prior to the election year that an issue is or is expected to be on the ballot;
- (b) on the 10th day of March and on the 10th day of each subsequent month through September;
 - (c) on the 15th and 5th days preceding the date on which an election is held;
- (d) within 24 hours after receiving a contribution of \$500 or more if received between the 10th day before the election and the day of the election,;
 - (e) within 20 days after the election; and
- (f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).
- (3) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized to support or oppose a particular state district candidate or issue shall file reports:
 - (a) on the 12th day preceding the date on which an election is held;
- (b) and within 48 hours after receiving a contribution of \$100 or more if received between the 17th day before the election and the day of the election. The report under this subsection (3)(a) may (3)(b) must be made by mail or by mail or by electronic communication communication to the elerk and recorder

and the commissioner of political practices commissioner and the election administrator of the appropriate county pursuant to 13-37-225.

- (b)(c) not more than 20 days after the date of the election; and
- (e)(d) whenever a candidate or political committee files a closing report as specified in 13-37-228(3).
- (4) Candidates for any other public office and political committees that are specifically organized to support or oppose a particular local issue shall file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds \$500, except as provided in 13-37-206.
- (5) For the purposes of this subsection, a committee that is not specifically organized to support or oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file:
- (a) a report on the 12th day preceding the date of an election in which it participates by making an expenditure;
- (b) a report within 24 hours of making an expenditure or incurring a debt or obligation of \$500 or more for election material described in 13-35-225(1) if made between the 17th day before the election and the day of the election;
- (b)(c) a report not more than 20 days after the date of the election in which it participates by making an expenditure; and
- (e)(d) a report on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.
- (6) The commissioner may promulgate rules regarding the extent to which organizations that are incidental political committees shall report their politically related activities in accordance with this chapter.
- (7) All Except as provided in subsections (1)(d), (2)(d), (3)(b), and (5)(b), all reports required by this section must be complete as of the fifth day before the date of filing as specified in 13-37-228(2) and this section."

Section 2. Section 13-37-228, MCA, is amended to read:

- "13-37-228. Time periods covered by reports. Reports filed under 13-37-225 and 13-37-226 must be filed to cover the following time periods even though no contributions or expenditures may have been received or made during the period:
- (1) The initial report must cover all contributions received or expenditures made by a candidate or political committee prior to the time that a person became a candidate or a political committee, as defined in 13-1-101, until the fifth day before the date of filing of the appropriate initial report pursuant to subsections (1) through (5) of 13-37-226(1) through (5). Reports filed by political committees organized to support or oppose a statewide ballot issue must disclose all contributions received and expenditures made prior to the time an issue becomes a ballot issue by transmission of the petition to the proponent of the ballot issue or referral by the secretary of state, even if the issue subsequently fails to garner sufficient signatures to qualify for the ballot.
- (2) Subsequent periodic reports must cover the period of time from the closing of the previous report to 5 days before the date of filing of a report pursuant to 13-37-226(1) through (5). For the purposes of this subsection, the

reports required under 13-37-226(1)(d), (2)(d), (3)(b), and (5)(b) are not periodic reports and must be filed as required by 13-37-226(1)(d), (2)(d), (3)(b), or (5)(b), as applicable.

(3) Closing reports must cover the period of time from the last periodic report to the final closing of the books of the candidate or political committee. A candidate or political committee shall file a closing report following an election in which the candidate or political committee participates whenever all debts and obligations are extinguished and no further contributions or expenditures will be received or made which relate to the campaign, unless the election is a primary election and the candidate or political committee will participate in the general election."

Approved April 17, 2009

CHAPTER NO. 253

[HB 222]

AN ACT REQUIRING THAT A PERSON WHO IS CONVICTED OF A HUNTING, FISHING, OR TRAPPING CRIMINAL VIOLATION AND WHOSE PRIVILEGES TO HUNT, FISH, OR TRAP HAVE BEEN REVOKED IS NOT ELIGIBLE TO PURCHASE A LICENSE TO HUNT, FISH, OR TRAP UNTIL ALL SENTENCING TERMS ARE MET; AMENDING SECTIONS 87-1-102 AND 87-2-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-102, MCA, is amended to read:

- "87-1-102. Penalties violation of state law. (1) (a) A person who purposely, knowingly, or negligently violates a provision of this title or any other state law pertaining to fish and game is guilty of a misdemeanor, except if a felony is expressly provided by law, and shall be fined an amount not less than \$50 or more than \$1,000 or imprisoned in the county detention center for not more than 6 months, or both, unless a different punishment is expressly provided by law for the violation. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of that person's license and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period set by the court.
- (b) (i) If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss of privileges as imposed by the court. The person shall surrender all licenses, as ordered by the court, to the department within 10 days.
- (ii) After a forfeiture period imposed pursuant to this section and upon receipt of notification from the court that the defendant has appeared and all terms of the court sentence, including making payment of any fine, costs, or restitution, have been met or the defendant is in compliance with installment payments specified by the court, the department shall reinstate the privileges unless the person is not otherwise entitled to reinstatement. After the privileges are reinstated, the department may revoke the privileges if it is notified by the clerk of court that the person is in default on any installment payment.
- (iii) A person convicted of hunting, fishing, or trapping while the person's license or privilege is forfeited shall be imprisoned in the county detention center for not less than 5 days or more than 6 months and may be fined an amount not less than \$500 or more than \$2,000.

- (2) (a) A person convicted of unlawfully taking, killing, possessing, or transporting a bighorn sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals shall be fined an amount not less than \$500 or more than \$2,000 or imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.
- (b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, or mountain lion or any part of these animals shall be fined an amount not less than \$300 or more than \$1,000 or imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.
- (c) A person convicted of unlawfully attempting to trap or hunt a game animal shall be fined an amount not less than \$200 or more than \$600 or imprisoned in the county detention center for not more than 60 days, or both.
- (d) A person convicted of purposely, knowingly, or negligently taking, killing, trapping, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined an amount not less than \$100 or more than \$1,000, imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current license and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period, and any pelts possessed unlawfully must be confiscated. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.
- (e) A person convicted of hunting, fishing, or trapping while that person's license is forfeited or a privilege is denied shall be imprisoned in the county detention center for not less than 5 days or more than 6 months. In addition, that person may be fined an amount not less than \$500 or more than \$2,000.
- (3) If a person is convicted of illegally taking an animal described in 87-1-111 or 87-1-115 through the use of spotlights, nightscopes, or infrared scopes, the person is prohibited from fishing or hunting in the state for an additional 5 years following the ending date of the original prohibition period. In addition, the person, upon conviction or forfeiture of bond or bail, shall successfully complete, at the person's own expense, a department-sponsored hunter education course.
- (4) A person convicted or who has forfeited bond or bail under this section and whose license privileges are forfeited may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or permit during the

period when license privileges have been forfeited. A person convicted of unlawfully purchasing, acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping license during the period when license privileges have been forfeited shall be fined an amount not less than \$500 or more than \$2,000, imprisoned in the county jail for not more than 60 days, or both.

- (5) A person convicted or who has forfeited bond or bail under this section and who has been ordered to pay restitution under the provisions of 87-1-111 or 87-1-115 may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later. If the violation involved the unlawful taking of a moose, a bighorn sheep, or a mountain goat, the person may not apply for a special license or enter a drawing for a special license or permit for the same species of game animal that was unlawfully taken for an additional period of 5 years following the ending date of the first 5-year period. A person convicted of unlawfully applying for any special license under Title 87, chapter 2, part 7, or unlawfully entering a drawing for a special license or permit shall be fined an amount not less than \$500 or more than \$2,000, imprisoned in the county detention center for not more than 60 days, or both.
- (6) (a) A person convicted of a second offense of any of the following offenses within 10 years of the first conviction or who is convicted of two or more of the following offenses at different times within a 10-year period is subject to the penalties provided in subsection (6)(b):
 - (i) hunting during a closed season;
 - (ii) spotlighting;
 - (iii) hunting without a license;
 - (iv) unlawful taking of more than double the legal bag limit;
 - (v) unlawful possession of more than double the legal bag limit; and
 - (vi) waste of game by abandonment in the field.
- (b) (i) A person convicted of the offenses in subsection (6)(a) in the time periods specified in subsection (6)(a) shall be fined an amount not less than \$2,000 or more than \$5,000 or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit all current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for 60 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period.
 - (ii) The department shall notify the offender of the loss of privileges.
- (iii) The offender shall surrender all hunting, fishing, and trapping licenses to the department within 10 days after having received notice from the department that privileges have been revoked.
- (7) (a) A person convicted of a third offense of any of the following offenses within 10 years of the first conviction is subject to the penalties provided in subsection (7)(b):
 - (i) hunting during a closed season;
 - (ii) spotlighting;
 - (iii) hunting without a license; and
 - (iv) unlawful taking of more than double the legal bag limit.

- (b) (i) A person convicted of the offenses in subsection (7)(a) in the time period specified in subsection (7)(a) shall be fined an amount not less than \$5,000 or more than \$10,000 or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit all current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for life.
 - (ii) The department shall notify the offender of the loss of privileges.
- (iii) The offender shall surrender all hunting, fishing, and trapping licenses to the department within 10 days after having received notice from the department that privileges have been revoked.
- (8) Subject to sentencing restrictions, the court shall order a person who is convicted pursuant to this section to pay the costs of imprisonment under this section.
- (9) A mandatory forfeiture of privileges imposed pursuant to this section does not apply to juveniles. However, the court may, at its discretion, order forfeiture of a juvenile's license and privilege to hunt, fish, or trap upon conviction or forfeiture of bond or bail for a violation of this title.
- (10) Notwithstanding the provision of subsection (1), the penalties provided by this section are in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2.
- (11) If an administrative authority suspends a license, permit, or privilege to obtain a license or permit issued under this title, the administrative authority or the department shall notify the person of the suspension and the person shall surrender the license or permit to the department within 10 days.
- (12) For the purposes of this section, the terms "knowingly", "negligently", and "purposely" have the same meaning as provided in 45-2-101."
 - Section 2. Section 87-2-106, MCA, is amended to read:
- "87-2-106. (Temporary) Application for license penalties for violation — forfeiture of privileges. (1) A license may be procured from the director, a warden, or an authorized agent of the director. The applicant shall state the applicant's name, age, [last four digits of the applicant's social security number, occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver's license, Montana driver's examiner's identification card, tribal identification card, or other identification specified by the department to substantiate the required information. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a license. It is a misdemeanor for a license agent to sell a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the time of application for licensure. Except as provided in subsections (2) through (4), the statements made by the applicant must be subscribed to before the officer or agent issuing the license.
- (2) Except as provided in subsection (3), department employees or officers may issue licenses by telephone, by mail, on the internet, or by other electronic means. Statements on an application for a license to be issued by telephone, by mail, on the internet, or by other electronic means need not be subscribed to before the employee or officer.

- (3) To apply for a license under the provisions of 87-2-102(7), the applicant shall apply to the director and shall submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(7). The director shall process the application in an expedient manner.
- (4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for the resident's spouse, parent, child, brother, or sister who is otherwise qualified to obtain the license.
 - (5) A license is void unless subscribed to by the licensee.
- (6) It is unlawful to subscribe to or make any statement, on an application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. A person violating any provision of this subsection is guilty of a misdemeanor.
- (7) A person whose privilege to hunt, fish, or trap has been revoked is not eligible to purchase any license until all terms of the court sentence in which the privilege was revoked, including making restitution, have been met or the person is in compliance with installment payments specified by the court and the department has received notification from the sentencing court to that effect pursuant to 87-1-102(1).
- (7)(8) It is unlawful for a nonresident to apply for or purchase for a nonresident's use the following resident licenses and permits:
 - (a) wildlife conservation license;
 - (b) hunting license or permit; or
 - (c) fishing license or permit.
- (8)(9) (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to or making a false statement to obtain a resident license or who is convicted of applying for or purchasing a resident license in violation of subsection (7) (8) shall be:
- (i) fined not less than the greater of \$100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than \$1,000;
 - (ii) imprisoned in the county jail for not more than 6 months; or
 - (iii) both fined and imprisoned.
- (b) In addition to the penalties specified in subsection (8)(a) (9)(a), upon conviction or forfeiture of bond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.
- (9)(10) It is a misdemeanor for a person to purposely or knowingly assist an unqualified applicant in obtaining a resident license in violation of this section.
- [(10)(11) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]
- (11)(12) The department shall delete an applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Terminates April 24, 2010, pursuant to sec. 5, Ch. 237, L. 2007, unless contingency occurs. Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001; sec. 5, Ch. 237, L. 2007.)
- 87-2-106. (Effective April 25, 2010, pursuant to Ch. 237, L. 2007, unless contingency occurs) Application for license penalties for violation —

- forfeiture of privileges. (1) A license may be procured from the director, a warden, or an authorized agent of the director. The applicant shall state the applicant's name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver's license, Montana driver's examiner's identification card, tribal identification card, or other identification specified by the department to substantiate the required information. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a license. It is a misdemeanor for a license agent to sell a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the time of application for licensure. Except as provided in subsections (2) through (4), the statements made by the applicant must be subscribed to before the officer or agent issuing the license.
- (2) Except as provided in subsection (3), department employees or officers may issue licenses by telephone, by mail, on the internet, or by other electronic means. Statements on an application for a license to be issued by telephone, by mail, on the internet, or by other electronic means need not be subscribed to before the employee or officer.
- (3) To apply for a license under the provisions of 87-2-102(7), the applicant shall apply to the director and shall submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(7). The director shall process the application in an expedient manner.
- (4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for the resident's spouse, parent, child, brother, or sister who is otherwise qualified to obtain the license.
 - (5) A license is void unless subscribed to by the licensee.
- (6) It is unlawful to subscribe to or make any statement, on an application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. A person violating any provision of this subsection is guilty of a misdemeanor.
- (7) A person whose privilege to hunt, fish, or trap has been revoked is not eligible to purchase any license until all terms of the court sentence in which the privilege was revoked, including making restitution, have been met or the person is in compliance with installment payments specified by the court and the department has received notification from the sentencing court to that effect pursuant to 87-1-102(1).
- (7)(8) It is unlawful for a nonresident to apply for or purchase for a nonresident's use the following resident licenses and permits:
 - (a) wildlife conservation license;
 - (b) hunting license or permit; or
 - (c) fishing license or permit.
- (8)(9) (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to or making a false statement to obtain a resident license or who is convicted of applying for or purchasing a resident license in violation of subsection (7) (8) shall be:
- (i) fined not less than the greater of \$100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than \$1,000;

- (ii) imprisoned in the county jail for not more than 6 months; or
- (iii) both fined and imprisoned.
- (b) In addition to the penalties specified in subsection (8)(a) (9)(a), upon conviction or forfeiture of bond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.
- (9)(10) It is a misdemeanor for a person to purposely or knowingly assist an unqualified applicant in obtaining a resident license in violation of this section.
- [(10)(11) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]
- (11)(12) The department shall delete an applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001.)"

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2009

CHAPTER NO. 254

[HB 357]

AN ACT SHORTENING A CONSTRUCTION CONTRACTOR'S OBLIGATION TO PAY INTEREST ON A DELAYED PERIODIC OR FINAL PAYMENT TO A SUBCONTRACTOR FROM 30 DAYS PLUS 3 WORKING DAYS TO 30 DAYS; PROVIDING THAT ONLY ACCEPTANCE OF A FINAL PAYMENT, RATHER THAN ACCEPTANCE OF A PROGRESS PAYMENT OR FINAL PAYMENT, RELEASES ANY CLAIM FOR INTEREST; AND AMENDING SECTION 28-2-2104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 28-2-2104, MCA, is amended to read:

- **"28-2-2104. Obligations upon delay of payment.** (1) If a periodic or final payment that is required by a construction contract to be paid by an owner to a contractor is delayed by more than 30 days from the date the payment is required by the contract to be made, the owner shall pay to the contractor interest, beginning on the day following the date when the payment is due, at the rate of 1 1/2% a month or a pro rata fraction of that amount on the unpaid balance. If the contractor receives interest from the owner for a delayed payment by the owner, the contractor shall ensure that any interest accrued on a delayed payment is distributed by the contractor to subcontractors on a pro rata basis.
- (2) If a periodic or final payment required by a subcontract to be paid by a contractor to a subcontractor is delayed for more than 30 days plus 3 working days from the date the payment is required by the subcontract to be made, the contractor shall pay to the subcontractor interest beginning on the day following the date when the payment is due, at the rate of 1 1/2% a month or a pro rata fraction of that amount on the unpaid balance. If a subcontractor receives interest from the contractor for a delayed payment by the contractor, the subcontractor shall ensure that any interest accrued on the delayed payment is

distributed by the subcontractor to other subcontractors, if any, on a pro rata

(3) Acceptance of progress payments or the final payment releases any claim for interest on the payment."

Approved April 17, 2009

CHAPTER NO. 255

[HB 362]

AN ACT REVISING LAWS RELATING TO DISASTER AND EMERGENCY SERVICES; DEFINING "DISASTER MEDICINE"; LIMITING LIABILITY OF LICENSED HEALTH CARE PROFESSIONALS DURING THE PRACTICE OF DISASTER MEDICINE; AND AMENDING SECTIONS 10-3-101, 10-3-103, 10-3-111, 10-3-302, AND 10-3-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-101, MCA, is amended to read:

- "10-3-101. Declaration of policy. Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action and natural disasters and in order to provide for prompt and timely reaction to an emergency or disaster, to insure that preparation of this state will be adequate to deal with disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state to the fullest extent practicable, it is declared to be necessary to:
- (1) authorize the creation of local or interjurisdictional organizations for disaster and emergency services in the political subdivisions of this state;
- (2) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made human-caused disasters;
- (3) provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;
- (4) clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from emergencies and disasters;
- (5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;
- (6) authorize and provide for coordination of activities relating to disaster prevention, preparedness, *mitigation*, response, and recovery by agencies and officers of this state and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;
- (7) provide an emergency and disaster management system embodying all aspects of emergency or disaster prevention, preparedness, response, and recovery;
- (8) assist in prevention of disasters caused or aggravated by inadequate planning for public and private facilities and land use;
- (9) supplement, without in any way limiting, authority conferred by previous statutes of this state and increase the capability of the state, local, and

interjurisdictional disaster and emergency services agencies to perform disaster and emergency services; and

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

Section 2. Section 10-3-103, MCA, is amended to read:

- "10-3-103. **Definitions.** As used in parts 1 through 4 of this chapter, the following definitions apply:
- (1) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and emergency services.
 - (2) "Department" means the department of military affairs.
- (3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or artificial cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, accidents involving radiation byproducts or other hazardous materials, outbreak of disease, bioterrorism, or incidents involving weapons of mass destruction.
- (4) "Disaster and emergency services" means the preparation for and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.
- (5) "Disaster medicine" means the provision of patient care by a health care provider during a disaster or emergency when the number of patients exceeds the capacity of normal medical resources, facilities, and personnel. Disaster medicine may include implementing patient care guidelines that depart from recognized nondisaster triage and standard treatment patient care guidelines determining the order of evacuation and treatment of persons needing care.
- (5)(6) "Division" means the division of disaster and emergency services of the department.
- (6)(7) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize.
- (7)(8) (a) "Incident" means an event or occurrence, caused by either an individual or by natural phenomena, requiring action by disaster and emergency services personnel to prevent or minimize loss of life or damage to property or natural resources. The term includes the imminent threat of an emergency.
- (b) The term does not include a state of emergency or disaster declared by the governor pursuant to 10-3-302 or 10-3-303.
- (8)(9) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.
- (9)(10) "Principal executive officer" means the mayor, presiding officer of the county commissioners, or other chief executive officer of a political subdivision.

(10)(11) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings."

Section 3. Section 10-3-111, MCA, is amended to read:

- "10-3-111. Personnel immune from liability. (1) The state, a political subdivision of the state, or the agents or representatives of the state or a political subdivision of the state are not liable for personal injury or property damage sustained by a person appointed or acting as a volunteer civilian defense or other response and recovery activity worker or member of an agency engaged in civilian defense or other response and recovery activity during an incident, disaster, or emergency. This section does not affect the right of a person to receive benefits or compensation to which the person might otherwise be entitled under the workers' compensation law or a pension law or an act of congress.
- (2) The state or a political subdivision of the state or, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or a political subdivision of the state or a volunteer or auxiliary civilian defense or other response and recovery worker or member of an agency engaged in civilian defense or other response and recovery activity during an incident, disaster, or emergency or the owners of facilities used for civil defense or other response and recovery shelters, pursuant to a fallout shelter license or privilege agreement and while complying with or reasonably attempting to comply with parts 1 through 4 or 12 of this chapter or rule promulgated under the provisions of parts 1 through 4 or 12 of this chapter or pursuant to an ordinance relating to blackout or other precautionary measures enacted by a political subdivision of the state, are not liable for the death of or injury to persons or for damage to property as a result of any activity specified in this subsection."

Section 4. Section 10-3-302, MCA, is amended to read:

- "10-3-302. Declaration of emergency effect and termination. (1) A state of emergency may be declared by the governor when he the governor determines that an emergency as defined in 10-3-103 exists.
- (2) An executive order or proclamation of a state of emergency shall activate activates the emergency response and disaster preparation aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and be is authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disasters and disaster-related emergencies. An executive order or proclamation may authorize the practice of disaster medicine. The provisions of [section 6] do not apply to the state of emergency unless the order or proclamation includes a provision authorizing the practice of disaster medicine.
- (3) A state of emergency may not continue for longer than 20 days unless continuing conditions of the state of emergency exist, which shall must be determined by a declaration of an emergency by the president of the United States or by a declaration of the legislature by joint resolution of continuing conditions of the state of emergency."

Section 5. Section 10-3-303, MCA, is amended to read:

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

- (2) An executive order or proclamation of a state of disaster shall activate activates the disaster response and recovery aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and be is authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disaster and disaster-related emergencies. The executive order or proclamation may authorize the practice of disaster medicine. The provisions of [section 6] do not apply to the state of disaster unless the order or proclamation includes a provision authorizing the practice of disaster medicine.
- (3) A state of disaster may not continue for longer than 30 days unless continuing conditions of the state of disaster exist, which shall must be determined by a declaration of a major disaster by the president of the United States or by the declaration of the legislature by joint resolution of continuing conditions of the state of disaster.
 - (4) The governor shall terminate a state of emergency or disaster when:
 - (a) the emergency or disaster has passed;
- (b) the emergency or disaster has been dealt with to the extent that emergency or disaster conditions no longer exist; or
- (c) at any time the legislature terminates the state of emergency or disaster by joint resolution. However, after termination of the state of emergency or disaster, disaster and emergency services required as a result of the emergency or disaster may continue."
- Section 6. Medical services during declared emergency or disaster limitation of liability administrative disciplinary sanctions. (1) Except as provided in subsection (3), a health care professional licensed to practice in Montana who, in good faith and regardless of compensation, renders or fails to render emergency care, health care services, or first aid during a declared emergency or disaster is not liable for any civil damages or injury unless the damages or injury was caused by gross negligence or willful and wanton misconduct and as a result of:
- (a) an act or omission arising out of activities undertaken in response to the disaster or emergency;
- (b) any act or omission related to the rendering of or failure to render services; or
- (c) evacuation or treatment or the failure to evacuate or provide treatment conducted in accordance with disaster medicine or at the direction of military or government authorities.
- (2) A licensing program, licensing board, or any other disciplinary authority in Montana may impose administrative sanctions upon a health care professional for unprofessional conduct in response to a declared public health emergency that occurs in Montana. An administrative disciplinary sanction imposed upon a health care professional who is licensed in another state must be reported to the licensing authority in the health care professional's state and each state in which the health care professional is licensed. The standard of review for administrative disciplinary sanctions must be whether the health care professional exercised good faith clinical judgment given the circumstances under which the judgment was exercised.

(3) This section does not apply to a health care provider employed by the United States, a state, or a political subdivision acting within the scope of the provider's employment or duties.

Section 7. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 10, chapter 3, part 1, and the provisions of Title 10, chapter 3, part 1, apply to [section 6].

Approved April 17, 2009

CHAPTER NO. 256

[HB 371]

AN ACT REVISING THE MOTOR VEHICLE CODE TO INCLUDE OTHER ON-TRACK EQUIPMENT IN STATUTES CONCERNING APPROACHING TRAINS AT RAILROAD CROSSINGS AND SIGNALS; AND AMENDING SECTIONS 61-8-347, 61-8-348, 61-8-349, 61-8-350, 61-8-713, AND 61-8-813, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-347, MCA, is amended to read:

- "61-8-347. Obedience to signal indicating approach of train or other on-track equipment. (1) When a person operating a vehicle approaches a railroad crossing under any of the circumstances stated in this section, the operator of the vehicle shall stop as close as practicable but not less than 15 feet from the nearest rail of the railroad and may not proceed until the operator can do so safely. These requirements apply when:
- (a) a clearly visible electric or mechanical signal device gives warning of the presence or immediate approach of a railroad train or other on-track equipment;
- (b) a crossing gate is lowered or when a flag person gives a signal of the approach or passage of a railroad train or other on-track equipment;
- (c) a railroad train approaching within approximately 1,500 feet of the crossing emits a signal audible from that distance, except at crossings within quiet zones established under 69-14-620, indicating that the train is an immediate hazard because of its speed or nearness to the crossing; or
- (d) an approaching railroad train or other on-track equipment is plainly visible and is in hazardous proximity to the crossing.
- (2) A person may not operate a vehicle through, around, or under any crossing gate or barrier at a railroad grade crossing while the gate or barrier is closed or is being opened or closed."
 - Section 2. Section 61-8-348, MCA, is amended to read:
- **"61-8-348.** All vehicles to stop at certain railroad grade crossings. (1) The department of transportation and local authorities in their respective jurisdictions may designate particularly dangerous highway grade crossings of railroads and erect stop signs at these crossings. Where these stop signs are erected, the operator of a vehicle shall stop as close as practicable but not less than 15 feet from the nearest rail of the railroad and may proceed only upon exercising due care.
- (2) The operator of a vehicle upon a highway outside of the limits of an incorporated city or town who is approaching a highway grade crossing where a flag person or a mechanical device is not in place or maintained to warn the

public of approaching trains or other on-track equipment shall, before crossing the railroad tracks, stop the vehicle as close as practicable but not less than 15 feet from the nearest rail if:

- (a) a curve in the tracks or vegetation or some other feature or characteristic obscures the view of approaching trains or other on-track equipment; or
 - (b) a moving train *or other on-track equipment* is within sight or hearing." **Section 3.** Section 61-8-349, MCA, is amended to read:
- "61-8-349. Certain vehicles to stop at all railroad grade crossings. (1) (a) Except as provided in subsection (1)(b), the driver of a motor vehicle carrying seven or more passengers for hire, a school bus with or without passengers, or a vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop the vehicle as close as practicable but not less than 15 feet from the nearest rail of the railroad and while stopped shall open the door, (in the case of a school bus), and shall listen and look in both directions along the track for an approaching train or other on-track equipment and for signals indicating the approach of a train or other on-track equipment and may not proceed until the driver can do so safely. After stopping as required in this section and upon proceeding when it is safe to do so, the operator of a vehicle may cross only in a gear of the vehicle that requires no changing gears while traversing the crossing. The operator may not shift gears while crossing the track or tracks.
- (b) A stop is not required at a crossing where a police officer, highway patrol officer, or official traffic control device directs traffic to proceed.
- (2) As used in this section, "official traffic control device" does not include a railroad grade crossing signal."

Section 4. Section 61-8-350, MCA, is amended to read:

- **"61-8-350. Moving heavy equipment at railroad grade crossings.** (1) A person shall comply with the provisions of this section before operating or moving upon or across the tracks at a railroad grade crossing any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure that has:
 - (a) a normal operating speed of 10 or less miles an hour; or
- (b) a vertical body or load clearance measured above the surface of the roadway of:
- (i) less than one-half inch for each foot of the distance between any two adjacent axles; or
 - (ii) at least 9 inches.
- (2) Notice of an intended crossing must be given to a representative of the railroad and reasonable time must be given to the railroad to provide proper protection at the crossing.
- (3) Before making a crossing, the person operating or moving the vehicle or equipment shall first stop the vehicle or equipment as close as practicable but not less than 15 feet from the nearest rail of the railroad and while stopped shall listen and look in both directions along the track for any approaching train or other on-track equipment and for signals indicating the approach of a train or other on-track equipment. The person may not proceed until the crossing can be made safely.
- (4) A crossing may not be made when warning is given by automatic signal, crossing gates, a flag person, or other official traffic control device of the immediate approach of a railroad train or car or other on-track equipment. If a

flag person is provided by the railroad, movement over the crossing must be under the flag person's direction."

Section 5. Section 61-8-713. MCA, is amended to read:

- **"61-8-713.** Injury to or removal of sign or marker as misdemeanor penalty. (1) A person who maliciously injures, defaces, damages, or removes any sign, signal, or marker, either temporarily or permanently erected on the right-of-way of any secondary, state, or interstate highway for warning, instruction, or information of the public, is guilty of a misdemeanor and upon conviction shall be punished by a fine of \$250, by imprisonment in the county jail for a period not exceeding 60 days, or both. This section applies to secondary, state, or interstate highways that are completed and to secondary, state, or interstate highways that are under construction or repair.
- (2) A person may not, without lawful authority, attempt to or in fact alter, deface, injure, knock down, or remove any official traffic control device or any railroad sign or signal or any inscription, shield, or insignia on or part of the sign or device.
- (3) As used in this section, "railroad sign or signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train or other on-track equipment."

Section 6. Section 61-8-813, MCA, is amended to read:

- "61-8-813. Suspension of commercial driver's license railroad crossing offenses. (1) The department shall suspend a person's commercial driver's license upon the report of a conviction of any of the following railroad crossing offenses or conduct:
 - (a) for drivers who are not required to always stop:
- (i) failing to slow down and check that the tracks are clear of an approaching train or other on-track equipment; or
 - (ii) failing to stop before reaching the crossing if the tracks are not clear;
- (b) for drivers who are always required to stop, failing to stop before driving onto the crossing;
 - (c) for all drivers:
- (i) failing to have sufficient space to drive completely through the crossing without stopping;
- (ii) failing to obey a traffic control device or the directions of an enforcement official at the crossing: or
- (iii) failing to negotiate a crossing because of insufficient undercarriage clearance.
- (2) Upon receipt of a report of a conviction of any railroad crossing offense or conduct described in subsection (1), the following suspension periods must be imposed:
 - (a) 60 days upon a first conviction;
 - (b) 120 days upon a second conviction within a 3-year period; or
 - (c) 1 year upon a third or subsequent conviction within a 3-year period."

Approved April 17, 2009

CHAPTER NO. 257

[HB 374]

AN ACT GENERALLY REVISING ELECTRICIAN LICENSING LAWS; REVISING DEFINITIONS; REQUIRING ELECTRICIANS TO CARRY THEIR LICENSES ON JOBSITES; REVISING LICENSE EXEMPTION PROVISIONS; INCREASING PENALTIES FOR VIOLATING LICENSING LAWS; MAKING THE IMPOSITION OF CERTAIN PENALTIES PERMISSIVE RATHER THAN MANDATORY; AMENDING SECTIONS 37-68-101, 37-68-102, 37-68-103, 37-68-201, 37-68-301, 37-68-302, 37-68-303, 37-68-304, 37-68-305, 37-68-311, 37-68-315, AND 37-68-322, MCA; AND REPEALING SECTIONS 37-68-307 AND 37-68-314, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-68-101, MCA, is amended to read:

"37-68-101. Purpose. The purpose of this chapter is to:

- (1) protect the health and safety of the people of this state from the danger of electrically caused shocks, fires, and explosions;
- (2) protect property from the hazard of electrically caused fires and explosions;
- (3) establish a procedure for determining where and by whom electrical installations are to be made;
- (4) assure the public that persons making electrical installations are qualified; and
- (5) insure ensure that the electrical installations and electrical products made and sold in this state meet minimum safety standards."
 - Section 2. Section 37-68-102, MCA, is amended to read:
- "37-68-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:
 - (1) "Board" means the state electrical board provided for in 2-15-1764.
- (2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
- (3) "Electrical construction" means work performed by an individual, firm, or corporation in which an electrical connection is made to a supply of electricity or in which electricity is supplied to any electric equipment installation for which a permit is required by the authority having jurisdiction.
- (3)(4) (a) "Electrical contractor" means a person, firm, partnership, corporation, association, or combination of these *entities* that undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power.
- (b) The term does not include a person, firm, partnership, corporation, association, or combination of these entities A registered electrical engineer who that only plans or designs electrical installations is not an electrical contractor.
- (4)(5) "Journeyman electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes under the rules governing this work.

- (6) "Journeyman level experience" means being recognized as a journeyman electrician by a state or other legally authorized jurisdiction or having a minimum of 8,000 hours of practical experience.
- (5)(7) "Master electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out layout, and supervise the installation and repair of wiring apparatus and equipment for electric light, heat, power, and other purposes under the rules governing this work.
- (8) "Practical experience" means experience gained in the electrical construction industry consisting of layout, assembly, repairs, connecting and testing electrical fixtures, apparatus, and control equipment, and wiring in residential and nonresidential settings pursuant to the provisions of the national electrical code or pursuant to the requirements of another authority having jurisdiction.
 - (9) "Public utility" has the meaning provided in 69-3-101.
- (6)(10) "Residential electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes in residential construction consisting of less than five living units in a single structure under the rules governing this work."
 - **Section 3.** Section 37-68-103, MCA, is amended to read:
- "37-68-103. Exemptions. (1) Nothing in this This chapter shall be deemed does not to apply to the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility or a city. For purposes of this exemption, "communications equipment" includes telephone wire inside a customer's premises. Nothing in this This chapter prohibits does not prohibit a public utility from doing inside wiring to install, alter, repair, or maintain electrical equipment, installations, or facilities in buildings owned by the public utility if the work is accomplished by an employee who is a licensed electrician. If the building owned by the public utility is open to the public and the inside wiring constitutes major renovation or construction, the installation, alteration, repair, or maintenance of electrical equipment, installations, or facilities is subject to the permits and inspections required by law.
- (2) The licensing or inspection provisions of this chapter do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer, nor do they apply or to line work on the business premises of the employer when ordinary and customary in-plant or onsite installations, modifications, additions, or repairs are performed.
- (3) Nothing in this chapter shall be construed to This chapter does not require an individual to hold a license while or for doing to perform electrical work on his the individual's own property or residence provided that said the property or residence is maintained for his the individual's own use.
- (4) An individual, firm, partnership, or corporation may apply for licensure engage in business as an electrical contractor without an electrician's license if all electrical work performed by such the individual, firm, partnership, or corporation is under the direction, control, and supervision of a licensed master electrician or under the direction, control, and supervision of a licensed journeyman electrician for residential construction consisting of less than five living units in a single structure.

- (5) Any A person who plugs in an electrical appliance where an approved electrical outlet is already installed shall may not be considered as an installer.
- (6) No *The* provisions of this chapter shall may not in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure where the appliance is to be connected."

Section 4. Section 37-68-201, MCA, is amended to read:

- "37-68-201. Organization meetings rulemaking power seal. (1) Each July, the board shall elect from its membership a president, vice president, and secretary-treasurer.
- (2) The board shall meet quarterly and at other times that the board considers necessary.
 - (3) The board shall:
- (a) adopt rules for the administration of this chapter, for the licensing of electrical contractors, and for the examination of master, and journeyman, and residential electricians;
 - (b) adopt a seal;
- (c) eause provide for the prosecution and enjoinder of persons violating this chapter."

Section 5. Section 37-68-301, MCA, is amended to read:

- "37-68-301. License required to engage in electrical work. (1) A person may not engage in or work at the business, or trade, or ealling of or hold out to the public that the person is an electrician, electrical contractor, residential electrician, journeyman electrician, or master electrician in this state until the person has received from the department a license or permit to work as an electrical contractor, residential electrician, journeyman electrician, or master electrician.
- (2) A person who has received a license from the department under the provisions of this chapter shall carry the license, or proof of licensure, at all times while working at a job site jobsite and performing work that requires a license. Acceptable proof of licensure must be determined by the board and made known to each licensee by the department when a license is issued.
- (3) A private or public employment agency or labor union, or an employee thereof, of the agency or union who refers persons for employment by others may not refer a person for employment by others to perform the work of an electrical contractor, residential electrician, journeyman electrician, or master electrician in this state unless the person has received from the department a license or permit to work as an electrical contractor, residential electrician, journeyman electrician, or master electrician."

Section 6. Section 37-68-302, MCA, is amended to read:

"37-68-302. Unauthorized use of title. No A person, firm, partnership, corporation, or association shall may not assume or use the title or designation of licensed master electrician, master electrician, licensed journeyman electrician, journeyman electrician, or electrician electrician, residential electrician, licensed electrician, or electrician unless qualified and licensed under this chapter."

Section 7. Section 37-68-303, MCA, is amended to read:

"37-68-303. Apprentice may work under licensed electrician — record of apprentices. This chapter does not prohibit a person from working as an apprentice in the *electrical* trade of electrician with an electrician licensed under this chapter and under rules made adopted by the board. The name and residence address of each apprentice and the name and residence address of his the apprentice's employer shall must be filed with the department, and a record shall must be kept by the department showing the name and residence address of each apprentice."

Section 8. Section 37-68-304, MCA, is amended to read:

- "37-68-304. Master electricians application qualifications contents of examination fees. (1) An applicant for a master electrician's license shall furnish written evidence of *at least one of the following:*
- (a) being a graduate electrical engineer of an accredited college or university and of having 1 year a minimum of 2,000 hours of legally obtained practical electrical experience or that the applicant is a graduate of an electrical trade school and has at least 4 years of legally obtained practical experience in electrical work or: or
- (b) has had having at least 5 years 8,000 hours of legally obtained practical journeyman level experience in planning, laying out, or supervising the installation and repair of wiring, apparatus, or equipment for electrical light, heat, and power.
- (2) An applicant for a license as a master electrician shall file an application on a form furnished by the department, submit appropriate fees, and satisfactorily pass an examination prescribed by the board. The board shall, not less than 30 days prior to a scheduled examination, notify each applicant that the evidence submitted with the applicant's application is sufficient to qualify to take the examination or that the evidence is insufficient and is rejected. If the application is rejected, the board shall set forth the reasons in the notice to the applicant. The place of examinations must be designated by the board, and examinations must be held at least once a year and at other times as, in the opinion of the board, the number of applicants warrants.
- (3) The examination must consist of at least 30~80 questions designed to fairly test the applicant's knowledge and the applicant's technical application skills in the following subjects:
 - (a) the national electric code; and
 - (b) board rules and applicable laws under Title 37.
 - (b) cost estimating for electrical installments;
- (c) procurement and handling of materials needed for electrical installations and repair;
 - (d) reading blueprints for electrical work;
 - (e) drafting and layout of electrical circuits; and
 - (f) knowledge of practical electrical theory.
- (4) The board shall determine by rule the fees to be charged an applicant for each examination or reexamination. The fees must be commensurate with costs."

Section 9. Section 37-68-305, MCA, is amended to read:

"37-68-305. Journeyman and residential electricians — application — qualifications — contents of examination. (1) An applicant for a

journeyman electrician's license shall furnish written evidence of at least *one of the following*:

- (a) 4 years completion of an approved of apprenticeship program in the electrical trade; or
- (b) completion of an appropriate training program conducted by a bona fide union or trade association;
- (c) 4 years 8,000 hours of legally obtained practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power-; or
- (d) work in the electrical maintenance field for at least 20,000 hours, accompanied by written certification by the applicant's employer that the employer considers the applicant qualified to take the examination for which the applicant is applying and that the applicant has attained at least 20,000 hours in the electrical maintenance field while working for the employer. A minimum of 8,000 of these hours must be practical experience.
- (2) Applications for license and notice to the applicant must be made and given as in the case of in the same manner as for master electricians' licenses. The examination for a journeyman's license must consist of at least $\frac{30}{60}$ questions designed to fairly test the applicant's knowledge and the applicant's technical application *skills* in the following subjects:

(a) the Ohm's law;

- (b)(a) the national electric code; and
- (e)(b) layout and practical installation of electrical circuits board rules and applicable laws under Title 37.
- (2)(3) An applicant for a residential electrician's license shall furnish written evidence of at least one of the following:
- (a) at least 2 years of completion of an approved residential electrician apprenticeship program;
- (b) in the electrical trade or 2 years 4,000 hours of legally obtained practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power in residential construction consisting of less than five living units in a single structure.
- (c) completion of an appropriate training program conducted by a bona fide union or trade association; or
- (d) work in the electrical maintenance field for at least 20,000 hours, accompanied by written certification by the applicant's employer that the employer considers the applicant qualified to take the examination for which the applicant is applying and that the applicant has attained at least 20,000 hours in the electrical maintenance field while working for the employer. A minimum of 8,000 of these hours must be practical experience.
- (4) Application for license and notice to the applicant must be made and given as in the case of in the same manner as for master electricians' licenses. The examination for a residential electrician's license must consist of at least 30 questions designed to fairly test the applicant's knowledge and the applicant's technical application skills in the following subjects:

(a) the Ohm's law;

(b)(a) the national electric code; and

- (e)(b) board rules and applicable laws under Title 37 layout and practical installation of electrical circuits.
- (5) (a) For the purposes of this section "electrical maintenance" means the ordinary and customary installations in a plant or onsite in addition to modifications, additions, or repairs that are limited to replacing ballasts, relamping, trouble-shooting motor controls, and replacing motors, breakers, or magnetic starters in a kind-for-kind manner. The term includes the connection of specific items of specialized equipment that can be directly connected to an existing branch circuit panel by means of factory-installed leads.
- (b) The term does not include installation of a new circuit to operate the equipment described in subsection (5)(a) or installation that requires the size of supply conductors to be increased."

Section 10. Section 37-68-311, MCA, is amended to read:

- "37-68-311. Application fee license fee specific exemption for apprentices. (1) Master electricians and journeyman or residential electricians installing or intending to install for hire electric wiring or equipment to convey electric current or apparatus to be operated by electric current shall apply for a license to the department. The application must be on a form furnished by the department and must be accompanied by an application fee set by the board. The forms must state the applicant's full name and address, the extent of work experience, and other information required by the board. If the applicant has complied with the rules adopted by the board and, being qualified, has successfully completed the examination, the department shall issue the proper license to the applicant.
- (2) A person serving a 4-year electrician in an approved journeyman apprenticeship program or a residential apprenticeship program under the supervision of a licensed electrician is exempt from the licensing provision of this section during training. Credit for the time spent in an electricial school must be given to the master electrician, journeyman electrician, residential electrician, or apprentice, up to a total of 2 years, on the 4-year requirement.
- (3) In addition to the temporary permits authorized in 37-1-305, the board may, on a case-by-case basis at the board's discretion and in accordance with criteria determined by the board, renew issue a second temporary practice permit for a person who fails the first license examination for which the person is eligible but and who submits a temporary practice permit fee with a request for a second temporary practice permit renewal application to the board stating that the person intends to retake the license examination on the next available date within 3 months of failing the first examination."

Section 11. Section 37-68-315, MCA, is amended to read:

- "37-68-315. **Proof** *Presentation* of license. (1) An employee of a private or public employment agency or labor union, a building code compliance inspector, an employee of the department, a person who is professionally responsible for a job site, or an electrician licensed under Title 37, chapter 68, this chapter has the right to ask a person who is working at a job site jobsite doing work that requires an electrician's license to present the person's license provide proof of licensure. If the person performing the work is unable to furnish the person's license proof of licensure, the requesting person may report that fact to the board or the department.
- (2) An employee of the department may issue a citation to and collect a fine, as provided in 37-68-316, from a person at a job site jobsite where the person is

performing electrical work if the person fails to display an electrician's license or proof of licensure at the request of the department inspector employee."

Section 12. Section 37-68-322, MCA, is amended to read:

- **"37-68-322. Penalty.** (1) (a) Any A person or corporation violating who knowingly violates any provision of this chapter shall may upon conviction of a violation:
- (a) if a person, be punished by a fine of not more than \$500 \$750, by imprisonment for a term not to exceed 6 months, by revocation of the license, or by any combination of the fine, imprisonment, and revocation, in the discretion of the court; and.
- (b) if If a corporation, or other business entity violates any provision of this chapter, it may be punished by a fine of not more than \$1,000.
- (2) Any officer or agent of a corporation or other business entity or member or agent of a partnership or association who knowingly and personally participates in or is an accessory to any violation of this chapter by the partnership, association, or corporation, other business entity, partnership, or association shall be is subject to the penalties prescribed for individuals in subsection (1)(a).
- (3) A violation of this chapter is a continuing violation, and the statute of limitations is tolled until the violation ceases. The county attorney shall, upon request of the board, prosecute any violation of the licensing requirements of this chapter."

Section 13. Repealer. Sections 37-68-307 and 37-68-314, MCA, are repealed.

Approved April 17, 2009

CHAPTER NO. 258

[HB 404]

AN ACT PROVIDING AUTHORITY TO THE BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS TO PRESCRIBE UNIFORM STANDARDS GOVERNING CERTIFICATES OF SURVEY AND FINAL SUBDIVISION PLATS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Board to prescribe standards. The board of professional engineers and professional land surveyors shall, in conformance with the Montana Administrative Procedure Act, prescribe uniform standards governing certificates of survey and final subdivision plats.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 76, chapter 3, part 4, and the provisions of Title 76, chapter 3, part 4, apply to [section 1].

Approved April 16, 2009

CHAPTER NO. 259

[HB 412]

AN ACT REVISING THE LIQUOR EXCISE TAX RATE SCHEDULE TO PROVIDE ADDITIONAL RATES FOR COMPANIES THAT PRODUCE LESS THAN 200,000 PROOF GALLONS OF LIQUOR; AMENDING SECTION

16-1-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-401, MCA, is amended to read:

- "16-1-401. Liquor excise tax. (1) The department shall collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at the a rate of: that is the percent of the retail selling price determined in accordance with the following schedule based on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed the liquor and sold the specified number of proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section:
- (a) 16% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;
- (b) 13.8% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

$Nation wide\ production$	Tax rate
Lessthan20,000proofgallons	3%
$20,000\mathrm{to}50,000\mathrm{proof}\mathrm{gallons}$	8%
50,001to200,000proofgallons	13.8%
Over200,000proofgallons	16%

(2) The department shall retain the amount of the excise tax received in a separate account and shall, in accordance with the provisions of 17-2-124, deposit, to the credit of the general fund, the amount collected and received not later than the 10th day of each month."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to liquor sold and delivered after July 1, 2009.

Approved April 17, 2009

CHAPTER NO. 260

[HB 416]

AN ACT EXEMPTING CERTAIN BIODIESEL PRODUCED FROM WASTE VEGETABLE OIL FEEDSTOCK FROM THE SPECIAL FUEL TAX; PROVIDING DEFINITIONS; PROVIDING REGISTRATION AND REPORTING REQUIREMENTS; AMENDING SECTION 15-70-301, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Exemption from special fuel tax. (1) Subject to the conditions of this section, a special biodiesel fuel producer is exempt from the special fuel tax imposed by 15-70-321 on biodiesel produced by the producer from waste vegetable oil feedstock.

- (2) This section does not apply to special fuel used for agricultural purposes pursuant to 15-70-362.
- (3) To qualify for the exemption under this section, the special biodiesel fuel producer shall:
 - (a) register annually with the department; and
- (b) report on the amount of biodiesel produced and used by the producer in a calendar year by February 15 of the succeeding year.

Section 2. Section 15-70-301, MCA, is amended to read:

- **"15-70-301. Definitions.** As used in this part, the following definitions apply:
- (1) "Agricultural use" means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm or income reports for tax purposes as required by the United States internal revenue service.
- (2) (a) "Biodiesel" means a fuel produced from monoalkyl esters of long-chain fatty acids derived from vegetable oils, renewable lipids, animal fats, or any combination of those ingredients. The fuel must meet the requirements of ASTM D6751, also known as the Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society for testing and materials.
 - (b) Biodiesel is also known as "B-100".
- (3) "Biodiesel blend" means a blend of biodiesel and petroleum diesel fuel that is at least 2% biodiesel.
 - (4) "Bond" means:
- (a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or
- (b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.
- (5) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.
- (6) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.
 - (7) "Department" means the department of transportation.
- (8) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:
- (i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;
- (ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

- (iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.
- (b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.
- (c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.
 - (9) (a) "Distributor" means:
- (a)(i) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;
 - (b)(ii) an importer who imports special fuel for sale, use, or distribution;
- (e)(iii) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and
 - (d)(iv) an exporter.
- (b) The term does not include a special biodiesel fuel producer who produces biodiesel from waste vegetable oil feedstock in this state for the operation of motor vehicles owned or controlled by the person upon the public roads and highways of the state.
- (10) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.
- (11) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.
- (12) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.
- (13) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.
 - (14) "Improperly imported fuel" means special fuel that is:
- (a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or
- (b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.
- (15) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.
- (16) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

- (17) "Public roads and highways of this state" means all streets, roads, highways, and related structures:
- (a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;
 - (b) dedicated to public use;
- (c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or
- (d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.
- (18) "Special biodiesel fuel producer" means a person who produces less than 2,500 gallons annually of biodiesel fuel from waste vegetable oil feedstock for the operation of motor vehicles owned or controlled by the person upon the public roads and highways of the state.
- (18)(19) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes biodiesel and additives of all types when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.
 - (19)(20) "Special fuel dealer" means:
- (a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;
- (b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or
- (c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.
- (20)(21) (a) "Special fuel user" means a person who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.
 - (b) The term does not include:
- (i) the U.S. government, a state, a county, an incorporated city or town, or a school district of this state; or
- (ii) a special biodiesel fuel producer who produces biodiesel from waste vegetable oil feedstock for the operation of motor vehicles owned or controlled by the person upon the public roads and highways of the state.
- (21)(22) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state.
- (23) "Waste vegetable oil" means used cooking oil gathered from restaurants or commercial food processors."
- **Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 70, part 3, and the provisions of Title 15, chapter 70, part 3, apply to [section 1].
 - Section 4. Effective date. [This act] is effective July 1, 2009.

Section 5. Applicability. [This act] applies to biodiesel produced from waste vegetable oil feedstock produced after June 30, 2009.

Approved April 17, 2009

CHAPTER NO. 261

[HB 466]

AN ACT PROVIDING THAT EMPLOYEES OF ALL POLITICAL SUBDIVISIONS OF THE STATE WHO ARE MEMBERS OF THE NATIONAL GUARD OR MILITARY RESERVES ARE ENTITLED TO PAID MILITARY LEAVE; AMENDING SECTION 10-1-1009, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-1009, MCA, is amended to read:

"10-1-1009. Paid military leave for public employees. (1) A state, city, town, or county An employee of the state or of any political subdivision, as defined in 2-9-101, who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States and who has been an employee for a period of at least 6 months must be given leave of absence with pay accruing at a rate of 15 working days 120 hours in a calendar year, or academic year if applicable, for performing military service.

- (2) Military leave may not be charged against the employee's annual vacation time.
- (3) Unused military leave must be carried over to the next calendar year, or academic year if applicable, but may not exceed a total of 30 days 240 hours in any calendar or academic year."

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved April 17, 2009

CHAPTER NO. 262

[HB 544]

AN ACT PROVIDING THAT A DISABILITY INSURER MAY NOT CHARGE THE INSURED ANY FEES OR PENALTY FOR CANCELING COVERAGE THAT THE INSURED HAS PAID FOR IN ADVANCE; REQUIRING THE DISABILITY INSURER TO REFUND ANY UNEARNED PORTION OF THE PREMIUM TO THE INSURED; AND CREATING AN EXCEPTION FOR CERTAIN SHORT-TERM DISABILITY POLICIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Return of unearned premium. If an insured pays a premium in advance for coverage to any disability insurer licensed in this state and the insured subsequently cancels the coverage, the disability insurer shall refund the unearned portion of the premium. The disability insurer may consider premium to be earned only on a calendar month basis. The disability insurer may not charge the insured any fees or penalty for canceling the coverage. This section does not apply to a short-term disability policy that has a duration of 6 months or less.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 1].

Approved April 17, 2009

CHAPTER NO. 263

[HB 574]

AN ACT REVISING THE ELEMENTS OF THE OFFENSES OF BURGLARY AND AGGRAVATED BURGLARY; AND AMENDING SECTION 45-6-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-6-204, MCA, is amended to read:

- **"45-6-204. Burglary.** (1) A person commits the offense of burglary if he *the person* knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense therein and:
- (a) the person has the purpose to commit an offense in the occupied structure; or
- $(b)\ the\ person\ knowingly\ or\ purposely\ commits\ any\ other\ offense\ within\ that\ structure.$
- (2) A person commits the offense of aggravated burglary if he *the person* knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense therein and:
- (a) (i) the person has the purpose to commit an offense in the occupied structure; or
- (ii) the person knowingly or purposely commits any other offense within that structure; and
- (a)(b) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he after committing the offense:
- (i) the person or another participant in the offense is armed with explosives or a weapon; or
- (b) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he
- (ii) the person purposely, knowingly, or negligently inflicts or attempts to inflict bodily injury upon anyone.
- (3) A person convicted of the offense of burglary shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed \$50,000, or both. A person convicted of the offense of aggravated burglary shall be imprisoned in the state prison for any term not to exceed 40 years or be fined an amount not to exceed \$50,000, or both."

Approved April 17, 2009

CHAPTER NO. 264

[HB 588]

AN ACT REVISING THE DISTRIBUTION OF COAL GROSS PROCEEDS TAXES TO LOCAL TAXING JURISDICTIONS AND THE STATE;

ESTABLISHING A BASIS FOR THE DISTRIBUTION OF COAL GROSS PROCEEDS TAXES; PROVIDING THAT COAL GROSS PROCEEDS TAXES MUST BE DISTRIBUTED ACCORDING TO THE PREVIOUS FISCAL YEAR MILL LEVIES; ELIMINATING THE DISTRIBUTION OF COAL GROSS PROCEEDS BASED ON THE UNIT VALUE CALCULATION; REMOVING THE STATUTORY APPROPRIATION OF COAL GROSS PROCEEDS TAXES; AMENDING SECTIONS 15-23-703 AND 17-7-502, MCA; REPEALING SECTIONS 15-23-705, 15-23-706, AND 15-23-707, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-23-703, MCA, is amended to read:

- "15-23-703. Taxation of gross proceeds taxable value for county classification and guaranteed tax base aid to schools nontax purposes.

 (1) The department shall compute from the reported value of coal gross proceeds from coal a tax roll that must be transmitted to the county treasurer on or before September 15 of each year. The department may not levy or assess any mills against the reported coal gross proceeds of coal but shall levy a tax of 5% against the value of the reported gross proceeds coal as provided in 15-23-701(1)(d). The county treasurer shall give full notice to each coal producer of the taxes due and shall collect the taxes.
- (2) For county classification and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102.
- (3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the state, county, and eligible school districts in the county the amount of the coal gross proceeds tax, determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated, and sold on which the coal gross proceeds tax was owed during the preceding calendar year.
- (4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount determined under subsection (3) and the amounts received under 15-23-706:
- (a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and
- (b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988 production or used nontax revenue, such as impact aid money, as provided in 20 U.S.C. 7701, et seq., in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in the 1990 school fiscal year in the school district.
- (5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each year, send the excess revenue, excluding any protested coal gross proceeds tax revenue, to the department for redistribution as provided in 15-23-706.
- (b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.

- (3) (a) Except as provided in subsection (6) and subject to subsection (3)(b), coal gross proceeds taxes must be allocated to the state, county, and school districts in the same relative proportions as the taxes were distributed in fiscal year 1990.
- (b) The county treasurer shall multiply the coal gross proceeds taxes collected in the county under this part by the relative proportions determined for the state, county, and school districts under subsection (3)(a). Those amounts must be distributed as follows:
- (i) the state share must be distributed in the relative proportions required by levies for state purposes in the same manner as property taxes were distributed in fiscal year 1990;
- (ii) except as provided in subsection (4), the county share must be distributed in the relative proportions required by levies for county purposes, other than an elementary school or high school, in the same manner as property taxes were distributed in the previous fiscal year;
- (iii) except as provided in subsection (5), the school districts' share must be distributed in the relative proportions required by levies for school district purposes in the same manner as property taxes were distributed in the previous fiscal year.
- (6)(4) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection (4)(a) (3)(b)(i), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:
- (a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in *the previous* fiscal year 1990.
- (b) If the allocation in subsection $\frac{(6)(a)}{(4)}(a)$ exceeds the total budget for of a taxing unit, the commissioners may direct the county treasurer to allocate reallocate the excess to any taxing unit within the county.
- (7)(5) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:
- (a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in *the previous* fiscal year 1990.
- (b) If the allocation under subsection (7)(a) (5)(a) exceeds the total budget for a fund, the trustees may allocate reallocate the excess to any budgeted fund of the school district.
- (8)(6) The Except as provided in subsections (7) and (8), the county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year.
- (7) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds under subsection (6) in the same manner as provided in subsection (4).
- (8) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under subsection (6) in the same manner as provided in subsection (5)."

Section 2. Section 17-7-502, MCA, is amended to read:

- "17-7-502. Statutory appropriations definition requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.
- (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:
- (a) The law containing the statutory authority must be listed in subsection (3).
- (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.
- (3) The following laws are the only laws containing statutory appropriations: $2 \cdot 17 \cdot 105$; $5 \cdot 11 \cdot 120$; $5 \cdot 11 \cdot 407$; $5 \cdot 13 \cdot 403$; $7 \cdot 4 \cdot 2502$; $10 \cdot 1 \cdot 1202$; $10 \cdot 1 \cdot 1303$; $10 \cdot 2 \cdot 603$; $10 \cdot 3 \cdot 203$; $10 \cdot 3 \cdot 310$; $10 \cdot 3 \cdot 312$; $10 \cdot 3 \cdot 314$; $10 \cdot 4 \cdot 301$; $15 \cdot 1 \cdot 121$; $15 \cdot 1 \cdot 218$; $15 \cdot 23 \cdot 706$; $15 \cdot 31 \cdot 906$; $15 \cdot 35 \cdot 108$; $15 \cdot 36 \cdot 332$; $15 \cdot 37 \cdot 117$; $15 \cdot 39 \cdot 110$; $15 \cdot 65 \cdot 121$; $15 \cdot 70 \cdot 101$; $15 \cdot 70 \cdot 369$; $15 \cdot 70 \cdot 601$; $16 \cdot 11 \cdot 509$; $17 \cdot 3 \cdot 106$; $17 \cdot 3 \cdot 212$; $17 \cdot 3 \cdot 222$; $17 \cdot 3 \cdot 241$; $17 \cdot 6 \cdot 101$; $17 \cdot 7 \cdot 304$; $18 \cdot 11 \cdot 112$; $19 \cdot 3 \cdot 319$; $19 \cdot 6 \cdot 404$; $19 \cdot 9 \cdot 702$; $19 \cdot 13 \cdot 604$; $19 \cdot 17 \cdot 301$; $19 \cdot 18 \cdot 512$; $19 \cdot 19 \cdot 305$; $19 \cdot 19 \cdot 506$; $19 \cdot 20 \cdot 604$; $19 \cdot 20 \cdot 607$; $19 \cdot 21 \cdot 203$; $20 \cdot 8 \cdot 107$; $20 \cdot 9 \cdot 534$; $20 \cdot 9 \cdot 622$; $20 \cdot 26 \cdot 1503$; $22 \cdot 3 \cdot 1004$; $23 \cdot 4 \cdot 105$; $23 \cdot 4 \cdot 204$; $23 \cdot 4 \cdot 204$; $23 \cdot 4 \cdot 302$; $23 \cdot 4 \cdot 304$; $23 \cdot 5 \cdot 306$; $23 \cdot 5 \cdot 409$; $23 \cdot 5 \cdot 612$; $23 \cdot 7 \cdot 301$; $23 \cdot 7 \cdot 402$; $37 \cdot 43 \cdot 204$; $37 \cdot 51 \cdot 501$; $39 \cdot 71 \cdot 503$; $41 \cdot 5 \cdot 2011$; $42 \cdot 2 \cdot 105$; $44 \cdot 1 \cdot 504$; $44 \cdot 12 \cdot 206$; $44 \cdot 13 \cdot 102$; $50 \cdot 4 \cdot 623$; $53 \cdot 1 \cdot 109$; $53 \cdot 6 \cdot 703$; $53 \cdot 24 \cdot 108$; $53 \cdot 24 \cdot 206$; $60 \cdot 11 \cdot 115$; $61 \cdot 3 \cdot 415$; $69 \cdot 3 \cdot 870$; $75 \cdot 1 \cdot 1101$; $75 \cdot 5 \cdot 1108$; $75 \cdot 6 \cdot 214$; $75 \cdot 11 \cdot 313$; $76 \cdot 13 \cdot 150$; $77 \cdot 1 \cdot 108$; $77 \cdot 2 \cdot 362$; $80 \cdot 2 \cdot 222$; $80 \cdot 4 \cdot 416$; $80 \cdot 5 \cdot 510$; $80 \cdot 11 \cdot 518$; $82 \cdot 11 \cdot 161$; $87 \cdot 1 \cdot 513$; $90 \cdot 1 \cdot 115$; $90 \cdot 1 \cdot 205$; $90 \cdot 3 \cdot 1003$; and $90 \cdot 9 \cdot 306$.
- (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)"

Section 3. Repealer. Sections 15-23-705, 15-23-706, and 15-23-707, MCA, are repealed.

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 5. Effective date. [This act] is effective July 1, 2009.

Section 6. Applicability. (1) [This act] applies retroactively, as provided in 1-2-109, to coal produced and sold after December 31, 2007.

(2) [This act] applies to coal gross proceeds taxes distributed for fiscal years beginning after June 30, 2009.

Approved April 17, 2009

CHAPTER NO. 265

[SB 9]

AN ACT ALLOWING FOR CERTAIN PUBLIC TRANSPORTATION SYSTEMS TO BE INCLUDED IN PROJECTS FINANCED BY MUNICIPAL REVENUE BONDS; AMENDING SECTION 7-7-4402, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-4402, MCA, is amended to read:

"7-7-4402. **Definitions.** Whenever *As* used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

- (1) The term "governing body" shall include includes bodies and boards, by whatsoever names they may be known, having charge of finances and management of a municipality.
- (2) The term "municipality" shall include includes any city or any town, however organized.
- (3) The term "undertaking" $\frac{1}{2}$ shall mean means any one or a combination of the following:
- (a) water and sewer systems, together with all parts thereof of the systems and appurtenances thereto to the systems, including but not limited to supply and distribution systems, reservoirs, dams, and sewage treatment and disposal works;
 - (b) public airport construction and public airport building;
 - (c) convention facilities;
 - (d) public recreation facilities; and
- (e) public parking facilities, solid waste management systems, or other revenue-producing facilities and services authorized in these codes for cities and towns: and
- (f) public transportation systems, including passenger buses, trolleys, passenger trains and lines, light rail trains and lines, and the facilities associated with those systems."

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved April 17, 2009

CHAPTER NO. 266

[SB 71]

AN ACT REVISING STATE REMEDIATION LAWS; ALLOWING REIMBURSEMENT OF CLAIMS FROM A LEAD LIABLE PERSON UPON COMPLETION AND APPROVAL OF CERTAIN REPORTS; CLARIFYING

THE DEPARTMENT'S RESPONSIBILITY TO IDENTIFY PERSONS LIABLE FOR A RELEASE OR THREATENED RELEASE; AND AMENDING SECTIONS 75-10-743 AND 75-10-745, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-743, MCA, is amended to read:

"75-10-743. Orphan share state special revenue account — reimbursement of claims — payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and, except as provided in subsections (9) and (10), must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-751 and to pay costs incurred by the department in defending the orphan share.

- (2) There must be deposited in the orphan share account:
- (a) all penalties assessed pursuant to 75-10-750(12);
- (b) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;
- (c) unencumbered funds remaining in the abandoned mines state special revenue account;
 - (d) interest income on the account;
 - (e) funds received from settlements pursuant to 75-10-719(7); and
- (f) funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).
- (3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.
- (4) Except as provided in subsections (6) and (7), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.
- (5) Except as provided in subsection (6), reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of a petition provided for in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.
- (6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-751 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:
- (i) If sufficient funds are available in the orphan share fund, the department's costs incurred in defending the orphan share must be paid from the orphan share fund in proportion to the share of liability allocated to the orphan share.

- (ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-751 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.
- (b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).
- (c) A state agency that is liable for remedial action costs incurred has a claim against the orphan share fund and must be reimbursed as provided in subsection (3). The agency may submit a claim before or after remedial action is complete. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs. The agency may be reimbursed only after:
- (i) its liability has been determined pursuant to 75-10-742 through 75-10-751 or by a court of competent jurisdiction;
 - (ii) it has received a notice letter pursuant to 75-10-711; and
 - (iii) the department has approved the costs.
- (7) (a) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.
- (b) The department may reimburse claims from a lead liable person upon completion and department approval of a report evaluating the nature and extent of contamination and a report formulating and evaluating final remediation alternatives. This early reimbursement is limited to those eligible costs incurred by the lead liable person for the preparation of the reports.
- (8) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process.
- (9) (a) For the biennium beginning July 1, 2005, up to \$1.25 million may be used by the department to pay the costs incurred by the department in contracting for evaluating the extent of contamination and formulating final remediation alternatives for releases at the Kalispell pole and timber, reliance refinery company, and Yale oil corporation facility complex. If the department spends less than \$1.25 million for those purposes, the remaining funds must be spent for remediation of the facility complex. The department may not seek recovery of the \$1.25 million from potentially liable persons.
- (b) The money spent pursuant to subsection (9)(a) must be credited against the amount owed by the state agency in a judgment or settlement agreement for payment of the remedial action costs at the facility for which the money was spent.
- (c) The department shall consult with the noticed potentially liable persons regarding contractor selection and determination of the scope of the work for contract tasks. The department shall also provide the noticed potentially liable

persons with contract performance updates and shall consult with the noticed potentially liable persons regarding expenses and progress on contract tasks.

- (d) The department shall contract for the compilation, assessment, and summarization of the existing data pertaining to the complex described in subsection (9)(a), for recommendations for and conducting of additional investigations and studies necessary to develop remediation alternatives, and for development and assessment of remediation alternatives.
- (e) Unless the department is delayed by a challenge to a contracting action, multiple contractor selection processes, or other unanticipated circumstances, the activities authorized under subsection (9)(a) must meet the following schedule:
- (i) Contracts for investigations and studies must be in place by August 31, 2005.
 - (ii) A summary of existing data must be prepared by December 31, 2005.
- (iii) The contract or contract task order for investigations, studies, and development and evaluation of final remediation alternatives must be in place by April 30, 2006.
- (iv) All intended field work must be completed by November 30, 2006, and to the extent that this field work indicates that followup is necessary, the followup field work must be completed as soon as possible or addressed in the report that must be submitted pursuant to subsection (9)(g).
- (v) The contractor shall submit evaluations of the extent of contamination by October 31, 2006.
- (vi) The contractor shall submit final remediation alternatives by July 31, 2007.
- (f) The department shall report to the environmental quality council quarterly during calendar years 2005, 2006, and 2007 regarding the progress being made to meet the requirements of subsection (9)(e). The report must include information on expenditures.
- (g) If investigations completed under this subsection (9) indicate the need for additional information or for pilot tests and other related remedial action process activities, the department shall prepare a report identifying the rationale and estimated costs for additional work and present it to the environmental quality council during the spring of 2007.
- (h) The department shall provide to the environmental quality council copies of investigations and reports completed pursuant to subsection (9)(d).
- (10) (a) Beginning in the fiscal year that commences July 1, 2005, the *The* department shall transfer from the orphan share account to the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 \$1.2 million in each fiscal year until the board of investments makes the certification pursuant to subsection (10)(b) of this section.
- (b) (i) The board of investments shall monitor the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 to determine when the amount of money in the long-term or perpetual water treatment permanent trust fund will be sufficient, with future earnings, to provide a fund balance of \$19.3 million on January 1, 2018.
- (ii) When the board of investments makes the determination pursuant to subsection (10)(b)(i), the board of investments shall notify the department and certify to the department the amount of money, if any, that must be transferred

during the fiscal year in which the board of investments makes its determination pursuant to subsection (10)(b)(i) in order to provide a fund balance of \$19.3 million on January 1, 2018.

- (iii) In the fiscal year that the board of investments makes its determination and notifies the department, the department shall transfer only the amount certified by the board of investments, if any, and may not make additional transfers during subsequent fiscal years.
- (11) For the biennium beginning July 1, 2007, the department shall transfer from the orphan share fund:
- (a) \$600,000 to the hazardous waste/CERCLA account provided for in 75-10-621 to provide for a positive account balance;
- (b) \$50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161 to provide for a positive account balance;
- (c) \$2 million to the environmental quality protection fund established in 75-10-704 to be used by the department to expedite the cleanup of the burlington northern Santa Fe Livingston site;
- (d) \$200,000 to the natural resources operations state special revenue account established in 15-38-301 to provide for a positive account balance; and
- (e) \$800,000 to the natural resources projects state special revenue account established in 15-38-302 to provide for a positive account balance."
 - **Section 2.** Section 75-10-745, MCA, is amended to read:
- "75-10-745. Allocation of liability process initiation. (1) For a facility at which the department has initiated a remedial action under 75-10-711 through the issuance of a notice letter prior to July 1, 1997, any person determined to be potentially liable under 75-10-715 may petition the department in writing to initiate the allocation process. The right to participate in the allocation process is waived if the written petition is not provided to the department prior to the completion of remedial actions, except for operation and maintenance, at the facility.
- (2) For a facility at which the department has not initiated a remedial action through the issuance of a notice letter under 75-10-711, any person potentially liable under 75-10-715 who has received approval of a voluntary cleanup plan under 75-10-730 through 75-10-738 may petition the department in writing to initiate the allocation process. The right to participate in the allocation process is waived if the written petition is not provided to the department prior to the completion of remedial actions, except for operation and maintenance, at the facility.
- (3) For a facility at which the department initiates a remedial action through the issuance of a notice letter under 75-10-711 after July 1, 1997, any person potentially liable under 75-10-715 may petition the department in writing within 60 days of the date of the notice letter to initiate the allocation process. Any potentially liable person under 75-10-715 who does not provide a written petition to the department within this timeframe waives the right to participate in the allocation process and remains liable as provided in 75-10-715. The notice letter sent by the department must advise that a failure to petition the department for allocation as provided in this subsection will result in a waiver of the right to participate in the allocation process.
- (4) The allocation process may be initiated and may proceed upon written petition of one or more potentially liable persons.

- (5) Prior to the initiation of discovery as provided in 75-10-747, all persons who participate in the allocation process shall agree in writing that the allocator's decision is binding, subject only to the provisions of 75-10-750(9) and the appeal provisions of 75-10-751.
- (6) All liable or potentially liable persons under 75-10-715 who do not participate in the allocation process under 75-10-742 through 75-10-751 remain liable as provided in 75-10-715.
- (7) Upon receipt of a written petition under subsection (1) or (2) or when initiating actions at a facility without a prior notice letter under subsection (3), the department shall:
- (a) conduct a good faith investigation and may use its authority in 75-10-707 to identify persons who may be liable under 75-10-715; and
- (a) make a diligent good faith effort to determine the identity of the person or persons liable for the release or threatened release; and
- (b) issue notice letters to one or more of the persons it identifies as potentially liable under 75-10-715. If a person petitions the department to initiate the allocation process as provided for in subsection (8), the department shall issue notice letters or nomination letters pursuant to subsection (9) to the persons it identified as potentially liable under 75-10-715 who were not previously given notice.
- (8) A person who receives a notice letter may, within 60 days from the date of the notice letter, petition the department in writing to participate in an allocation process and provide the department with the identity of other potentially liable persons under 75-10-715 who were not given notice by the department. When identifying additional potentially liable persons, the person given notice shall provide to the department a statement and credible evidence showing that there is a basis in law and fact to determine that the identified person is potentially liable under 75-10-715.
- (9) Within 30 days of receipt of the information provided for in subsection (8), the department may issue a notice letter to an identified person whom the department determines is a potentially liable person under 75-10-715 or to a person whom the department identified in subsection (7) and who was not previously given notice. If the department does not issue a notice letter to an identified person, the department shall issue the person a nomination letter indicating that the person has been identified as potentially liable under 75-10-715. The nomination letter must state that the person has the right to participate in the allocation process and that if the person does not participate and is found liable, the person remains subject to liability as provided in 75-10-715. If the newly noticed or nominated person chooses to participate in the allocation process, the person shall provide a written petition of the person's intent to participate in the allocation process to the department within 30 days of the date of the notice or nomination letter. A failure to petition the department for allocation as provided in this subsection results in a waiver of the right to participate in the allocation process.
- (10) If a person nominated under subsection (9) cannot be readily located, the department shall, within 30 days of receipt of the information provided for in subsection (8), publish one notice of the person's nomination, along with the information contained in a nomination letter under subsection (9), in a newspaper of general circulation in the county where all or a portion of the facility is located. The notice must state that the person has 30 days from the date of the notice to petition the department, in writing, to participate in the

allocation process. A failure to petition the department for allocation as provided in this subsection results in a waiver of the right to participate in the allocation process.

- (11) If one or more potentially liable persons petition in writing for an allocation process under subsection (1), (2), or (3) and the department determines that the facility has a potential orphan share, the department shall:
- (a) publish a notice and brief description of the facility in a newspaper of general circulation in the area affected and provide at least 30 days for submission of public comment on the identification of potentially liable persons under 75-10-715; and
- (b) notify interested persons and the county commissioners of each county in which all or a portion of the facility is located and provide at least 30 days for submission of comments on the identification of potentially liable persons under 75-10-715.
- (12) If a nominated person participates in the allocation and the person is assigned a zero share of liability by the allocator, that person's reasonable costs of participating in the allocation, including attorney fees, must be borne by the person who proposed the addition of the nominated person to the allocation.
- (13) If the department anticipates that a facility may have an orphan share, the department shall represent the orphan share in the allocation process. If the state is a potentially liable person under 75-10-715, an agency or entity other than the department shall represent the state in the allocation process.
- (14) Except as provided in subsection (15), whenever the department is involved in allocation processes on five facilities, other allocation processes may be stayed before the discovery stage provided in 75-10-747. Upon completion of an allocation provided in 75-10-750 or 75-10-751, execution of a stipulated agreement under 75-10-750, or a default to liability as provided in 75-10-715 for one of the five facilities, the department shall notify the potentially liable persons for the facility on the waiting list that has the earliest date of written petition. Discovery under 75-10-747 must begin within 10 days of department notification.
- (15) A stay on the allocation process may not occur under subsection (14) if all persons participating in the allocation process agree in writing that there is no orphan share and that the state is not a potentially liable person under 75-10-715. The agreement is binding upon all noticed or nominated persons.
- (16) If, after initiating the process, a potentially liable person elects to discontinue participation in the process, the person remains subject to liability as provided in 75-10-715."

Approved April 17, 2009

CHAPTER NO. 267

[SB 95]

AN ACT AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO USE TEMPORARY NUTRIENT CRITERIA TO ESTABLISH PERMIT LIMITS FOR POINT SOURCE DISCHARGES TO SURFACE WATER; ESTABLISHING A TIME LIMIT FOR TEMPORARY CRITERIA; REQUIRING A REPORT TO THE ENVIRONMENTAL QUALITY COUNCIL; AND AMENDING SECTION 75-5-103, MCA.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Section 75-5-103, MCA, is amended to read:
- "75-5-103. **Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:
- (1) (a) "Base numeric nutrient standards" means numeric water quality standards for nutrients in surface water that are adopted to protect the designated uses of a surface water body.
- (b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.
- (2) "Board" means the board of environmental review provided for in 2-15-3502.
- (2)(3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.
- (3)(4) "Council" means the water pollution control advisory council provided for in 2-15-2107.
- (4)(5) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.
- (b) The term does not mean new data to be obtained as a result of department efforts.
- (5)(6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).
- (6)(7) "Department" means the department of environmental quality provided for in 2-15-3501.
- (7)(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.
- (8)(9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.
- (9)(10) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.
 - (10)(11) "High-quality waters" means all state waters, except:
- (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and
 - (b) surface waters that:
- (i) are not capable of supporting any one of the designated uses for their classification; or
- (ii) have zero flow or surface expression for more than 270 days during most years.
- (11)(12) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

- (12)(13) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.
- (13)(14) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.
- (14)(15) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.
- (15)(16) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.
- (16)(17) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.
- (17)(18) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.
- (18)(19) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.
- (20) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of temporary nutrient criteria, and the implementation of those standards and criteria together with associated economic impacts.
- (19)(21) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.
 - (20)(22) "Outstanding resource waters" means:
- (a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or
- (b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.
- $\frac{(21)}{(23)}$ "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.
- (22)(24) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.
- (23)(25) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(24)(26) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(25)(27) (a) "Pollution" means:

- (i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or
- (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.
- (b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.
- (26)(28) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.
- (27)(29) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.
- (28)(30) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.
- (29)(31) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.
 - (b) The term does not apply to:
- (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or
- (ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.
- (30)(32) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.
- (33) "Temporary nutrient criteria" means numeric permit limits for nutrients that are based on a determination that the base numeric nutrient standards cannot be achieved by a particular point source discharger due to economic impacts or the limits of technology.
- (31)(34) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the

water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

- (a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or
 - (b) documented adverse pollution trends.
- (32)(35) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.
- (33)(36) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.
- (34)(37) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.
- (35)(38) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.
- (36)(39) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.
- (37)(40) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704."
- **Section 2. Temporary nutrient criteria.** (1) The department may, on a case-by-case basis, approve the use of temporary nutrient criteria in a discharge permit based upon adequate justification pursuant to subsection (2) that attainment of the base numeric nutrient standards is precluded due to economic impacts or the limits of technology.
- (2) (a) The department, in consultation with the nutrient work group, shall develop guidelines to ensure that the economic impacts from base numeric nutrient standards on public and private systems are equally and adequately addressed. In developing those guidelines, the department and the nutrient work group shall consider economic impacts appropriate for application within Montana and may also consider relevant guidance of the United States environmental protection agency pertaining to analysis of economic impacts from water quality standards.
- (b) In the event that economic impacts do not justify temporary nutrient criteria for a particular discharger, the department may approve temporary nutrient criteria based upon a finding that the limits of technology preclude the attainment of the base numeric nutrient standards. The department's determination that the limits of technology justify temporary nutrient criteria must be based on available and proven treatment technologies at the time the temporary nutrient criteria are approved.

- (c) The department shall consult with the nutrient work group prior to recommending base numeric nutrient standards or criteria to the board and shall continue to consult with the nutrient work group in implementing temporary nutrient criteria.
- (3) The department shall review each application for temporary nutrient criteria on a case-by-case basis to determine if there are reasonable alternatives, such as trading or permit compliance schedules, that preclude the need for the temporary criteria.
- (4) (a) Temporary nutrient criteria approved by the department become effective and may be incorporated into a permit only after a public hearing and adoption by the department under the rulemaking procedures of Title 2, chapter 4, part 3.
- (b) Temporary nutrient criteria may be established for a period not to exceed 20 years and must be reviewed by the department every 5 years from the date of adoption to ensure that the justification for their adoption is still valid.
- (c) On or before July 1 of each year, the department, in consultation with the nutrient work group, shall report to the environmental quality council by providing a summary of the status of the base numeric nutrient standards, temporary nutrient criteria, and implementation of those criteria, including estimated economic impacts.
- (d) On or before September 1 of each year preceding the convening of a regular session of the legislature, the department, in consultation with the nutrient work group, shall summarize the previous two reports provided in subsection (4)(c) to the environmental quality council in accordance with 5-11-210.
- Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [section 2].

Approved April 17, 2009

CHAPTER NO. 268

[SB 96]

AN ACT REQUIRING A MENTAL EVALUATION OF CERTAIN CRIMINAL DEFENDANTS CLAIMING A MENTAL DISEASE OR DEFECT OR A DEVELOPMENTAL DISABILITY; AMENDING SECTIONS 46-14-311 AND 46-18-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-14-311, MCA, is amended to read:

Consideration of mental disease or defect or developmental disability in sentencing. (1) Whenever a defendant is convicted on a verdict of guilty or a plea of guilty or nolo contendere and claims at the time of the omnibus hearing held pursuant to 46-13-110 or, if no omnibus hearing is held, at the time of any change of plea by the defendant that at the time of the commission of the offense of which convicted the defendant was suffering from a mental disease or defect or developmental disability that rendered the defendant unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of law, the sentencing

court shall consider any relevant evidence presented at the trial and shall require additional evidence that it considers necessary for the determination of the issue, including examination of the defendant and a report of the examination as provided in 46-14-202 and 46-14-206 also consider the results of the presentence investigation required pursuant to subsection (2).

(2) Under the circumstances referred to in subsection (1), the sentencing court shall order a presentence investigation and a report on the investigation pursuant to 46-18-111. The investigation must include a mental evaluation by a person appointed by the director of the department of public health and human services or the director's designee. The evaluation must include an opinion as to whether the defendant suffered from a mental disease or defect or developmental disability with the effect as described in subsection (1). If the opinion concludes that the defendant did suffer from a mental disease or defect or developmental disability with the effect as described in subsection (1), the evaluation must also include a recommendation as to the care, custody, and treatment needs of the defendant."

Section 2. Section 46-18-111, MCA, is amended to read:

- **"46-18-111. Presentence investigation** when required. (1) (a) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing.
- (b) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, 45-5-627, 45-5-601(3), 45-5-602(3), or 45-5-603(2)(c) or if the defendant was convicted under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant to Title 46, chapter 23, part 5, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.
- (c) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report pursuant to this section, the mental evaluation required by 46-14-311 must be attached to the presentence investigation report and becomes part of the report. The report must be made available to persons and entities as provided in 46-18-113.
- (2) The court shall order a presentence *investigation* report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation and parole officer is presented to and considered by the district court. The district court may order a

presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in 46-23-502.

(3) The defendant shall pay to the department of corrections a \$50 fee at the time that the report is completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time. The fee may be retained by the department and used to finance contracts entered into under 53-1-203(5)."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to a defendant convicted on a verdict of guilty or a plea of guilty or nolo contendere on or after [the effective date of this act].

Approved April 17, 2009

CHAPTER NO. 269

[SB 104]

AN ACT REVISING THE TIME REQUIREMENTS APPLICABLE TO THE HOLDING OF ESTRAYS AND THE PUBLIC NOTIFICATION REQUIREMENTS RELATING TO THE DISPOSITION OF ESTRAYS BY A STOCK INSPECTOR; AND AMENDING SECTION 81-4-603, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-4-603, MCA, is amended to read:

- "81-4-603. Taking up and disposition of estrays advertisement. (1) A stock inspector authorized by the department shall take into his possession an estray found in his the stock inspector's district and shall either:
- (a) ship or arrange for the shipment of the estray to a licensed livestock market for sale,; or
- (b) he may hold the estray in his the stock inspector's possession and care for the estray in the cheapest and most practicable manner for a period of not less at least 10 days and not more than 30 days after public notice is published as provided in subsection (2) or more than 60 days, during which time he During the holding period, the stock inspector shall advertise that he holds the estray is being held and that, unless the estray is claimed by the owner, he will on a date to be specified in the notice the stock inspector will sell the estray at a public auction to the highest bidder for cash.
- (2) The notice shall must be published in the newspaper doing the county printing of the county in which the estray is found and in addition to that paper in a paper published in the town or city nearest the place in which the estray is held in the newspaper doing the county printing of the county in which the estray is found and on the department's website and in each livestock market brand office and county sheriff's office in the state. This notice shall be published at least once a week for 4 consecutive weeks and shall must be published in the newspaper at least one time and must contain a statement of the date of the sale, the place where the sale is to be held, and a general description of the estray, including the sex and the approximate age, together with an illustration of the brand and the position of the brand on the estray and a description of the place or locality where the estray was found or taken.

- (3) The proceeds from the sale $\frac{1}{2}$ shall $\frac{1}{2}$ must be disposed of under 81-4-605 and 81-4-606.
- (4) The owner of the estray may appear and claim it at any time before the sale or shipment, as provided in this part, upon payment to the department of the cost of caring for the estray as determined by the department."

Approved April 17, 2009

CHAPTER NO. 270

[SB 123]

AN ACT PROHIBITING THE USE OF AN AMENDED NOTICE OF PROPOSED RULEMAKING BY A STATE AGENCY TO CURE A DEFICIENCY IN A STATEMENT OF REASONABLE NECESSITY UNLESS CERTAIN CONDITIONS ARE MET; AMENDING SECTION 2-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-305, MCA, is amended to read:

- **"2-4-305. Requisites for validity authority and statement of reasons.** (1) The agency shall fully consider written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.
- (2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.
- (3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement. A substantive rule may not be proposed or adopted unless:
- (a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter of the rule as a subject upon which the agency shall or may adopt rules; or
- (b) the rule implements and relates to a subject matter or an agency function that is clearly and specifically included in a statute to which the grant of rulemaking authority extends.
- (4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a

policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

- (5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.
- (6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:
 - (a) consistent and not in conflict with the statute; and
- (b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency. A statement that merely explains what the rule provides is not a statement of the reasonable necessity for the rule.
- (7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases
- (8) (a) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in citations of authority for rules and in citations of sections implemented by rules.
- (b) An agency may use an amended proposal notice but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a statement of reasonable necessity.
- (c) If an agency uses an amended proposal notice to amend a statement of reasonable necessity for reasons other than for corrections in citations of authority, in citations of sections being implemented, or of a clerical nature, the agency shall allow additional time for oral or written comments from the same interested persons who were notified of the original proposal notice, including from a primary sponsor, if primary sponsor notification was required under 2-4-302, and from any other person who offered comments or appeared at a hearing already held on the proposed rule.
- (9) If a majority of the members of the appropriate administrative rule review committee notify the committee presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to the proposal notice and will address the objections at the next committee meeting. Following notice by the committee to the agency, the proposal notice may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period

during which the adoption notice must be published, unless prior to that time, the committee meets and does not make the same objection. A copy of the committee's notification to the agency must be included in the committee's records."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2009

CHAPTER NO. 271

[SB 133]

AN ACT GENERALLY REVISING INSURANCE LAWS; SUBSTITUTING THE TERM "BUSINESS ENTITY" FOR "PARTNERSHIP" AND "CORPORATION" IN VARIOUS CONTEXTS THROUGHOUT THE INSURANCE CODE; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ADOPT RULES TO FACILITATE ELECTRONIC FILING OF CERTAIN DOCUMENTS; EXTENDING THE TIME THAT A LICENSEE MAY NOT CLAIM AN EXEMPTION FROM CERTAIN PROVISIONS OF STATE INSURANCE LAWS BASED ON FEDERAL PRIVACY STANDARDS; PROVIDING THAT A BUSINESS ENTITY THAT IS OTHER THAN A CORPORATION OR PARTNERSHIP MUST BE ORGANIZED UNDER THE LAWS OF THIS STATE; CLARIFYING THAT DISABILITY INSURANCE IS SUBJECT TO GUARANTEED RENEWABILITY PROVISIONS; REQUIRING THAT INSUREDS PAY ONLY THE REQUIRED COPAYMENT OR OTHER COST-SHARING REQUIREMENT FOR COVERED PRESCRIPTION DRUGS AT THE TIME OF PURCHASE; CLARIFYING CERTAIN INCURRED GROUP HEALTH INSURANCE CLAIMS MAY BE HELD PENDING PREMIUM PAYMENT; AMENDING SECTIONS 33-1-601, 33-2-116, 33-2-301, 33-2-305, 33-2-306, 33-4-502, 33-4-503, 33-4-504, 33-17-211, 33-17-212, 33-17-214, 33-17-231, 33-17-301, 33-17-1001, 33-17-1002, 33-17-1103, 33-17-1204, 33-19-105, 33-20-606, 33-20-1303, 33-20-1307, 33-21-113, 33-22-101, 33-22-142, 33-22-232, 33-22-302, 33-22-530, 33-22-602, 33-22-1809, 33-28-104, 33-30-102, 33-31-102, 33-31-111, AND 33-31-311, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-601, MCA, is amended to read:

"33-1-601. Commissioner — attorney for service of process. (1) Each insurer applying for authority to transact insurance in this state shall appoint the commissioner as its attorney to receive service of legal process issued against it in Montana. Service of legal process under this section means a summons and a complaint. The appointment must be made on a form designated and furnished by the commissioner. The appointment is irrevocable, binds the insurer and any successor in interest or to the assets or liabilities of the insurer, and remains in effect as long as there is in force in Montana any contract made by the insurer or obligations arising from a contract.

(2) Each insurer at the time of application for a certificate of authority shall file with the commissioner the name and address of the person to whom process against it the insurer served upon the commissioner is to be forwarded. The insurer may change the designation or address by a new filing, which must be filed on a form designated and furnished by the commissioner."

Section 2. Section 33-2-116, MCA, is amended to read:

- "33-2-116. Issuance or refusal of certificate of authority state ownership of certificate. (1) If upon completion of its an insurer's application for a certificate of authority the commissioner finds that the insurer has met the requirements for a certificate of authority and is entitled thereto under this code, he the commissioner shall issue to the insurer a proper certificate of authority. If he the commissioner does not so find that the insurer is entitled to a certificate of authority, the commissioner shall issue his an order refusing such to issue a certificate. The commissioner shall act upon an application for a certificate of authority within 180 days after its completion.
- (2) The certificate, if issued, shall *must* specify the kind or kinds of insurance the insurer is authorized to transact in Montana. At the insurer's request, the commissioner may issue a certificate of authority limited to particular types of insurance or insurance coverages within the scope of a kind of insurance as defined in 33-1-205 through 33-1-212.
- (3) Although issued to the insurer, the certificate of authority is at all times the property of the state of Montana. Upon any expiration, suspension, or termination thereof of the certificate of authority, the insurer shall promptly deliver the certificate of authority to the commissioner."
 - Section 3. Section 33-2-301, MCA, is amended to read:
- "33-2-301. Short title purpose definitions. (1) This part constitutes and may be referred to as "The Surplus Lines Insurance Law".
 - (2) This part must be applied to:
 - (a) protect persons seeking insurance in this state;
- (b) permit surplus lines insurance to be placed with reputable and financially sound unauthorized insurers and to be exported from this state pursuant to this part:
- (c) establish a system of regulation that will permit orderly access to surplus lines insurance in this state and encourage authorized insurers to provide new and innovative types of insurance to consumers in this state; and
 - (d) protect revenues of this state.
 - (3) As used in this part, the following definitions apply:
- (a) "Authorized insurer" means an insurer authorized pursuant to 33-2-101 to transact insurance in this state.
- (b) "Eligible surplus lines insurer" means an unauthorized insurer with which a surplus lines insurance producer may place surplus lines insurance under 33-2-307.
- (c) "Export" means to place surplus lines insurance with an unauthorized insurer.
- (d) "Producing insurance producer" means the individual insurance producer dealing directly with the person seeking insurance.
- (e) (i) "Surplus lines insurance" means any insurance on risks resident, located, or to be performed in this state permitted to be placed through a surplus lines insurance producer with an unauthorized insurer eligible to accept the insurance.
- (ii) The term does not include the kinds of insurance exempted under 33-2-317.
- (f) "Surplus lines insurance producer" means an individual, partnership, or corporation business entity licensed under 33-2-305 to place surplus lines

insurance on risks resident, located, or to be performed in this state with unauthorized insurers eligible to accept the insurance.

(g) "Unauthorized insurer" means an insurer not authorized pursuant to 33-2-101 to transact insurance in this state. The term includes insurance exchanges authorized under the laws of other states."

Section 4. Section 33-2-305, MCA, is amended to read:

- "33-2-305. Licensing of surplus lines insurance producer fee. (1) A person may not place a contract of surplus lines insurance with an unauthorized insurer unless the person is licensed as a property and casualty insurance producer and possesses a current surplus lines insurance producer's license issued by the commissioner.
- (2) The commissioner shall issue a surplus lines insurance producer's license to any qualified holder of a current property and casualty insurance producer license only if the insurance producer has:
 - (a) remitted to the commissioner the fee prescribed by 33-2-708;
- (b) submitted to the commissioner a completed license application in a form approved by the commissioner; and
- (c) been licensed as a property and casualty insurance producer continuously for 5 years or more.
- (3) The licensee shall renew the license on a form prescribed by the commissioner. The commissioner may establish rules for biennial renewal of the license. A license lapses if not renewed.
- (4) A corporation *business entity* is eligible to be licensed as a surplus lines insurance producer if:
- (a) the eorporate business entity's license lists the individuals within the eorporation business entity who have satisfied the requirements of this part to become surplus lines insurance producers; and
- (b) only those individuals listed on the ${\it corporate}$ business entity's license transact surplus lines insurance.
- (5) This section may not be construed to require agents, producers, or brokers acting as intermediaries between a surplus lines insurance producer and an unauthorized insurer under this part to hold a valid Montana surplus lines insurance producer's license."

Section 5. Section 33-2-306, MCA, is amended to read:

- "33-2-306. Surplus lines insurance producer's authority under license acceptance of business from other insurance producers. (1) Under a surplus lines insurance producer's license the licensee may place surplus lines insurance, in compliance with The Surplus Lines Insurance Law this part, with a foreign or alien insurer not authorized to transact insurance in this state and may act as a surplus lines insurance producer in this state for the insurer.
- (2) The surplus lines insurance producer may accept surplus lines insurance from a licensed insurance producer of an authorized insurer or, if the commissioner agrees in advance, through an individual, partnership, or eorporation business entity that has not been appointed as an insurance producer in this state and may compensate him therefor the licensed insurance producer of an authorized insurer, individual, or business entity for the accepted surplus lines insurance.

(3) A surplus lines insurance producer who places or renews surplus lines insurance in accordance with subsection (1) may collect an inspection fee for the actual costs of inspecting the risk to be covered."

Section 6. Section 33-4-502, MCA, is amended to read:

- **"33-4-502.** Limit of risk retention of liability. (1) Except as provided in subsection (3), the maximum amount of insurance that an insurer shall *may* retain on a single risk, after deduction of applicable reinsurance, may not exceed *the greater of* 10% of the admitted assets of the insurer or \$50,000, whichever is the larger amount.
- (2) For the purposes of this section, a "single risk" as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophic perils includes all properties insured by the same insurer that are reasonably susceptible to loss or damage from the same fire or the same occurrence of another hazard insured against.
 - (3) A farm mutual insurer:
- (a) that insures any portion of a liability risk shall maintain a surplus of at least \$50,000:
- (b) that retains any portion of a liability risk shall obtain reinsurance on that liability insurance with an insurer authorized to do business in this state that meets the criteria established in 33-4-503, and the farm mutual insurer's maximum aggregate liability for incurred losses on liability coverage retained for any calendar year or contract year may not exceed the smaller of \$200,000 or 20% of the farm mutual insurer's surplus as of December 31 of the preceding year; and
- (c) may not retain liability risk or risk resulting from insuring growing crops against loss or damage from hail or other hazards greater than the proportional share of each limit of liability in the following schedule:

Surplus as of the	Proportional Share of Each
Preceding December 31:	Limit of Liability Retained:
\$1,000,000 or greater	15%
\$800,000 to \$999,999	12%
\$600,000 to \$799,999	9%
\$400,000 to \$599,999	6%
\$200,000 to \$399,999	3%
Under \$200,000	0"

Section 7. Section 33-4-503, MCA, is amended to read:

"33-4-503. Reinsurance. A farm mutual insurer may cede reinsurance to any other farm mutual insurer or insurers and to other authorized property insurers and reinsurers meeting the requirements of 33-2-1216(3) and may accept reinsurance from other farm mutual insurers."

Section 8. Section 33-4-504, MCA, is amended to read:

- "33-4-504. Cash premium or assessment plans. (1) An insurer may transact business either on the a cash premium plan altogether or on the an assessment plan altogether, depending upon whichever which plan is provided for in its articles of incorporation or bylaws.
- (2) If transacting business on the cash premium plan, the insurer shall collect from each member before or at the time of effectuation of the member's

insurance the *a* premium in cash in such *an* amount as *that* the insurer deems will be *considers* adequate to cover losses and expenses incurred during the term of such *the* insurance.

- (3) If transacting business on the assessment plan, the insurer will must principally depend for the payment of losses and expenses principally upon assessments from time to time levied upon members either before or after such any losses or expenses have been incurred. This provision shall may not be construed, however, as preventing any such insurer from collecting from each member such an initial amount as it may deem that the insurer considers proper prior to or at the time of the effectuation of the member's insurance; nor shall it be deemed, and this provision may not be considered to prohibit the acquisition, accumulation, and maintenance of surplus or unallocated funds.
- (4) An insurer transacting business on the cash premium plan may nevertheless provide in its bylaws and policies for special assessment of its members in event if the cash premium charged is found by it the insurer to be inadequate to pay in full losses and expenses currently incurred. The bylaws shall must provide a specific limitation as to on the amount which that can be so assessed in any one policy year, such and the amount to may not be not less than one or more than six times the premium charged on each member's policy at the annual rate for a term of 1 year."

Section 9. Section 33-17-211, MCA, is amended to read:

- "33-17-211. General qualifications application for license. (1) An individual applying for a license shall apply in a form approved by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the individual:
 - (a) is 18 years of age or older;
- (b) has not committed an act that is a ground for refusal, suspension, or revocation as set forth in 33-17-1001;
 - (c) has paid the license fees stated in 33-2-708;
- (d) has successfully passed the examinations for each kind of insurance for which the individual has applied within 12 months of application;
- (e) is a resident of this state or of another state that grants similar privileges to residents of this state. Licenses issued based upon Montana state residency terminate if the licensee relocates to another state.
 - (f) is competent, trustworthy, and of good reputation;
- (g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which the applicant applies to be licensed and is reasonably familiar with the provisions of this code that govern the applicant's operations as an insurance producer;
- (h) if applying for a license as to life or disability insurance, except as permitted by 33-20-1501(1)(c)(ii):
- (i) is not a funeral director, undertaker, or mortician operating in this or any other state:
- (ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or
- (iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state; and

- (i) has completed a background examination pursuant to 33-17-220.
- (2) A resident or nonresident business entity acting as an insurance producer is required to obtain an insurance producer's license. Application must be made in a form approved by the commissioner. To approve the application, the commissioner shall verify that:
 - (a) the business entity has paid the appropriate fee; and
- (b) the business entity has designated an individual licensed insurance producer who is responsible for the business entity's compliance with the insurance laws of this state.
- (3) A person acting as an insurance producer shall obtain a license. A person shall apply for a license in a form approved by the commissioner. Before approving the application, the commissioner shall verify that:
 - (a) the person meets the requirements listed in subsection (1);
- (b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.
- (c) the person has designated a licensed officer to be responsible for the person's compliance with the insurance laws and rules of this state;
- (d) each member, and employee, of a partnership and each officer, director, or stockholder, or employee of a corporation business entity who is acting as an insurance producer in this state has obtained a license;
- (e) (i) if the person is a partnership or corporation with respect to a business entity, the transaction of insurance business is within the purposes stated in the partnership agreement, the articles of incorporation, or other organizational documents; and
- (ii) if the person is with respect to a corporation, the secretary of state has issued a certificate of existence or authority under 35-1-1312 or filed articles of incorporation under 35-1-220.
- (4) (a) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance.
- (b) The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement.
- (c) The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in the association's name alone.
 - (d) The fee for the license is the same as that required by 33-2-708(1)(a).
- (e) The commissioner may, after a hearing with notice to the association, revoke the license if the commissioner finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.
- (5) An insurance producer using an assumed business name shall register the name with the commissioner before using the name."

Section 10. Section 33-17-212, MCA, is amended to read:

- "33-17-212. Examination required exceptions fees. (1) Except as provided in subsection (6), an individual applying for a license is required to pass a written examination. The examination must test the knowledge of the individual concerning each kind of insurance listed in subsection (5) for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. The examination must be developed and conducted under rules adopted by the commissioner.
- (2) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination. The commissioner may arrange for the testing service to recover the cost of the examination from the applicant.
- (3) An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination and shall remit all forms before being rescheduled for another examination.
- (4) If the applicant is a partnership or corporation business entity, each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license shall must meet the qualifications as provided for in this section.
- (5) Examination of an applicant for a license must cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:
 - (a) life insurance;
 - (b) disability insurance;
- (c) property insurance. For, which for the purposes of this provision, property insurance includes marine insurance.;
 - (d) casualty insurance;
 - (e) surety insurance;
 - (f) limited lines credit insurance;
 - (g) title insurance.
 - (6) This section does not apply to and an examination is not required of:
- (a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and who continues to be licensed;
- (b) an applicant for a license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months immediately preceding the date of application unless the commissioner has suspended, revoked, or terminated the previous license:
 - (c) an applicant for a license as a nonresident insurance producer;
- (d) transportation ticket agents of common carriers applying for a license to solicit and sell only:
 - (i) accident insurance ticket policies; or
- (ii) insurance of personal effects while being carried as baggage on a common carrier, as incidental to their duties as transportation ticket agents;
 - (e) an association applying for a license under 33-17-211; or
- (f) an individual who, within 90 days of cancellation of a license issued by the state of the individual's residence, files with the commissioner a current letter of

clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and that is not covered under the license held in the other state.

- (7) (a) Subject to the provisions of subsection (7)(b), an individual who applies for a nonresident insurance producer license in this state and who was previously licensed for the same lines of authority in another state may not be required to complete any prelicensing education or examination.
- (b) The exemption in subsection (7)(a) is available only if the individual is currently licensed in the other state or the individual's application is received within 90 days of the cancellation of the individual's previous license and if the other state issues a certification that, at the time of the cancellation, the individual was in good standing in that state or the state's database records, maintained by the national association of insurance commissioners or any of the association's affiliates or subsidiaries that the association oversees, indicate that the insurance producer is or was licensed in good standing for the lines of authority requested."

Section 11. Section 33-17-214, MCA, is amended to read:

- "33-17-214. Issuance of license insurance producer lines of authority license data lapse of license change of address. (1) A person who has met the requirements of 33-17-211 and 33-17-212 must be issued a license unless that person has been denied a license pursuant to 33-17-1001.
- (2) An insurance producer may receive a license qualifying the insurance producer in one or more of the following lines of authority:
- (a) life insurance coverage on human lives, including benefits of endowment and annuities, and the coverage may include:
 - (i) funeral insurance as defined in 33-20-1501;
 - (ii) benefits in the event of death or dismemberment by accident; and
 - (iii) benefits for disability income:
- (b) accident and health or sickness insurance coverage providing for sickness, bodily injury, or accidental death, and the coverage may provide benefits for disability income;
- (c) property insurance coverage for the direct or consequential loss or damage to property of every kind;
- (d) casualty insurance coverage against legal liability, including liability for death, injury, or disability or damage to real or personal property;
- (e) variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities;
- (f) personal lines of property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;
 - (g) limited line credit insurance; or
 - (h) any other line of insurance permitted under Title 33.
- (3) The license must state the name and address of the licensee, personal identification number, date of issuance, general conditions relative to expiration or termination, kind of insurance covered, and other information that the commissioner considers necessary.

- (4) The license of a partnership, corporation, or association business entity must also state the name of each individual authorized to exercise the license powers.
- (5) Each license remains in effect, unless it is suspended, revoked, or terminated or the license lapses.
 - (6) (a) A person shall inform the commissioner in writing within 30 days of:
 - (i) a change of address;
- (ii) the final disposition resulting in disciplinary action taken against or a conviction of the insurance producer in any state or federal jurisdiction or by another governmental agency in this state of:
 - (A) any administrative action related to transacting insurance;
 - (B) any action taken against any type of securities license; and
 - (C) any criminal action, excluding traffic violations.
- (b) (i) As used in this subsection (6), "final disposition" includes but is not limited to a settlement agreement, consent order, plea agreement, sentence and judgment, or order.
- (ii) The term does not include an action that is dismissed or that results in an acquittal, for which no report is necessary."

Section 12. Section 33-17-231, MCA, is amended to read:

- "33-17-231. Appointment of insurance producers continuation and termination. (1) Each insurer appointing an insurance producer in this state shall file with the commissioner the appointment, specifying the kinds of insurance to be transacted by the insurance producer for the insurer. The appointment may be electronically filed pursuant to rules adopted by the commissioner. The commissioner may adopt rules to implement electronic filing.
- (2) Each appointment remains in effect until the insurance producer's license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with the commissioner by the insurer or the insurance producer. The written notice may be electronically filed pursuant to rules adopted by the commissioner. The commissioner may adopt rules to implement electronic filing. Termination of the insurer's authority in Montana also terminates the appointment.
- (3) Subject to the insurance producer's contract rights, an insurer may terminate an insurance producer's appointment at any time. The insurer shall promptly give written notice of the termination to the commissioner and to the insurance producer. The commissioner may require reasonable proof that the insurer has given notice to the insurance producer.
- (4) As part of the notice of termination given the commissioner, the insurer shall file with the commissioner a statement of the facts relative to the termination and the cause of termination. Any information or statement contained in the notice of termination is not admissible as evidence in any action or proceeding against the insurer or any representative of the insurer by or on behalf of any person affected by the termination."

Section 13. Section 33-17-301, MCA, is amended to read:

"33-17-301. Adjuster license — qualifications — catastrophe adjustments — public adjuster. (1) An individual may not act as or purport to be an adjuster in this state unless licensed as an adjuster under this chapter. An individual shall apply to the commissioner for an adjuster license in a form

approved by the commissioner. The commissioner shall issue the adjuster license to individuals qualified to be licensed as an adjuster.

- (2) To be licensed as an adjuster, the applicant:
- (a) must be an individual 18 years of age or more;
- (b) must be a resident of Montana or resident of another state that will permit permits residents of Montana regularly to act as adjusters in the other state;
- (c) shall pass an adjuster licensing examination as prescribed by the commissioner and pay the fee pursuant to 33-2-708;
 - (d) must be trustworthy and of good character and reputation; and
- (e) must have and shall maintain in this state an office accessible to the public and shall keep in the office for not less than 5 years the usual and customary records pertaining to transactions under the license. This provision does not prohibit maintenance of the office in the home of the licensee.
- (3) A partnership or corporation business entity, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the adjuster license powers is separately licensed or is named in the partnership or corporation business entity adjuster license and is qualified for an individual adjuster license.
- (4) An adjuster license or qualifications are not required for an adjuster who is sent into this state by and on behalf of an insurer or adjusting partnership or corporation business entity for the purpose of investigating or making adjustments of a particular loss under an insurance policy or for the adjustment of a series of losses resulting from a catastrophe common to all losses.
- (5) An adjuster license continues in force until lapsed, suspended, revoked, or terminated. The licensee shall renew the license by the biennial renewal date and pay the appropriate fee or the license will lapse. The biennial fee is established pursuant to 33-2-708.
- (6) The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters."

Section 14. Section 33-17-1001, MCA, is amended to read:

- "33-17-1001. Suspension, revocation, or refusal of license. (1) The commissioner may suspend, revoke, refuse to renew, or refuse to issue an insurance producer's license, adjuster license, or consultant license, may levy a civil penalty in accordance with 33-1-317, or may choose any combination of actions when an insurance producer, adjuster, consultant, or applicant for those licenses has:
- (a) engaged or is about to engage in an act or practice for which issuance of the license could have been refused;
- (b) obtained or attempted to obtain a license through misrepresentation or fraud, including but not limited to providing incorrect, misleading, incomplete, or materially untrue information in the license application or in the continuing education affidavit;
- (c) violated or failed to comply with a provision of this code or has violated a rule, subpoena, or order of the commissioner or of the commissioner of any other state:
- (d) improperly withheld, misappropriated, or converted to the licensee's or applicant's own use money or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of business under the license;

- (e) been convicted of a felony;
- (f) in the conduct of the affairs under the license, used fraudulent, coercive, or dishonest practices or the licensee or applicant is incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public:
- (g) misrepresented the terms of an actual or proposed insurance contract or application for insurance;
- (h) been found guilty of an unfair trade practice or fraud prohibited by Title 33, chapter 18;
 - (i) had a similar license suspended or revoked in any other state;
- (j) forged another's name to an application for insurance or to any document related to an insurance transaction;
 - (k) cheated on an examination for a license; or
 - (l) knowingly accepted insurance business from a person who is not licensed.
- (2) The license of a partnership or corporation business entity may be suspended, revoked, refused, or denied if a reason listed in subsection (1) applies to an individual designated in the license to exercise its powers.
- (3) The commissioner retains the authority to enforce the provisions of and impose any penalty or remedy authorized by the insurance code against any person who is under investigation for or charged with a violation of the insurance code even if the person's license or registration has been surrendered, suspended, revoked, refused, or denied or has lapsed."

Section 15. Section 33-17-1002, MCA, is amended to read:

- "33-17-1002. Procedure following suspension or revocation. (1) Upon suspension, revocation, or refusal of a license, the commissioner shall notify the licensee or applicant by mail addressed to the licensee or applicant at the last-known address contained in the records of the commissioner. Notice is effectuated when mailed.
- (2) The commissioner may reissue a license that has lapsed if the insurance producer has paid the lapsed license reinstatement fee pursuant to 33-2-708 and has filed certification of completion of continuing education requirements for the preceding biennium within 1 year of the lapse occurring.
- (3) The commissioner may not again issue a license under this code to a person whose license has been revoked until after expiration of 1 year and until the person again qualifies for a license in accordance with this code. If the commissioner revokes a person's license, the commissioner may refuse to issue a license to the person for up to 5 years after the revocation. A person whose license has been revoked twice is not again eligible for any license under this code.
- (4) If the license of a partnership or corporation business entity is suspended or revoked, a member, of the partnership or officer, or director of the corporation business entity may not be licensed or be designated in a license to exercise its the business entity's powers during the period of the suspension or revocation unless the commissioner determines upon substantial evidence that the member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked."

Section 16. Section 33-17-1103, MCA, is amended to read:

- "33-17-1103. Accepting and paying commissions, fees, or consideration. (1) An insurer or insurance producer may not pay, directly or indirectly, a commission, service fee, brokerage fee, or other valuable consideration to a person for services as an insurance producer unless the person performing the service holds a valid license with regard to the kind or kinds of insurance for which the service was rendered at the time the service was performed. A person not properly licensed in accordance with this chapter at the time the person performs the service as an insurance producer may not accept a commission, service fee, brokerage fee, or other valuable consideration for the service. This section does not prevent payment or receipt of renewal or other deferred commissions to or by a person entitled to receive the payment under this section.
- (2) An insurance producer may not directly or indirectly share the insurance producer's commissions or other compensation received or to be received by the insurance producer on account of a transaction under the insurance producer's license with any person not also licensed under this chapter as to the same kind or kinds of insurance involved in the transactions. This provision does not affect payment of the regular salaries due to employees of the licensee, the distribution in regular course of business of compensation and profits among members or stockholders if the licensee is a partnership or corporation business entity, or use of funds for family or personal purposes.
- (3) Surplus lines producers may share commissions with a property and casualty insurance producer pursuant to 33-2-306."

Section 17. Section 33-17-1204, MCA, is amended to read:

- "33-17-1204. Review and approval of continuing education courses by commissioner advisory council. (1) The commissioner shall, after review by and at the recommendations of the advisory council established under subsection (2), approve only those continuing education courses, lectures, seminars, and instructional programs that the commissioner determines would improve the product knowledge, management, ethics, or marketing capability of the licensee. Course content, instructors, material, instructional format, and the sponsoring organization must be approved and periodically reviewed by the commissioner. The fee for approval of a course, lecture, seminar, or instructional program is listed in 33-2-708(2). The commissioner shall also determine the number of credit hours to be awarded for completion of an approved continuing education activity.
- (2) The commissioner shall appoint an advisory council, pursuant to 2-15-122, consisting of at least one representative of the independent insurance agents of Montana, one representative of the Montana national association of insurance and financial advisors-Montana, one representative of the professional insurance agents of Montana, one representative of the Montana state adjusters association, one title insurance producer, two public members who are not directly employed by the insurance industry, one insurance producer or consultant not affiliated with any of the three listed organizations, and a nonvoting presiding officer from the department who will be appointed by the commissioner as a representative of the department. The members of the council shall serve a term of 2 years, except that the initial term of the representative from each organization is 3 years. The commissioner shall consult with the council in formulating rules and standards for the approval of continuing education activities and prior to approving specific education activities. The provisions of 2-15-122(9) and (10) do not apply to this council.

- (3) In conducting periodic review of course content, instructors, material, instructional format, or a sponsoring organization, the commissioner may exercise any investigative power of the commissioner provided for in 33-1-311 or 33-1-315.
- (4) If after review or investigation the commissioner determines an approved continuing education activity is not being operated in compliance with the standards established under this section, the commissioner may revoke approval, place the activity under probationary approval, or issue a cease and desist order under 33-1-318."

Section 18. Section 33-19-105, MCA, is amended to read:

- "33-19-105. Exemption based on federal standards for privacy of individually identifiable health information notice to commissioner required rules. (1) The obligations imposed under this chapter do not apply to a licensee that is a covered entity under the provisions of federal regulations that are part of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR, parts 160 and 164, standards for privacy of individually identifiable health information or security standards for the protection of electronic health information as to any use or disclosure of personal information that is covered under the HIPAA privacy and security regulations, except for the following provisions:
- (a) A notice of insurance information practices described as a notice of privacy practices for protected health information under HIPAA privacy regulations must be delivered annually, as provided for in 33-19-202(1).
- (b) To the extent that an insurer collects, discloses, or uses personal information that is not covered under the HIPAA notice of privacy practices, a separate Montana specific notice must be delivered pursuant to the provisions of 33-19-202.
- (c) A disclosure authorization remains valid for a period that does not exceed 24 months, as provided for in 33-19-206(2).
- (d) The reasons for an adverse underwriting decision must be specified, as provided for in 33-19-303.
- (e) Disclosure of underwriting information is required, as provided for in 33-19-308.
- (2) The commissioner may adopt rules regarding the exceptions from the exemption provisions described in subsection (1), including additional exceptions that embody substantive provisions of this chapter but would not be preempted by HIPAA privacy regulations.
- (3) If a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (1), the licensee shall give written notice to the commissioner of that exemption and a brief statement describing why the licensee is a HIPAA-covered entity.
- (4) A licensee may claim an exemption only for those lines of business that are subject to HIPAA privacy regulations. All other lines of business are subject to this chapter.
- (5) A business associate, as defined in the HIPAA privacy regulations, 45 CFR 160.103, that is a party to a valid business associate agreement required by HIPAA privacy regulations is exempt from the provisions of this chapter, but only as to the scope of that particular agreement. Any activity of the business associate that falls outside of the scope of that agreement is subject to the provisions of this chapter.

- (6) The commissioner retains the authority to conduct complete market conduct examinations of the licensee as to the privacy policies and practices that are subject to state privacy laws.
 - (7) Beginning July 1, 2009 2011:
- (a) if a licensee is subject to and in compliance with a federal regulation that is part of the federal health insurance portability and accountability privacy and security regulations, 45 CFR, parts 160 and 164, and the federal regulation with which the licensee complies is inconsistent with a provision of this chapter and not less protective of consumer privacy, the licensee is exempt from compliance with the inconsistent provision of this chapter;
- (b) if a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (7)(a), the licensee shall give written notice to the commissioner of that exemption unless the requirements of this subsection (7) are preempted by HIPAA privacy regulations. The notice must include a statement of the reason for the claimed exemption."

Section 19. Section 33-20-606, MCA, is amended to read:

- "33-20-606. Variable contracts to meet insurance contract requirements. (1) Except for 33-15-321 through 33-15-329, 33-20-302, and 33-20-307 for variable annuity contracts and 33-20-104, 33-20-110, 33-20-111, 33-20-112, and 33-20-201 through 33-20-213 for variable life insurance policies and as otherwise provided in this part, all pertinent provisions of Title 33 and other laws relating to insurance apply to separate accounts and their related policies and contracts.
- (2) Any individual variable life insurance contract or any individual variable annuity contract delivered or issued for delivery in this state must contain grace and reinstatement provisions appropriate to the contract. Any individual variable life insurance contract must contain nonforfeiture provisions appropriate to such a that contract.
- (3) An insurer shall file with the commissioner a copy of a final prospectus, dated and effective, before it issues or delivers an individual variable life insurance contract or an individual variable annuity contract in this state.
- (4) The reserve liability for any variable contract must be established in accordance with actuarial procedures that recognize the variable nature of benefits provided and mortality guarantees."

Section 20. Section 33-20-1303, MCA, is amended to read:

- **"33-20-1303.** License requirements. (1) A person may not act as or purport to be a viatical settlement provider unless licensed as a viatical settlement provider under this part.
- (2) (a) Except as provided in subsections (2)(b) and (2)(c), an individual may not broker, solicit, or negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or otherwise act on behalf of a viator without first having obtained a license as a viatical settlement broker from the commissioner. An applicant for a viatical settlement broker's license shall:
- (i) attend required viatical settlement broker training and pass a viatical settlement broker examination designated by the commissioner by rule; and
- (ii) pay a fee for an original viatical settlement broker's license pursuant to 33-2-708. The fees for license renewal and lapsed license reinstatement for a viatical settlement broker's license are as provided in 33-2-708.

- (b) A resident or nonresident insurance producer must be considered to meet the licensing requirements of a viatical settlement broker and must be permitted to operate as a viatical settlement broker if the insurance producer is licensed as an insurance producer with a life insurance line of authority in this state or in the insurance producer's home state and has been licensed for at least 1 year. In addition:
- (i) not later than 30 days from the first day of operating as a viatical settlement broker, the insurance producer shall notify the commissioner, on a form or in a manner prescribed by the commissioner, that the insurance producer is acting as a viatical settlement broker and shall pay a fee pursuant to 33-2-708(1)(b)(viii). The notification must include an acknowledgment by the insurance producer that the insurance producer will operate as a viatical settlement broker in accordance with this part.
- (ii) regardless of the manner in which the insurance producer is compensated, the insurance producer must be considered to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator.
- (c) If requested by the commissioner, a life insurance producer acting as a viatical settlement broker under this subsection (2) who has previously complied with subsection (2)(b)(i) shall report to the commissioner when renewing a resident or nonresident life insurance producer's license regarding the life insurance producer's intent to continue to act as a viatical settlement broker. The statement regarding an intent to continue acting as a viatical settlement broker must be made on the life insurance producer's license renewal form. An individual who makes a statement pursuant to this subsection (2)(c) may not be charged an additional fee.
- (d) The provisions of subsections (2)(a) and (2)(b) do not prohibit an individual licensed as an attorney, certified public accountant, or certified financial planner who is accredited by a nationally recognized accreditation agency, who is retained to represent the viator, and whose compensation is not paid directly or indirectly by the viatical settlement provider from negotiating viatical settlement contracts without having to obtain a license as a viatical settlement broker.
- (3) Regardless of the manner in which a viatical settlement broker or insurance producer is compensated, the viatical settlement broker or insurance producer must be considered to represent only the viator and the viatical settlement broker or insurance producer owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator.
- (4) (a) To obtain a license to transact business as a viatical settlement provider or as a viatical settlement broker, if required to obtain a viatical settlement broker's license under the provisions of subsection (2)(a), an applicant shall apply for the license in a form approved by the commissioner and shall pay the fee required for the application.
- (b) The commissioner may request biographical, organizational, locational, financial, employment, and other information on the application form that the commissioner determines to be relevant to the evaluation of applications and to the granting of the license. The commissioner may require a statement of the business plan or plan of operation of the applicant. The commissioner shall require an applicant for a viatical settlement provider license to file with the application for the commissioner's approval a copy of the viatical settlement contract that the applicant intends to use in business under the license.

- (c) If an applicant is a corporation, the corporation must be:
- (i) incorporated or organized under the laws of this state; or
- (ii) a foreign corporation authorized to transact business in this state.
- (d) If the applicant is a partnership, the partnership must be organized under the laws of this state.
- (e) If the applicant is a business entity other than a corporation or partnership, the business entity must be organized under the laws of this state.
- (5) (a) An individual licensed as a viatical settlement broker must meet the continuing education requirements in 33-17-1203.
- (b) The hours of continuing education required under subsection (5)(a) must be in the subjects of life insurance, viaticals, or ethics.
- (c) For an individual licensed as a viatical settlement broker, the 24-month period for meeting the continuing education requirements must correlate with the broker's license renewal period.
- (d) The viatical settlement broker's license of an individual who fails to comply with this continuing education requirement and who has not been granted an extension of time to comply in accordance with 33-17-1203(2) must be terminated and promptly surrendered to the commissioner."

Section 21. Section 33-20-1307, MCA, is amended to read:

- "33-20-1307. Suspension revocation refusal to issue or renew license. (1) The commissioner may suspend, revoke, refuse to issue, or refuse to renew a license if the commissioner determines that the licensee or applicant for a license is untrustworthy or incompetent to act as a licensee or is guilty of one or more of the following:
- (a) dishonesty, fraud, or gross negligence in the conduct of business as a licensee;
- (b) a pattern of unreasonable payments to policyholders or certificate holders:
- (c) falsification of an application for the license or renewal of the license or misrepresentation or engagement in any other dishonest act in relation to the application;
- (d) conduct resulting in a conviction of a felony under the laws of any state or of the United States;
- (e) conviction of any crime, an essential element of which is dishonesty or fraud, under the laws of any state or of the United States;
- (f) refusal to renew or cancellation, revocation, or suspension of authority to transact insurance or business as a viatical settlement provider, viatical settlement broker, or similar entity in another state;
- (g) failure to pay a civil penalty imposed by final order of the commissioner or to carry out terms of probation set by the commissioner;
- (h) refusal by a licensee to be examined or to produce accounts, records, or files for examination, refusal by any officers or employees to give information with respect to the affairs of the licensee, or refusal to perform any other legal obligation as to the examination, when required by the commissioner;
- (i) affiliation with or under the same general management or interlocking directorate or ownership as another viatical settlement provider, viatical

settlement broker, or insurer, any of which unlawfully transacts business in this state:

- (j) failure at any time to meet any qualification for which issuance of the license could have been refused had the failure then existed and been known to the commissioner; or
- (k) violation of any rule or order of the commissioner or any provision of Montana law.
- (2) The commissioner may suspend or refuse to renew a license immediately and without hearing if the commissioner determines that one or both of the following circumstances exist:
 - (a) the licensee is insolvent;
- (b) the financial condition or business practices of the licensee otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.
- (3) The commissioner may refuse to issue a license in the name of any firm, partnership, or corporation business entity if the commissioner believes that any member, officer, employee, stockholder, or partner who may materially influence the conduct of the applicant does not meet the standards of this section.
- (4) A viatical settlement provider or viatical settlement broker holding a license that has not been renewed or that has been revoked shall surrender the license to the commissioner at the commissioner's request.
- (5) The commissioner may take any other administrative action authorized under Montana law in addition to or in lieu of the actions authorized under this part."

Section 22. Section 33-21-113, MCA, is amended to read:

"33-21-113. Penalties. In addition to any penalty provided by law, a person or business entity who violates an order of the commissioner after it has become final and while the order is in effect shall, upon proof thereof of the violation to the satisfaction of the a court, forfeit and pay to the state of Montana a sum not to exceed \$250 if the violation is found to be not willful. which The sum may be recovered in a civil action., except that if If the violation is found to be willful, the amount of the penalty is may be in an amount a sum not to exceed \$1,000. The commissioner, in his discretion, may revoke or suspend the license or certificate of authority of the person, partnership, or corporation or business entity guilty of such the violation. The order for suspension or revocation is subject to judicial review as provided in 33-1-711."

Section 23. Section 33-22-101, MCA, is amended to read:

- **"33-22-101. Exceptions to scope.** (1) Subject to subsection (2), parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114, 33-22-125, 33-22-129, 33-22-130 through 33-22-136, 33-22-140, 33-22-141, 33-22-142, 33-22-243, and 33-22-304, and part 19 of this chapter do not apply to or affect:
- (a) any policy of liability or workers' compensation insurance with or without supplementary expense coverage;
 - (b) any group or blanket policy;
- (c) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance that:

- (i) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or
- (ii) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity if the insured or annuitant becomes totally and permanently disabled as defined by the contract or supplemental contract;
 - (d) reinsurance.
- (2) Sections 33-22-150 through 33-22-152, [section 24], and 33-22-301 apply to group or blanket policies."
- Section 24. Cost-sharing requirements applicability. (1) Each group or individual health insurance policy, certificate of insurance, and membership contract that covers prescription drugs and that is delivered, issued for delivery, renewed, extended, or modified in this state must provide that after the applicable deductible is met, the insured shall pay only the required copayment or other cost-sharing requirement for a covered prescription drug at the time of purchase if the prescription drug dispenser, third-party administrator, or health insurance issuer can determine that amount at the time of purchase.
- (2) This section applies to blanket policies issued pursuant to Title 33, chapter 22, part 6.
- (3) This section does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, or long-term care policies.

Section 25. Section 33-22-142, MCA, is amended to read:

- **"33-22-142. Certification of creditable coverage.** (1) A group health plan and a health insurance issuer offering group health insurance coverage shall issue the certification described in subsection (3):
- (a) within 10 days after an individual ceases to be covered under the group health plan or otherwise becomes covered under a COBRA continuation provision;
- (b) not later than 10 days after the expiration of the notice period for cancellation for nonpayment of premium is effective pursuant to the provisions of 33-22-121 and 33-22-530 or after termination of coverage for any other reason;
- (c) in the case of an individual becoming covered under a COBRA continuation provision, at the time that the individual ceases to be covered under a COBRA continuation provision; and
- (d) at the request on behalf of an individual made not later than 24 months after the date of termination of the coverage described in subsection (1)(a) or (1)(c), whichever is later.
- (2) The certification pursuant to subsection (1)(a) may be provided, to the extent practicable, at a time consistent with notices required under any applicable COBRA continuation provision.
 - (3) Certification is the written:
- (a) certification of the period of creditable coverage of the individual under a group health plan and the coverage under the COBRA continuation provision;
- (b) certification of the waiting period, if any, and affiliation period, as defined in 33-31-102, if applicable, imposed with respect to the individual for any coverage under a group health plan;

- (c) certification of the date of issuance of the certificate specified on the form; and ${\bf r}$
 - (d) notification to the individual of:
- (i) the individual's option to apply to the Montana comprehensive health association, provided for in 33-22-1503, for an association portability plan, as defined in 33-22-1501, within 63 days of issuance of a certificate of creditable coverage;
 - (ii) the individual's conversion rights;
 - (iii) the availability of COBRA continuation coverage;
- (iv) the telephone number and address of the Montana comprehensive health association; and
- (v) other notification as determined necessary and in the form prescribed by rule by the commissioner.
- (4) To the extent that medical care under a group health plan consists of group health insurance coverage, a group health plan satisfies the certification requirement of this section if the health insurance issuer offering the coverage provides the certification in accordance with this section.
- (5) In the case of an election described in 33-22-141 by a group health plan or health insurance issuer, if the group health plan or health insurance issuer enrolls an individual for coverage under the group health plan and the individual provides a certification of coverage of the individual, the entity that issued the certification shall upon request of the group health plan or health insurance issuer promptly disclose information on coverage of classes and categories of health benefits available under the certified coverage. The entity may charge the requesting group health plan or health insurance issuer the reasonable cost of disclosing the information.
- (6) This section applies to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the group market."

Section 26. Section 33-22-232, MCA, is amended to read:

- "33-22-232. Renewal at option of insurer. (1) Except as provided in subsection (2), Disability disability insurance policies, other than accident insurance only policies, in which the insurer reserves the right to refuse renewal shall must provide in substance the statement in a policy provision, thereof or in an endorsement, thereon or an attached rider attached thereto. The statement must provide that, subject to the insurer's right to terminate the policy upon nonpayment of premium when due, such the right to refuse renewal may not be exercised so as to take effect before the renewal date occurring on or after and nearest each policy anniversary (or in the case of lapse and reinstatement, at the renewal date occurring on or after and nearest each anniversary of the last reinstatement), and that any refusal of renewal shall must be without prejudice to any claim originating while the policy is in force. The parenthetic reference to lapse and reinstatement may be omitted at the insurer's option.
- (2) Policies conforming to this section are subject to the guaranteed renewability provisions of 33-22-247 or 33-22-524."

Section 27. Section 33-22-302, MCA, is amended to read:

"33-22-302. Age limits — effect on coverage. (1) (a) Except as provided in subsection (1)(b), if If any such disability policy contains a provision

establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective and if such that date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such that date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted.

- (b) Policies conforming to subsection (1)(a) are subject to the guaranteed renewability provisions of 33-22-247 or 33-22-524.
- (2) In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective or would have ceased prior to the acceptance of such the premium or premiums, then the liability of the insurer shall be is limited to the refund, upon request, of all premium or premiums paid for the period not covered by the policy."

Section 28. Section 33-22-530, MCA, is amended to read:

- "33-22-530. Notice required for cancellation for nonpayment of group health insurance. (1) A health insurance issuer shall provide at least 15 days prior notification of cancellation for nonpayment of premium for group health insurance coverage.
- (2) The notice must be sent to the policyholder at the policyholder's last-known address and must specify the date of cancellation of coverage. The insurer shall attach a properly executed proof of mailing to this notice and maintain a copy of the proof of mailing in its records.
- (3) The health insurance issuer shall hold for processing of payment any claims received for covered benefits incurred during the 15-day notification period for nonpayment of premium for group health insurance coverage. Upon receipt of the premium, claims held for the 15-day notification period must be processed for payment.
- (4) The policy continues in full force and effect, subject to the requirements of subsection (3), until the proper 15-day notice has been given, unless the coverage has already been replaced.
 - (5) The 15-day period begins to run from the date of the proof of mailing.
- (6) The issuer may collect premiums for any time period that the coverage remains in effect.
- (7) When coverage is actually canceled, notice must also be mailed to all certificate holders at:
 - (a) their last-known home addresses if available; or
 - (b) the business address of the group policyholder.
- (8) The notice of cancellation to certificate holders must be separate from the certificate of creditable coverage required in 33-22-142, although it may be mailed simultaneously with the certificate."

Section 29. Section 33-22-602, MCA, is amended to read:

"33-22-602. Required provisions of blanket policies. Any An insurer authorized to write disability insurance in this state shall have has the power to issue blanket disability insurance. No such A blanket policy may not be issued or delivered in this state unless a copy of the policy form thereof shall have been is filed in accordance with 33-1-501. Every such A blanket policy shall must contain provisions which that in the opinion of the commissioner are at least as

favorable to the policyholder and the individual insured as the following, a provision that provisions:

- (1) the policy and the application shall constitute the entire contract between the parties, and that all statements made by the policyholder shall are, in absence of fraud, be deemed considered representations and not warranties, and that no such statements shall may not be used in defense to a claim under the policy, unless it is contained in a written application;
- (2) written notice of sickness or of injury must be given to the insurer within 20 days after the date when such the sickness or injury occurred. Failure to give notice within such time shall 20 days may not invalidate or reduce any a claim if it shall be shown not to have been the insured shows that it was not reasonably possible to give such the required notice and that notice was given as soon as was reasonably possible.
- (3) the insurer will furnish to the policyholder such forms as are usually furnished by it for filing proof of loss. If such forms are not furnished before the expiration of within 15 days after the giving of such notice insured provided notice of sickness or injury, the claimant shall be deemed is considered to have complied with the requirements of the policy as to proof of loss upon submitting, within the time fixed established in the policy for filing proof of loss, written proof covering the occurrence, character, and extent of the loss for which claim is made.
- (4) in the case of a claim for loss of time for disability, written proof of such the loss must be furnished to the insurer within 30 days after the commencement of the period for which the insurer is liable and that subsequent written proofs proof of the continuance of such the disability must be furnished to the insurer at such intervals as established by the insurer. may reasonably require and that in In the case of a claim for any other loss, written proof of such the loss must be furnished to the insurer within 90 days after the date of such the loss. Failure to furnish such proof within such time shall 90 days may not invalidate or reduce any a claim if it shall be shown not to have been the insured shows it was not reasonably possible to furnish such the required proof and that such proof was furnished as soon as was reasonably possible.
- (5) except as provided in [section 24], all benefits payable under the policy other than benefits for loss of time will be are payable immediately upon receipt of due written proof of such the loss. and that, subject Subject to due proof of loss, all accrued benefits payable under the policy for loss of time will must be paid not later than at the expiration of each period of at least every 30 days during the continuance of the period for which the insurer is liable. and that any Any balance remaining unpaid at the termination of such period will the period of liability must be paid immediately upon receipt of such the proof; of loss.
- (6) the insurer at its own expense shall have has the right and opportunity to examine the person of the insured when and so as often as it may reasonably require required during the pendency of a claim under the policy and also the right and opportunity to make an autopsy in case of death where when it is not prohibited by law;
- (7) no an action at law or in equity shall may not be brought to recover a loss under the policy prior to the expiration of sooner than 60 days after written proof of loss has been furnished in accordance with the requirements of the policy and that no such action shall be brought after the expiration of no later than 3 years after the time written proof of loss is required to be furnished."

Section 30. Section 33-22-1809, MCA, is amended to read:

- "33-22-1809. Restrictions relating to premium rates. (1) Premium rates for health benefit plans under this part are subject to the following provisions:
- (a) The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than 20%.
- (b) For each class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage or the rates that could be charged to the employer under the rating system for that class of business may not vary from the index rate by more than 25% of the index rate.
- (c) The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:
- (i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period; in the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers;
- (ii) any adjustment, not to exceed 15% annually and adjusted pro rata for rating periods of less than 1 year, because of the claims experience, health status, or duration of coverage of the employees or dependents of the small employer, as determined from the small employer carrier's rate manual for the class of business; and
- (iii) any adjustment because of a change in coverage or a change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.
- (d) Adjustments in rates for claims experience, health status, and duration of coverage may not be charged to individual employees or dependents. Any adjustment must be applied uniformly to the rates charged for all employees and dependents of the small employer.
- (e) If a small employer carrier uses industry as a case characteristic in establishing premium rates, the rate factor associated with any industry classification may not vary from the average of the rate factors associated with all industry classifications by more than 15% of that coverage.
 - (f) A small employer carrier shall:
- (i) apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors must produce premiums for identical groups that differ only by the amounts attributable to plan design and that do not reflect differences because of the nature of the groups. Differences among base premium rates may not be based in any way on the actual or expected health status or claims experience of the small employer groups that choose or are expected to choose a particular health benefit plan.
- (ii) treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.
- (g) For the purposes of this subsection (1), a health benefit plan that includes a restricted network provision may not be considered similar coverage to a health benefit plan that does not include a restricted network provision.

- (2) A small employer carrier may not transfer a small employer involuntarily into or out of a class of business. A small employer carrier may not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claims experience, health status, or duration of coverage since the insurance was issued.
- (3) The commissioner may suspend for a specified period the application of subsection (1)(a) for the premium rates applicable to one or more small employers included within a class of business of a small employer carrier for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner either that the suspension is reasonable in light of the financial condition of the small employer carrier or that the suspension would enhance the fairness and efficiency of the small employer health insurance market.
- (4) In connection with the offering for sale of any health benefit plan to a small employer, a small employer carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of each of the following:
- (a) the extent to which premium rates for a specified small employer are established or adjusted based upon the actual or expected variation in claims costs or upon the actual or expected variation in health status of the employees of small employers and the employees' dependents;
- (b) the provisions of the health benefit plan concerning the small employer carrier's right to change premium rates and the factors, other than claims experience, that affect changes in premium rates;
 - (c) the provisions relating to renewability of policies and contracts; and
 - (d) the provisions relating to any preexisting condition.
- (5) (a) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.
- (b) Each small employer carrier shall file with the commissioner annually, on or before March 15, an actuarial certification certifying that the carrier is in compliance with this part and that the rating methods of the small employer carrier are actuarially sound. The actuarial certification must be in a form and manner and must contain information as specified by the commissioner. A copy of the actuarial certification must be retained by the small employer carrier at its principal place of business.
- (c) A small employer carrier shall make the information and documentation described in subsection (5)(a) available to the commissioner upon request. Except in cases of violations of the provisions of this part and except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction, the information must be considered proprietary and trade secret information and is not subject to disclosure by the commissioner to persons outside of the department.
- (6) The commissioner may not require prior approval of the rating methods used by small employer carriers or the premium rates of the health benefit plans offered to small employers."

Section 31. Section 33-28-104, MCA, is amended to read:

- "33-28-104. Minimum capital surplus letter of credit. (1) A captive insurance company may not be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of:
 - (a) in the case of a pure captive insurance company, not less than \$250,000;
- (b) in the case of an industrial insured captive insurance company, not less than \$500,000;
- (c) in the case of an association captive insurance company, not less than \$750,000; or
- (d) in the case of a protected cell captive insurance company, not less than \$500,000. However, if the protected cell captive insurance company does not assume any risks, the risks insured by the protected cells are homogenous, and if there are not more than 10 cells, the commissioner may reduce the amount required in this subsection (1)(d) to an amount not less than \$250,000.
- (e) (i) in the case of a branch captive insurance company, not less than the applicable amount of capital and surplus required in subsections (1)(a) through (1)(d), as determined based upon the organizational form of the foreign captive insurance company; and.
- (ii) the *The* minimum capital and surplus must be jointly held by the commissioner and the branch captive insurance company in a bank of the federal reserve system approved by the commissioner; or
- (f) in the case of a captive reinsurance company, not less than 50% of the capital that would be required for that type of captive reinsurance insurance company.
- (2) The commissioner may require additional capital and surplus based upon the type, volume, and nature of insurance business transacted.
- (3) Capital and surplus may be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by the state of Montana or a member bank of the federal reserve system and approved by the commissioner."

Section 32. Section 33-30-102, MCA, is amended to read:

- "33-30-102. Application of this chapter construction of other related laws. (1) All health service corporations are subject to the provisions of this chapter. In addition to the provisions contained in this chapter, other chapters and provisions of this title apply to health service corporations as follows: 33-2-1212; 33-3-307; 33-3-308; 33-3-401; 33-3-431; 33-3-701 through 33-3-704; 33-17-101; Title 33, chapter 2, part 19; Title 33, chapter 17, parts 2 and 10 through 12; and Title 33, chapters 1, 15, 18, 19, and 22, except 33-22-111.
- (2) A law of this state other than the provisions of this chapter applicable to health service corporations must be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict, the provisions of this chapter prevail."

Section 33. Section 33-31-102, MCA, is amended to read:

- **"33-31-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:
- (1) "Affiliation period" means a period that, under the terms of the health insurance coverage offered by a health maintenance organization, must expire before the health insurance coverage becomes effective.
 - (2) "Basic health care services" means:

- (a) consultative, diagnostic, therapeutic, and referral services by a provider;
- (b) inpatient hospital and provider care;
- (c) outpatient medical services;
- (d) medical treatment and referral services;
- (e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);
 - (f) care and treatment of mental illness, alcoholism, and drug addiction;
 - (g) diagnostic laboratory and diagnostic and therapeutic radiologic services;
 - (h) preventive health services, including:
 - (i) immunizations;
 - (ii) well-child care from birth;
 - (iii) periodic health evaluations for adults;
 - (iv) voluntary family planning services;
 - (v) infertility services; and
- (vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction;
 - (i) minimum mammography examination, as defined in 33-22-132;
- (j) outpatient self-management training and education for the treatment of diabetes along with certain diabetic equipment and supplies as provided in 33-22-129; and
- (k) treatment and medical foods for inborn errors of metabolism. "Medical foods" and "treatment" have the meanings provided for in 33-22-131.
- (3) "Commissioner" means the commissioner of insurance of the state of Montana.
 - (4) "Dependent" has the meaning provided in 33-22-140.
 - (5) "Enrollee" means a person:
 - (a) who enrolls in or contracts with a health maintenance organization;
- (b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or
- (c) on whose behalf the health maintenance organization contracts to receive health care services.
- (6) "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.
 - (7) "Health care services" means:
 - (a) the services included in furnishing medical or dental care to a person;
 - (b) the services included in hospitalizing a person;
- (c) the services incident to furnishing medical or dental care or hospitalization; or
- (d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.
- (8) "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

- (9) "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers. This subsection does not limit methods of provider payments made by health maintenance organizations.
- (10) "Insurance producer" means an individual, partnership, or corporation or business entity appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.
 - (11) "Person" means:
 - (a) an individual;
 - (b) a group of individuals;
 - (c) an insurer, as defined in 33-1-201;
 - (d) a health service corporation, as defined in 33-30-101;
 - (e) a corporation, partnership, facility, association, or trust; or
- (f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.
- (12) "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.
- (13) "Point-of-service option" means a delivery system that permits an enrollee of a health maintenance organization to receive health care services from a provider who is, under the terms of the enrollee's contract for health care services with the health maintenance organization, not on the provider panel of the health maintenance organization.
- (14) "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, or advanced practice registered nurse, as specifically listed in 37-8-202, who treats any illness or injury within the scope and limitations of the provider's practice or any other person who is licensed or otherwise authorized in this state to furnish health care services.
- (15) "Provider panel" means those providers with whom a health maintenance organization contracts to provide health care services to the health maintenance organization's enrollees.
- (16) "Purchaser" means the individual, employer, or other entity, but not the individual certificate holder in the case of group insurance, that enters into a health care services agreement.
- (17) "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent."

Section 34. Section 33-31-111, MCA, is amended to read:

"33-31-111. (Temporary) Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated

pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

- (2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.
- (3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.
- (4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.
- (5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.
 - (6) This section does not exempt a health maintenance organization from:
- (a) prohibitions against interference with certain communications as provided under chapter 1, part 8;
 - (b) the provisions of Title 33, chapter 22, part 19;
 - (c) the requirements of 33-22-134 and 33-22-135;
- (d) network adequacy and quality assurance requirements provided under chapter 36, except as provided in 33-22-262; or
 - (e) the requirements of Title 33, chapter 18, part 9.
- (7) Except as provided in 33-22-262, the provisions of Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-401, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 17, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-152, [section 24], 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations. (Terminates June 30, 2009—sec. 14, Ch. 325, L. 2003.)
- 33-31-111. (Effective July 1, 2009) Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.
- (2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.
- (3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.
- (4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

- (5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.
 - (6) This section does not exempt a health maintenance organization from:
- (a) prohibitions against interference with certain communications as provided under chapter 1, part 8;
 - (b) the provisions of Title 33, chapter 22, part 19;
 - (c) the requirements of 33-22-134 and 33-22-135;
- (d) network adequacy and quality assurance requirements provided under chapter 36; or
 - (e) the requirements of Title 33, chapter 18, part 9.
- (7) Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-401, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 17, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-152, [section 24], 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations."

Section 35. Section 33-31-311, MCA, is amended to read:

- "33-31-311. Insurance producer license required. An individual, partnership, or corporation or business entity may not act as or represent to the public that the individual, partnership, or corporation or business entity is an insurance producer for a health maintenance organization unless the individual, partnership, or corporation or business entity is:
- (1) licensed as a disability insurance producer by the commissioner pursuant to Title 33, chapter 17, parts 1, 2, 4, and 10 through 12, or licensed as an insurance producer as provided in 33-30-311; and
- (2) appointed or authorized by the health maintenance organization or other health insurance issuer to sell, solicit, or negotiate health care service agreements on its behalf."
- **Section 36.** Codification instruction. [Section 24] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 24].
 - Section 37. Effective date. [This act] is effective July 1, 2009.
- **Section 38. Applicability.** [Section 24] applies to policies, certificates, and membership contracts that are delivered, issued, renewed, extended, or modified on or after January 1, 2010.

Approved April 17, 2009

CHAPTER NO. 272

[SB 151]

AN ACT REVISING INSURANCE LAWS PERTAINING TO VIATICAL SETTLEMENTS; PROHIBITING VIATICAL SETTLEMENT FRAUD AND PROVIDING REMEDIES AND PENALTIES; INCLUDING SUSPECTED VIATICAL SETTLEMENT FRAUD IN ACTIVITIES THAT MUST BE REPORTED BY INSURERS AND OTHERS; REVISING REQUIREMENTS

FOR VIATICAL SETTLEMENT CONTRACT TERMS; LENGTHENING TO 3 BUSINESS DAYS THE AMOUNT OF TIME A VIATICAL SETTLEMENT PROVIDER HAS TO DEPOSIT PROCEEDS OF A SETTLEMENT INTO AN ESCROW OR TRUST ACCOUNT; ESTABLISHING CRITERIA FOR DETERMINING CONFLICT OF LAWS QUESTIONS; AMENDING SECTIONS 33-1-1301, 33-1-1302, 33-1-1303, 33-20-1308, AND 33-20-1314, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-1301, MCA, is amended to read:

- "33-1-1301. Insurance, viatical settlement, medical care discount card, pharmacy discount card, and securities fraud education and prevention program definitions. (1) The commissioner may:
- (a) establish an insurance, viatical settlement, medical care discount card, pharmacy discount card, and securities fraud education and prevention program; and
- (b) conduct investigations of insurance, *viatical settlement*, medical care discount card, pharmacy discount card, and securities fraud.
 - (2) As used in this section part:
- (a) "medical care discount card" and "pharmacy discount card" have the meanings provided in 33-38-102; and
- (b) "viatical settlement broker", "viatical settlement contract", and "viatical settlement provider" have the meanings provided in 33-20-1302."
 - **Section 2.** Section 33-1-1302, MCA, is amended to read:
- "33-1-1302. Insurance, viatical settlement, medical care discount card, and pharmacy discount card fraud insurer. (1) A person commits the act of insurance, viatical settlement, medical care discount card, or pharmacy discount card fraud when;
- (a) in the course of offering or selling insurance, a medical care discount card, or a pharmacy discount card, the person misrepresents a material fact, known to the person to be untrue or made with reckless indifference as to whether it is true, with the intention of causing another person to rely upon the misrepresentation to that relying person's detriment; or
- (b) with respect to a viatical settlement, the person violates the provisions of [section 3].
- (2) A person commits the act of insurance fraud or viatical settlement fraud by engaging in any transaction, act, practice, course of business, or course of dealing that involves a violation of insurable interest laws.
- (2)(3) The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose the penalties provided for in 33-1-317 for a violation of [section 3] or this section. Failure to pay a fine under this section results in a lien upon the assets and property of the person as provided in 33-1-318(3).
- (3)(4) In addition to any penalty provided for in 33-1-317, the commissioner may require a person regulated under this title who commits insurance, viatical settlement, medical care discount card, or pharmacy discount card fraud to make full restitution to the victim for all financial losses sustained as a result of the fraud with interest of 10% a year from the date of the fraud plus any costs and reasonable attorney fees, less the amount of any income, refund, or other benefit received by the victim from the insurance, viatical settlement, medical care discount card, or pharmacy discount card.

- (4)(5) The commissioner may require a person who commits insurance fraud a violation of this part to make full restitution to any insurer, purported insurer, or insurance producer person who may have sustained any losses as a result of the fraud with interest of 10% a year from the date of the loss plus any costs and reasonable attorney fees.
- (5)(6) An insurer, insurance producer, or other person who sustained any losses and who was awarded restitution may bring suit to recover those sums, including any attorney fees, interest at 10% a year, and costs incurred in obtaining a judgment.
- (6)(7) Failure of a person to pay any amount ordered under this section constitutes a forfeiture of the right to do business in this state.
- (7)(8) A person who purposely or knowingly is involved in the misappropriation or theft of insurance premiums or proceeds, *viatical settlement proceeds*, a medical care discount card fee, or a pharmacy discount card fee commits the offense of theft and deceptive practices and is punishable as provided in 45-6-301 and 45-6-317, and the commissioner may refer evidence concerning the violation to the attorney general or other appropriate prosecuting attorney.
- (8) As used in this section "medical care discount card" and "pharmacy discount card" have the meanings provided in 33-38-102."
- **Section 3. Viatical settlement fraud.** Viatical settlement fraud consists of but is not limited to the following committed by a person or the person's agents or employees:
- (1) acts or omissions by any person who, knowingly and with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, engages in or permits the person's employees or agents to engage in acts that include but are not limited to:
- (a) presenting, causing to be presented, or preparing with knowledge and belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, premium finance lender, life insurer, life insurance producer, or any other person false material information; or
- (b) concealing material information as part of, in support of, or concerning a fact material to one or more of the following:
- (i) an application for the issuance of a viatical settlement contract or life insurance policy;
 - (ii) the underwriting of a viatical settlement contract or life insurance policy;
- (iii) a claim for payment or benefit pursuant to a viatical settlement contract or life insurance policy;
 - (iv) premiums paid on a life insurance policy;
- (v) payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or life insurance policy;
 - (vi) the reinstatement or conversion of a life insurance policy;
- (vii) the solicitation, offer to enter into, or effectuation of a viatical settlement contract or life insurance policy;
- (viii) the issuance of written evidence of viatical settlement contracts or life insurance; or
- (ix) any application for, the existence of, or any payments related to a loan secured directly or indirectly by any interest in a life insurance policy.

- (2) employing any device, scheme, or artifice to defraud in the business of viatical settlements:
- (3) removing, concealing, altering, destroying, or sequestering from the commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;
- (4) misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or other person;
- (5) transacting the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements;
- (6) filing with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact;
- (7) engaging in embezzlement, theft, misappropriation, or conversion of money, funds, premiums, credits, or other property of a viatical settlement provider, viatical settlement broker, insurer, insured, policy owner, or any other person engaged in the business of viatical settlements or life insurance;
- (8) knowingly and with intent to defraud entering into, brokering, or otherwise dealing in a viatical settlement contract the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy if the policy owner or the owner's agent intended to defraud the issuer of the policy;
- (9) attempting to commit or to assist, aid, or abet in the commission of or conspiring to commit the acts or omissions specified in this section; or
- (10) misrepresenting the state of residence of a policy owner to be a state or jurisdiction that does not have a law substantially similar to this part or Montana's Viatical Settlement Act, Title 33, chapter 20, part 13, for the purpose of evading or avoiding the provisions of Montana law.
 - **Section 4.** Section 33-1-1303, MCA, is amended to read:
- "33-1-1303. Reporting requirements. (1) An insurer, insurance producer, or other person who has reason to believe that insurance, viatical settlement, medical care discount card, or pharmacy discount card fraud has occurred shall report the suspected fraud to the commissioner or to the insurance producer's or other person's insurer within 60 days of discovery of the occurrence. An insurer shall review a report given to the insurer, and if the insurer determines that there is a reasonable likelihood that fraud has occurred the insurer shall forward the report to the commissioner within 30 days of receipt.
- (2) In the absence of malice, an insurer, insurance producer, or other person may not be subjected to civil liability for reporting or providing information or otherwise cooperating with an investigation of insurance, *viatical settlement*, medical care discount card, or pharmacy discount card fraud."
 - Section 5. Section 33-20-1308, MCA, is amended to read:
- "33-20-1308. Terms of contract. (1) A viatical settlement contract must be in writing. A viatical settlement provider shall establish in the contract the terms under which the viatical settlement provider will pay compensation or anything of value in return for the policyholder's or certificate holder's

assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

- (2) A viatical settlement provider may not use a viatical settlement contract in this state unless the viatical settlement provider has filed the contract form with the commissioner and the commissioner has approved the contract form according to the provisions set forth in 33-1-501. The commissioner shall disapprove a viatical settlement contract form if, in the commissioner's judgment, the contract or any provision of the contract is unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the policyholder or certificate holder.
- (3) Each viatical settlement contract entered into in this state must contain a provision enabling the policyholder or certificate holder to rescind the contract not later than the 30th day after the date on which the contract is executed by all parties or not later than the 15th day after the policyholder or certificate holder receives the viatical settlement proceeds, whichever is the longer period. In order to rescind a contract, a policyholder or certificate holder who has received the proceeds shall return them to the viatical settlement provider or financing entity.
- (4) If a viatical settlement provider enters into a viatical settlement that allows the viator to retain an interest in the policy, the viatical settlement contract must contain all of the following provisions:
- (a) that the viatical settlement provider shall effect the transfer of the amount of the death benefit only to the extent or portion of the amount viaticated. Benefits in excess of the amount viaticated must be paid directly to the viator's beneficiary by the insurance company.
- (b) that the premiums to be paid by the viatical settlement provider and the viator will be apportioned unless the viatical settlement contract specifies that all premiums must be paid by the viatical settlement provider. The contract may also require that the viator reimburse the viatical settlement provider for the premiums attributable to the retained interest.
- (c) that the viatical settlement provider shall, upon acknowledgment of the perfection of the transfer, either:
- (i) advise the insured in writing that the insurance company has confirmed the viator's interest in the policy; or
- (ii) provide the insured with a copy of the instrument provided by the insurance company to the viatical settlement provider that acknowledges the viator's interest in the policy."

Section 6. Section 33-20-1314, MCA, is amended to read:

- "33-20-1314. Payment to escrow or trust account lump-sum payment. (1) Immediately upon Within 3 business days after receipt of documents from the policyholder or certificate holder effecting the transfer of the insurance policy or certificate, the viatical settlement provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a bank approved by the commissioner, pending acknowledgment of the transfer by the issuer of the life insurance policy. The trustee or escrow agent shall transfer the proceeds due to the policyholder or certificate holder immediately upon receipt of acknowledgment of the transfer from the insurer.
- (2) A viatical settlement provider shall make payment of the proceeds of a viatical settlement contract in a lump sum except as provided in this subsection.

A viatical settlement provider may not retain any portion of the proceeds. A viatical settlement provider may make installment payments only if the viatical settlement provider has purchased an annuity issued by an authorized insurer or a similar financial instrument issued by a financial institution authorized to engage in the business of a financial institution in this state.

- (3) Failure by the viatical settlement provider to tender the viatical settlement by the date disclosed to the policyholder or certificate holder renders the contract void."
- Section 7. Conflict of laws. (1) If there is more than one owner on a single life insurance policy and the owners are residents of different states, the viatical settlement contract is governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all of the owners. The law of the state of the insured governs if equal owners fail to agree in writing upon a state of residence for jurisdictional purposes.
- (2) (a) A viatical settlement provider from this state who enters into a viatical settlement contract with a viator who is a resident of another state that has enacted statutes or adopted regulations governing viatical settlement contracts is governed in the effectuation of that viatical settlement contract by the statutes and regulations of the viator's state of residence.
- (b) A viatical settlement provider from this state who enters into a viatical settlement contract with a viator who is a resident of another state that has not enacted statutes or adopted regulations governing viatical settlement contracts is governed in the effectuation of that viatical settlement contract by the laws of this state. The viatical settlement provider shall give the viator notice that this state regulates the transaction into which the viator is entering. The viatical settlement provider shall maintain all records required by this state and use forms approved in this state.
- (3) If there is a conflict in the laws that apply to a viator and a viatical settlement purchaser in any individual transaction, the laws of the state that apply to the viator take precedence and the viatical settlement provider shall comply with those laws.
- **Section 8. Codification instruction.** (1) [Section 3] is intended to be codified as an integral part of Title 33, chapter 1, part 13, and the provisions of Title 33, chapter 1, part 13, apply to [section 3].
- (2) [Section 7] is intended to be codified as an integral part of Title 33, chapter 20, part 13, and the provisions of Title 33, chapter 20, part 13, apply to [section 7].
- **Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 5] is effective January 1, 2010.

Approved April 17, 2009

CHAPTER NO. 273

[SB 222]

AN ACT REVISING PROVISIONS RELATED TO FOUR-LANE HIGHWAY CONSTRUCTION ALONG U.S. HIGHWAY 2; REMOVING THE REQUIREMENT THAT THE DEPARTMENT SEEK FEDERAL FUNDING FOR THE PROJECT THAT DOES NOT REQUIRE A STATE MATCH; REMOVING THE PROHIBITION ON EXPENDING RESOURCES THAT WOULD JEOPARDIZE FUTURE HIGHWAY PROJECTS; AND AMENDING SECTION 60-2-133, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-2-133, MCA, is amended to read:

- **"60-2-133. U.S. highway 2 planning funding.** (1) The commission shall may direct the department to construct a four-lane highway generally along the present route of U.S. highway 2 from the North Dakota border to the Idaho border in order to increase tourism and to bring economic development to Montana. Planning for the U.S. highway 2 project must may be included in any future fiscal plan developed by the department.
- (2) The department shall seek additional federal funding that does not require a state funding match for the U.S. highway 2 project.
- (3) The department may not expend any resources on the U.S. highway 2 project that would jeopardize any future highway projects."

Approved April 17, 2009

CHAPTER NO. 274

[SB 227]

AN ACT REVISING THE TIME FOR FILING CERTAIN CAMPAIGN FINANCE REPORTS; REQUIRING THAT CERTAIN REPORTS BE FILED ELECTRONICALLY; AND AMENDING SECTION 13-37-226, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-226, MCA, is amended to read:

- **"13-37-226. Time for filing reports.** (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports *electronically as follows*:
- (a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot;
- (b) on the 10th day of March and September in each year that an election is to be held and on the 15th and, April, July, August, and September;
- (c) on the 15th and 5th days days preceding the date on which an election is held; and
- (d) within 24 hours after receiving a contribution of \$200 or more if received between the 10th day before the election and the day of the election;
 - (e)(e) not more than 20 days after the date of the election; and

- (d)(f) on the 10th day of March and September September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).
- (2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:
- (a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which the text of the proposed ballot issue is submitted for review and approval pursuant to 13-27-202 during the year or years prior to the election year that an issue is or is expected to be on the ballot;
- (b) on the 10th day of March and on the 10th day of each subsequent month through September September;
- (c) on the 15th and 15th and 5th days days preceding the date on which an election is held;
- (d) within 24 hours after receiving a contribution of \$500 or more if received between the 10th day before the election and the day of the election;
 - (e) within 20 days after the election; and
- (f) on the 10th day of March and September September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).
- (3) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized to support or oppose a particular state district candidate or issue shall file reports:
- (a) on the 12th day preceding the date on which an election is held and within 48 hours after receiving a contribution of \$100 or more if received between the 17th day before the election and the day of the election. The report under this subsection (3)(a) may be made by mail or by electronic communication to the clerk and recorder and the commissioner of political practices.
 - (b) not more than 20 days after the date of the election; and
- (c) whenever a candidate or political committee files a closing report as specified in 13-37-228(3).
- (4) Candidates for any other public office and political committees that are specifically organized to support or oppose a particular local issue shall file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds \$500, except as provided in 13-37-206.
- (5) For the purposes of this subsection, a committee that is not specifically organized to support or oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file:
- (a) a report on the 12th day preceding the date of an election in which it participates by making an expenditure;
- (b) a report not more than 20 days after the date of the election in which it participates by making an expenditure; and

- (c) a report on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.
- (6) The commissioner may promulgate rules regarding the extent to which organizations that are incidental political committees shall report their politically related activities in accordance with this chapter.
- (7) All reports required by this section must be complete as of the fifth day before the date of filing as specified in 13-37-228(2) and this section."

Approved April 17, 2009

CHAPTER NO. 275

[SB 228]

AN ACT REVISING LAWS RELATED TO WOLF MANAGEMENT; PLACING PRIORITY ON THE PROTECTION OF HUMANS, LIVESTOCK, AND PETS; ALLOWING THE REMOVAL OF PROBLEM WOLVES FOR LIVESTOCK DEPREDATION; DEFINING "PROBLEM WOLVES"; PROVIDING THAT FOLLOWING DELISTING SPECIAL KILL PERMITS MAY BE ISSUED TO LANDOWNERS AND PUBLIC LAND PERMITTEES; AMENDING SECTIONS 87-1-217 AND 87-5-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-217, MCA, is amended to read:

- "87-1-217. Policy for management of large predators legislative intent. (1) In managing large predators, the primary goals of the department, in the order of listed priority, must be are to:
 - (a) preserve citizens' opportunities to hunt large game species;
 - (b)(a) protect humans, livestock, and pets; and
- (e)(b) preserve and enhance the safety of the public during outdoor recreational and livelihood activities; and
 - (c) preserve citizens' opportunities to hunt large game species.
 - (2) As used in this section:
- (a) "large game species" means deer, elk, mountain sheep, moose, antelope, and mountain goats; and
 - (b) "large predators" means bears, mountain lions, and wolves.
- (3) With regard to large predators, it is the intent of the legislature that the specific provisions of this section concerning the management of large predators will control the general supervisory authority of the department regarding the management of all wildlife.
- (4) For the management of wolves in accordance with the priorities established in subsection (1), the department may use lethal action to take problem wolves that attack livestock, so long as the state objective for breeding pairs has been met. For the purposes of this subsection, "problem wolves" means any individual wolf or pack of wolves with a history of livestock predation."

Section 2. Section 87-5-131, MCA, is amended to read:

"87-5-131. Process for delisting of gray wolf — management following delisting. (1) If the United States fish and wildlife service removes the Northern Rocky Mountain or gray wolf from the United States' list of

endangered or threatened wildlife, the department is authorized to remove the wolf from the state list of endangered species upon a determination by the department pursuant to this part that the wolf is no longer endangered.

- (2) Following state delisting of the wolf, the department shall manage the wolf as a species in need of management until the department and the commission determine that the wolf no longer needs protection as a species in need of management and can be managed and protected as a game animal. Upon making that determination, the commission may declare the wolf a big game animal or a furbearer and may regulate the taking of a wolf as a big game animal or furbearer.
- (3) (a) Following state delisting of the wolf, the department, or the department of livestock, pursuant to 81-7-102 and 81-7-103, may control wolves for the protection and safeguarding of livestock if the control action is consistent with a wolf management plan approved by both the department and the department of livestock.
- (b) Any wolf management plan approved by the department and the department of livestock must allow the issuance of special kill permits, also known as shoot-on-sight written take authorizations, by the department to landowners or public land permittees who have experienced livestock depredation."

Section 3. Effective date. [This act] is effective on passage and approval. Approved April 17, 2009

CHAPTER NO. 276

[SB 297]

AN ACT ESTABLISHING A SAND AND GRAVEL DEPOSIT PROGRAM WITHIN THE MONTANA BUREAU OF MINES AND GEOLOGY; ALLOWING THE MONTANA BUREAU OF MINES AND GEOLOGY TO ACCEPT GIFTS, GRANTS, AND REIMBURSEMENTS; REQUIRING PRESENTATIONS OF FINDINGS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Sand and gravel deposit program investigation purpose prioritization. (1) The Montana bureau of mines and geology shall establish a sand and gravel deposit program for the purpose of investigating sand and gravel deposits in areas of the state where conflicts between development and sand and gravel operations are high.
- (2) In prioritizing areas for investigation, the bureau of mines and geology shall consider the largest counties, according to the most recent census data, and counties with the most opencut mining permits and subdivision applications, according to the department of environmental quality.
- (3) The bureau of mines and geology may start an investigation when it has sufficient funds to conduct an investigation.
- (4) Within 1 year of starting an investigation, the bureau of mines and geology shall present the results of the investigation in the form of maps and text to:
 - (a) the counties included in the investigation;
 - (b) the education and local government interim committee; and

(c) the environmental quality council.

Section 2. Authority to accept gifts, grants, and reimbursements. The Montana bureau of mines and geology may accept gifts, grants, and reimbursements to be used for the purposes of [section 1].

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 82, chapter 2, and the provisions of Title 82, chapter 2, apply to [sections 1 and 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2009

CHAPTER NO. 277

[SB 308]

AN ACT REVISING LAWS RELATED TO THE STANDARD PREVAILING RATE OF WAGES FOR PUBLIC WORKS CONTRACTS; PROVIDING FOR WAGE AND BENEFIT SURVEYS AND ALTERNATE METHODOLOGIES; SPECIFYING PAYMENT TERMS FOR APPRENTICES WORKING ON PUBLIC WORKS CONTRACTS; LIMITING TO 10 THE MAXIMUM NUMBER OF PREVAILING WAGE RATE DISTRICTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-6-157, 15-6-158, 15-6-159, 15-24-3111, 15-70-522, 18-2-401, 18-2-402, 18-2-403, 18-2-407, 18-2-411, 18-2-412, AND 69-3-2005, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Standard prevailing rate of wages for building construction services. (1) The department shall conduct an annual survey to calculate the standard prevailing rate of wages for building construction services using the process described in this section.
- (2) The standard prevailing wage rates adopted under subsection (1) must be set for the districts established pursuant to 18-2-411.
 - (3) The department shall survey:
- (a) electrical contractors who are licensed under Title 37, chapter 68, who perform commercial work;
- (b) plumbers who are licensed under Title 37, chapter 69, whose work is performed according to commercial building codes; and
- (c) construction contractors registered under Title 39, chapter 9, whose work is performed according to commercial building codes.
- (4) The surveys required under subsection (3) must include those wages, including fringe benefits plus travel allowances if applicable, that are paid in the applicable district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part.
- (5) The contractor survey must include information pertaining to the number of skilled workers employed in the contractor's peak month of employment and the wages and benefits paid for each craft, classification, or type of work. In setting the prevailing wages from the survey for each craft, classification, or type of work, the department shall use a weighted average wage for each craft, classification, or type of work, except in those cases in which

the survey shows that at least 50% of the skilled workers are receiving the same wage. If the survey shows that at least 50% of the skilled workers are receiving the same wage, that wage is the prevailing wage for that craft, classification, or type of work.

- (6) The work performed must be work of a similar character to the work performed in the applicable district unless the survey in the applicable district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages.
- (7) (a) The commissioner shall establish by rule the methodology for determining the standard prevailing rate of wages. The rules must include an alternate methodology to determine the standard prevailing rate of wages whenever insufficient data is generated by the survey of contractors in the applicable district. The rules must identify the amount of data that constitutes insufficient data.
- (b) The commissioner shall use an alternate methodology provided by rule to determine the standard prevailing rate of wages whenever insufficient data exists.
- (c) The alternative method of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character, which must be based on a survey that is conducted as closely as possible to the original district.
- (8) Whenever work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits and the rate of travel allowance, must be those rates established by collective bargaining agreements in effect in the applicable district for each craft, classification, or type of skilled worker needed to complete the contract.
- Section 2. Standard prevailing rate of wages for heavy construction services and for highway construction services definition. (1) The department shall establish from time to time the standard prevailing rate of wages for heavy construction services and for highway construction services.
- (2) In establishing the standard prevailing rate of wages for heavy construction services and for highway construction services, the department may either:
- (a) conduct a survey of construction contractors registered under Title 39, chapter 9, who perform heavy construction services or highway construction services; or
- (b) adopt by reference through rulemaking the rates established by the U.S. department of labor under the federal Davis-Bacon Act, 29 CFR 1 et seq., for projects in Montana.
- (3) For the purposes of this section, the term "standard prevailing rate of wages for heavy construction services and for highway construction services" means wage rates, including fringe benefits plus zone pay and travel allowances that are determined and established statewide for heavy construction projects and highway construction projects. The department may define by rule the terms heavy construction projects and highway construction projects. The definitions of heavy construction projects and highway construction projects must include but are not limited to projects the same as or similar to the construction, alteration, or repair of roads, streets, highways, alleys, runways, airport runways and ramps, dams, powerhouses, canals, channels, pipelines,

parking areas, utility rights-of-way, staging yards located on or off the right-of-way, or new or reopened pits that produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the general public.

- Section 3. Standard prevailing rate of wages for nonconstruction services survey. (1) The department shall conduct an annual survey to calculate the standard prevailing rate of wages for nonconstruction services using the process described in this section.
- (2) The standard prevailing wage rates adopted under subsection (1) must be set for the districts established under 18-2-411.
- (3) (a) The department shall survey those employers that the department determines provide nonconstruction services in Montana in fulfillment of public works contracts.
- (b) The department may survey employers that request to be included in the survey related to the nonconstruction services standard prevailing rate of wages or employers whose names and addresses are supplied by a political subdivision of the state as employers who have submitted bona fide bids or responses to requests for proposals for public works contracts for nonconstruction services.
- (4) If the department does not survey an employer who is required to be surveyed under subsection (3)(a) or eligible to be surveyed under subsection (3)(b), the resulting survey and the ratesetting process remain valid.
 - (5) The survey must include:
- (a) those wages, including fringe benefits and travel allowances if applicable, that are paid in the applicable district by other employers for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part; and
- (b) information pertaining to the number of workers employed in the employer's peak month of employment.
- (6) In setting the standard prevailing rate of wages for nonconstruction services from the survey for each craft, classification, or type of work, the department shall use the weighted average wage for each craft, classification, or type of work, except in cases in which the survey shows that at least 50% of the workers are receiving the same wage. If the survey shows that at least 50% of the workers are receiving the same wage, that wage is the standard prevailing rate of wages for that craft, classification, or type of work.
- (7) The work performed must be work of a similar character to the work performed in the applicable district unless the survey in the applicable district does not generate sufficient data. If the survey produces insufficient data, the standard prevailing rate of wages may be established by the use of other information or an alternate methodology as provided in subsection (8).
- (8) (a) The commissioner shall establish by rule the methodology for determining the standard prevailing rate of wages. The rules must include an alternate methodology to determine the standard prevailing rate of wages whenever insufficient data is generated by the survey of contractors in the applicable district. The rules must identify the amount of data that constitutes insufficient data.
- (b) The commissioner shall use an alternate methodology provided by rule to determine the standard prevailing rate of wages whenever insufficient data exists.

- (c) The alternative method of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character, which must be based on a survey that is conducted as closely as possible to the original district.
- (9) Whenever work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits, must be those rates established by collective bargaining agreements in effect in the applicable district for each craft, classification, or type of skilled worker needed to complete the contract.
- Section 4. Wages paid to registered apprentices. (1) Only an apprentice whose indenture agreement is registered with the department under Title 39, chapter 6, or recognized by the department as being registered with an appropriate registration agency of another state or the federal government may be paid as provided in subsection (2) when working on a public works contract. An apprentice whose indenture agreement is not registered with or recognized by the department must be paid the full amount of the standard prevailing rate of wages, including any applicable travel allowances.
- (2) A recognized, registered apprentice must be paid the percentage of the standard prevailing rate of wages provided for in the apprenticeship standards applicable to that apprentice. The percentage amount applies to wage rates only and not to fringe benefits. The full amount of any applicable fringe benefits must be paid to the apprentice while the apprentice is working on the public works contract.
- Section 5. Wage rate adjustments for multiyear contracts. (1) Any public works contract that by the terms of the original contract calls for more than 30 months to fully perform must include a provision to adjust, as provided in subsection (2), the standard prevailing rate of wages to be paid to the workers performing the contract.
- (2) The standard prevailing rate of wages paid to workers under a contract subject to this section must be adjusted 12 months after the date of the award of the public works contract. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the contract
- (3) Any increase in the standard rate of prevailing wages for workers under this section is the sole responsibility of the contractor and any subcontractors and not the contracting agency.
 - **Section 6.** Section 15-6-157, MCA, is amended to read:
- "15-6-157. Class fourteen property description taxable percentage. (1) Class fourteen property includes:
 - (a) wind generation facilities of a centrally assessed electric power company;
- (b) wind generation facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a;
- (c) noncentrally assessed wind generation facilities owned or operated by any electrical energy producer;
- (d) wind generation facilities owned or operated by cooperative rural electric associations described under 15-6-137;
- (e) all property of a biodiesel production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

- (f) all property of a biogas production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;
 - (g) all property of a biomass gasification facility, as defined in 15-24-3102;
- (h) all property of a coal gasification facility, as defined in 15-24-3102, except for property in subsection (1)(k) of this section, that sequesters carbon dioxide;
- (i) all property of an ethanol production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;
 - (j) all property of a geothermal facility, as defined in 15-24-3102;
- (k) all property of an integrated gasification combined cycle facility, as defined in 15-24-3102, that sequesters carbon dioxide, as required by 15-24-3111(4)(c);
- (l) all property or a portion of the property of a renewable energy manufacturing facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;
 - (m) all property of a natural gas combined cycle facility;
- (n) equipment that is used to capture and to prepare for transport carbon dioxide that will be sequestered or injected for the purpose of enhancing the recovery of oil and gas, other than that equipment at coal combustion plants of the types that are generally in commercial use as of December 31, 2007, that commence construction after December 31, 2007;
- (o) high-voltage direct-current transmission lines and associated equipment and structures, including converter stations and interconnections, other than property classified under 15-6-159, that:
- (i) originate in Montana with a converter station located in Montana east of the continental divide and that are constructed after July 1, 2007;
 - (ii) are certified under the Montana Major Facility Siting Act; and
- (iii) provide access to energy markets for Montana electrical generation facilities listed in this section that commenced construction after June 1, 2007;
- (p) all property of electric transmission lines, including substations, that originate at facilities specified in this subsection (1), with at least 90% of electricity carried by the line originating at facilities specified in this subsection (1) and terminating at an existing transmission line or substation that has commenced construction after June 1, 2007;
- (q) the qualified portion of an alternating current transmission line and its associated equipment and structures, including interconnections, that has commenced construction after June 1, 2007.
- (2) (a) The qualified portion of an alternating current transmission line in subsection (1)(q) is that percentage, as determined by the department of environmental quality, of rated transmission capacity of the line contracted for on a firm basis by buyers or sellers of electricity generated by facilities specified in subsection (1) that are located in Montana.
- (b) The department of revenue shall classify the total value of an alternating current transmission line in accordance with the determination made by the department of environmental quality pursuant to subsection (2)(a).
- (c) The owner of property described under this subsection (2) shall disclose the location of the generation facilities specified in subsection (1) and information sufficient to demonstrate that there is a firm contract for transmission capacity available throughout the year. For purposes of the initial

qualification, the owner is not required to disclose financial terms and conditions of contracts beyond that needed for classification.

- (3) Class fourteen property does not include facilities:
- (a) at which the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a) [section 2], was not paid during the construction phase; or
 - (b) that are exempt under 15-6-225.
- (4) For the purposes of this section, "wind generation facilities" means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind.
- (5) (a) The department of environmental quality shall determine whether to certify that a transmission line meets the criteria of subsection (1)(0), (1)(p), or (1)(q), as applicable, based on an application provided for in 15-24-3112. The department of environmental quality shall review the certification 10 years after the line is operational, and if the property no longer meets the requirements of subsection (1)(0), (1)(p), or (1)(q), the certification must be revoked.
- (b) If the department of revenue finds that a certification previously granted was based on an application that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time that the certification was in effect.
 - (6) Class fourteen property is taxed at 3% of its market value."

Section 7. Section 15-6-158, MCA, is amended to read:

- "15-6-158. Class fifteen property description taxable percentage. (1) Class fifteen property includes:
- (a) carbon dioxide pipelines certified by the department of environmental quality under 15-24-3112 for the transportation of carbon dioxide for the purposes of sequestration or for use in closed-loop enhanced oil recovery operations;
- (b) qualified liquid pipelines certified by the department of environmental quality under 15-24-3112;
 - (c) carbon sequestration equipment;
 - (d) equipment used in closed-loop enhanced oil recovery operations; and
- (e) all property of pipelines, including pumping and compression equipment, carrying products other than carbon dioxide, that originate at facilities specified in 15-6-157(1), with at least 90% of the product carried by the pipeline originating at facilities specified in 15-6-157(1) and terminating at an existing pipeline or facility.
 - (2) For the purposes of this section, the following definitions apply:
- (a) "Carbon dioxide pipeline" means a pipeline that transports carbon dioxide from a plant or facility that produces or captures carbon dioxide to a carbon sequestration point, including a closed-loop enhanced oil recovery operation.
- (b) "Carbon sequestration" means the long-term storage of carbon dioxide from a carbon dioxide pipeline in geologic formations, including but not limited

to deep saline formations, basalt or oil shale formations, depleted oil and gas reservoirs, unminable coal beds, and closed-loop enhanced oil recovery operations.

- (c) "Carbon sequestration equipment" means the equipment used for carbon sequestration, including equipment used to inject carbon dioxide at the carbon sequestration point and equipment used to retain carbon dioxide in the sequestration location.
- (d) "Carbon sequestration point" means the location where the carbon dioxide is to be confined for sequestration.
- (e) "Closed-loop enhanced oil recovery operation" means all oil production equipment, as described in 15-6-138(1)(c), owned by an entity that owns or operates an operation that, after construction, installation, and testing has been completed and the full enhanced oil recovery process has been commenced, injects carbon dioxide to increase the amount of crude oil that can be recovered from a well and retains as much of the injected carbon dioxide as practicable, but not less than 85% of the carbon dioxide injected each year absent catastrophic or unforeseen occurrences.
- (f) "Liquid pipeline" means a pipeline that is dedicated to using 90% of its pipeline capacity for transporting fuel or methane gas from a coal gasification facility, biodiesel production facility, biogas production facility, or ethanol production facility.
- (g) "Plant or facility that produces or captures carbon dioxide" means a facility that produces a flow of carbon dioxide that can be sequestered or used in a closed-loop enhanced oil recovery operation. This does not include wells from which the primary product is carbon dioxide.
- (3) Class fifteen property does not include a carbon dioxide pipeline, liquid pipeline, or closed-loop enhanced oil recovery operation for which, during construction, the standard prevailing wages for heavy construction, as provided in 18-2-401(13)(a) [section 2], were not paid during the construction phase.
 - (4) Class fifteen property is taxed at 3% of its market value."

Section 8. Section 15-6-159, MCA, is amended to read:

- "15-6-159. Class sixteen property description taxable percentage. (1) Class sixteen property includes high-voltage direct-current converter stations that are constructed in a location and manner so that the converter station can direct power to two different regional power grids.
- (2) Class sixteen property does not include property described in subsection (1) for which the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a) [section 2], was not paid during the construction phase.
- (3) (a) The department shall determine whether to certify that the property meets the criteria of subsection (1).
- (b) If the department finds that a certification previously granted was based on an application that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time that the certification was in effect.
 - (4) Class sixteen property is taxed at 2.25% of its market value."

Section 9. Section 15-24-3111, MCA, is amended to read:

- "15-24-3111. Energy production or development tax abatement eligibility. (1) A facility listed in subsection (3), clean advanced coal research and development equipment, and renewable energy research and development equipment may qualify for an abatement of property tax liability pursuant to this part.
- (2) (a) If the abatement is granted for a facility listed in subsection (3), the qualifying facility must be assessed at 50% of its taxable value for the qualifying period.
- (b) If the abatement is granted for clean advanced coal research and development equipment or renewable energy research and development equipment, the qualifying equipment, up to the first \$1 million of the value of equipment at a facility, must be assessed at 50% of its taxable value for the qualifying period. There is no abatement for any portion of the value of equipment at a facility in excess of \$1 million.
- (c) The abatement applies to all mills levied against the qualifying facility or equipment.
- (3) Subject to subsections (4) and (5), the following facilities or property may qualify for the abatement allowed under this part:
 - (a) biodiesel production facilities;
 - (b) biogas production facilities;
 - (c) biomass gasification facilities;
- (d) coal gasification facilities for which carbon dioxide from the coal gasification process is sequestered;
 - (e) ethanol production facilities;
 - (f) geothermal facilities;
 - (g) renewable energy manufacturing facilities;
- (h) clean advanced coal research and development equipment and renewable energy research and development equipment;
- (i) a natural gas combined cycle facility that offsets a portion of the carbon dioxide produced through carbon credit offsets;
- (j) transmission lines and associated equipment and structures classified in 15-6-157;
 - (k) converter stations classified under 15-6-159:
 - (l) carbon sequestration equipment as defined in 15-6-158; and
 - (m) pipelines classified under 15-6-158.
- (4) (a) In order to qualify for the abatement under this part, a facility listed in subsection (3) must meet the following requirements:
- (i) commencement of construction of the facility must occur after June 1, 2007; and
- (ii) the standard prevailing rate of wages for heavy construction, as provided in $\frac{18-2-401(13)(a)}{(a)}$ [section 2], must be paid during the construction phase of the facility.
- (b) In order to qualify for the abatement under this part, clean advanced coal research and development equipment and renewable energy research and development equipment must be placed into service after June 30, 2007.

- (c) For the facility to qualify under subsection (3)(d), the carbon dioxide produced from the gasification process must be sequestered at a rate that is practically obtainable but may not be less than 65%.
- (d) Integrated gasification combined cycle facilities for which a permit under Title 75, chapter 2, is applied for after December 31, 2014, do not qualify under subsection (3)(d).
- (e) To qualify under subsection (3)(i), the facility shall offset carbon dioxide emissions by the percentage determined in 15-24-3116.
- (5) To qualify for an abatement, the facility or clean advanced coal research and development equipment and renewable energy research and development equipment must be certified as provided in 15-24-3112.
- (6) Upon termination of the qualifying period, the abatement ceases and the property for which the abatement had been granted must be assessed at 100% of its taxable value.
- (7) For the purposes of this section, "qualifying period" means the construction period and the first 15 years after the facility commences operation or the clean advanced coal research and development equipment or renewable energy research and development equipment is purchased. The total time of the qualifying period may not exceed 19 years."

Section 10. Section 15-70-522, MCA, is amended to read:

- "15-70-522. Tax incentive for production of ethanol rules. (1) (a) If the ethanol was produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the ethanol was produced from non-Montana agricultural products when Montana products are not available, there is a tax incentive payable to ethanol distributors for distilling ethanol that:
- (i) is to be blended with gasoline for sale as ethanol-blended gasoline in Montana:
- (ii) was exported from Montana to be blended with gasoline for sale as ethanol-blended gasoline; or
- (iii) is to be used in the production of ethyl butyl ether for use in reformulated gasoline.
- (b) Payment must be made by the department out of the amount collected under 15-70-204.
- (2) Except as provided in subsections (3) and (4), the tax incentive on each gallon of ethanol distilled in accordance with subsection (1) is 20 cents a gallon for each gallon that is 100% produced from Montana products, with the amount of the tax incentive for each gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used in the production of the ethanol. The tax incentive is available to a facility for the first 6 years from the date that the facility begins production. The facility shall file a business plan with the department at least 2 years before the estimated beginning date of production. After the initial business plan is filed, the facility shall provide the department with quarterly updates regarding any changes to the business plan.
 - (3) Regardless of the ethanol tax incentive provided in subsection (2):
- (a) the total payments made for the incentive under this part may not exceed \$6 million in any consecutive 12-month period;

- (b) a plant or facility is not eligible to receive the tax incentive unless the facility paid the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a) [section 2], during the construction phase; and
- (c) an ethanol distributor is not eligible to receive the tax incentive unless at least:
- (i) 20% Montana product is used to produce ethanol at the facility in the first year of production;
- (ii) 25% Montana product is used to produce ethanol at the facility in the second year of production;
- (iii) 35% Montana product is used to produce ethanol at the facility in the third year of production;
- (iv) 45% Montana product is used to produce ethanol at the facility in the fourth year of production;
- (v) 55% Montana product is used to produce ethanol at the facility in the fifth year of production; and
- (vi) 65% Montana product is used to produce ethanol at the facility in the sixth year of production.
- (4) (a) An ethanol distributor may not receive tax incentive payments under subsection (2) that exceed \$2 million in any consecutive 12-month period. Subject to subsections (5) and (6), an ethanol distributor may receive tax incentive payments commencing the first quarter after a facility begins production. The distributor shall report its production to the department pursuant to 15-70-205.
 - (b) The distributor's report must include:
 - (i) the total number of gallons produced for the month;
 - (ii) the total amount of products purchased for the production of ethanol;
- (iii) the percentage of the total amount of products purchased that are Montana products; and
 - (iv) other information that the department determines is necessary.
- (5) (a) A plant shall apply for the incentive payment by submitting an application to the department when the plant has proof of commitment from lenders to finance the plant. Subject to subsection (5)(b), the department shall respond to the applicant with approval of the application within 45 days of receipt of the application, after confirming the lending commitment. Upon approval of the application, the department shall enter into a contract with the plant that ensures the state's commitment to pay incentive payments to qualifying ethanol plants.
- (b) If the department is not able to confirm a lending commitment, the department shall deny the application.
- (6) After the department has verified production, the application provisions of subsection (5) are met, and the plant owner presents proof of financing, the department shall begin payments of the ethanol tax incentives based on actual production according to the terms of subsections (2) and (4).
- (7) The department shall adopt rules necessary to carry out the provisions of this section. The department shall coordinate and request information and input from the ethanol production industry as a part of the rulemaking process and shall follow the procedures provided in Title 2, chapter 4."

Section 11. Section 18-2-401, MCA, is amended to read:

- "18-2-401. **Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:
- (1) (a) A "bona "Bona fide Montana resident of Montana" is a person means an individual who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's individual's past habitation in this state has been coupled with an intention to make it the person's this state the individual's home. Persons
- (b) Individuals who come to Montana solely in pursuance pursuit of any a contract or an agreement to perform labor may not be considered to be bona fide Montana residents of Montana within the meaning and for the purpose of this part.
- (2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.
- (3) (a) "Construction services" means work performed by an individual in building construction, heavy construction, highway construction, and remodeling work.
 - (b) The term does not include:
- (i) engineering, superintendence, management, office, or clerical work on a public works contract; or
- (ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.
- (4) "Contractor" means any *individual*, general contractor, subcontractor, firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in construction services.
- (5) "Department" means the department of labor and industry provided for in 2-15-1701.
- (6) "District" means a prevailing wage rate district established as provided in 18-2-411.
- (7) "Employer" means any *individual*, firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in nonconstruction services.
- (8) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and zone pay and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, utility rights-of-way, staging yards located on or off the right-of-way, or new or reopened pits that produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the general public.
- (8) "Fringe benefits" means health, welfare, and pension contributions that meet the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq., and other bona fide programs approved by the U.S. department of labor.
- (9) "Nonconstruction services" means work performed by an individual, not including management, office, or clerical work, for:

- (a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;
 - (b) custodial or security services for publicly owned buildings and facilities;
 - (c) grounds maintenance for publicly owned property;
- (d) the operation of public drinking water supply, waste collection, and waste disposal systems;
 - (e) law enforcement, including janitors and prison guards;
 - (f) fire protection;
 - (g) public or school transportation driving;
 - (h) nursing, nurse's aid services, and medical laboratory technician services;
 - (i) material and mail handling;
 - (j) food service and cooking;
 - (k) motor vehicle and construction equipment repair and servicing; and
 - (l) appliance and office machine repair and servicing.
- (10) "Project location" means the construction site where a public works project involving construction services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and specifications.
- (11) (a) "Public works contract" means a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of \$25,000. The nonconstruction services classification does not apply to any school district that at any time prior to April 27, 1999, contracted with a private contractor for the provision of nonconstruction services on behalf of the district.
- (b) The term does not include contracts entered into by the department of public health and human services for the provision of human services.
- (12) "Special circumstances" means all work performed at a facility that is built or developed for a specific Montana public works project and that is located in a prevailing wage district that contains the project location or that is located in a contiguous prevailing wage district.
- (13) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means the rates established as provided in:
 - (a) [section 1] for building construction services;
- (b) [section 2] for heavy construction services and for highway construction services; and
 - (c) [section 3] for nonconstruction services.
- (i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or
- (ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages must be computed by the department based on work performed by electrical contractors who are licensed under Title

37, chapter 68, master plumbers who are licensed under Title 37, chapter 69, part 3, and Montana contractors who are registered under Title 39, chapter 9, and whose work is performed according to commercial building codes. The contractor survey must include information pertaining to the number of skilled craftspersons employed in the employer's peak month of employment and the wages and benefits paid for each craft. In setting the prevailing wages from the survey for each craft, the department shall use the weighted average wage for each craft, except in those cases in which the survey shows that 50% of the craftspersons are receiving the same wage. When the survey shows that 50% of the craftspersons are receiving the same wage, that wage is the prevailing wage for that craft. The work performed must be work of a similar character to the work performed in the district unless the annual survey of construction contractors and the biennial survey of nonconstruction service employers in the district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by the survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and require the commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.

- (b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.
- (14) "Work of a similar character" means work on private commercial projects as well as work on public projects."

Section 12. Section 18-2-402, MCA, is amended to read:

- "18-2-402. Standard prevailing rate of wages. (1) The Montana commissioner of labor may determine the standard prevailing rate of wages applicable to public works contracts under this part. The commissioner shall undertake to keep and maintain copies of collective bargaining agreements and other information on which the rates are based.
- (2) The provisions of this part do not apply in those instances where in which the standard prevailing rate of wages is determined pursuant to by federal law.
- (3) In no instances where Whenever this part is applicable, shall the standard prevailing rate of wage be determined to wages may be equal to but not greater than the highest applicable rate of wage wages in the area for the particular work in question as negotiated under existing and current collective bargaining agreements."

Section 13. Section 18-2-403, MCA, is amended to read:

- "18-2-403. Preference of Montana labor in public works wages tax-exempt project federal exception. (1) In every public works contract, there must be inserted in the bid specification and the public works contract a provision requiring the contractor to give preference to the employment of bona fide *Montana* residents of Montana in the performance of the work.
- (2) All public works contracts for construction services under subsection (1), except those for heavy and highway construction, that are conducted at the project location or under special circumstances must contain a provision requiring the contractor to pay:
- (a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and
- (b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that:
- (i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor; and
- (ii) is in effect and applicable to the district in which the work is being performed.
- (3) In every public works contract for heavy and highway construction, there must be inserted a provision to require the contractor to pay the heavy and highway construction standard prevailing wage rates established statewide for heavy and highway construction services conducted at the project location or under special circumstances.
- (4) Except as provided in subsection (5), all public works contracts for nonconstruction services under subsection (1) must contain a provision requiring the contractor to pay:
- (a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and
- (b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that:
- (i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor; and
- (ii) is in effect and applicable to the district in which the work is being performed.
- (5) An employer who, as a nonprofit organization providing individuals with vocational rehabilitation, performs a public works contract for nonconstruction services and who employs an individual whose earning capacity is impaired by a mental, emotional, or physical disability may pay the individual wages that are less than the standard prevailing wage if the employer complies with the provisions of section 214(c) of the Fair Labor Standards Act of 1938, 29 U.S.C. 214 and 29 CFR, part 525, and the wages paid are equal to or above the minimum wage required in 39-3-404 39-3-409.
- (6) Transportation of goods, supplies, materials, and manufactured or fabricated items to or from the project location is not subject to payment of the standard prevailing rate of wages.
- (7) A contract, other than a public works contract, let for a project costing more than \$25,000 and financed from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, must contain a provision

requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

- (8) A public works contract may not be let to any person, firm, association, or corporation refusing to execute an agreement with the provisions described in subsections (1) through (7) in it, provided that in public works contracts involving the expenditure of federal-aid funds, this part may not be enforced in a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.
- (9) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from the contractor's obligation to pay the standard prevailing wage rate and places the obligation on the public contracting agency."

Section 14. Section 18-2-407, MCA, is amended to read:

- "18-2-407. Forfeiture for failure to pay standard prevailing wage rate of wages. (1) Except as provided in 18-2-403, a contractor, subcontractor, or employer who pays workers or employees at less than the standard prevailing wage rate of wages as established under the public works contract shall forfeit to the department a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected by the department under this section must be deposited in the general fund. A contractor, subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus \$25 a day for each day that the employee was underpaid.
- (2) Whenever it appears to the contracting agency or to the Montana commissioner of labor and industry that there is insufficient money due to the contractor or the employer under the terms of the contract to cover penalties, the Montana commissioner of labor and industry may, within 90 days after the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an action in district court to recover all penalties and forfeitures due. This part does not prevent the individual worker who has been underpaid or the commissioner of labor and industry on behalf of all the underpaid workers from maintaining an action for recovery of the wages due under the contract as provided in Title 39, chapter 3, part 2, except that appeal of the hearings officer's decision is made directly to district court rather than to the board of personnel appeals."

Section 15. Section 18-2-411, MCA, is amended to read:

- "18-2-411. Creation of prevailing wage rate districts. (1) Without taking into consideration heavy *construction services* and highway construction services wage rates, the commissioner shall divide the state into at least not more than 10 prevailing wage rate districts for building construction services and nonconstruction services.
 - (2) In initially determining the districts, the commissioner must shall:
- (a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and
 - (b) publish the reasons supporting the creation of each district.

- (3) A district boundary may not be changed except for good cause and in accordance with the rulemaking procedures in the Montana Administrative Procedure Act.
- (4) The presence of collective bargaining agreements in a particular area may not be the sole basis for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in a particular area be the sole basis for changing the boundaries of a district.
- (5) For each prevailing wage rate district established under this section, the commissioner shall determine the standard prevailing rate of wages to be paid employees, as provided in 18-2-401 and 18-2-402 this part. The standard prevailing rate of wages for construction services, as determined by the commissioner in this subsection, must be used for calculating an apprentice's wage, as provided in 39-6-108."

Section 16. Section 18-2-412, MCA, is amended to read:

- **"18-2-412. Method for payment of standard prevailing wage.** (1) To fulfill the obligation to pay the standard prevailing rate of wages under 18-2-403, a contractor or subcontractor may:
- (a) pay the amount of fringe benefits and the basic hourly rate of pay that is part of the standard prevailing rate of wages directly to the worker or employee in cash;
- (b) make an irrevocable contribution to a trustee or a third person pursuant to a fringe benefit fund, plan, or program that meets the requirements of the Employee Retirement Income Security Act of 1974 or that is a bona fide program approved by the $\underline{\text{United States }U.S.}$ department of labor; or
- (c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that the aggregate of payments and contributions is not less than the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions that meet the requirements of the Employee Retirement Income Security Act of 1974, and travel, or other bona fide programs approved by the United States department of labor, that is allowances, applicable to the district for the particular type of work being performed.
- (2) The fringe benefit fund, plan, or program described in subsection (1)(b) must provide benefits to workers or employees for health care, pensions on retirement or death, life insurance, disability and sickness insurance, or bona fide programs that meet the requirements of the Employee Retirement Income Security Act of 1974 or that are approved by the $\frac{\text{United States }U.S.}{\text{U.S.}}$ department of labor.
- (3) A private contractor or subcontractor shall file a copy of the fringe benefit fund, plan, or program described in subsection (2) with the department."

Section 17. Section 69-3-2005, MCA, is amended to read:

- "69-3-2005. Procurement cost recovery reporting. (1) In meeting the requirements of this part, a public utility shall:
- (a) conduct renewable energy solicitations under which the public utility offers to purchase renewable energy credits, either with or without the associated electricity, under contracts of at least 10 years in duration; and
- (b) consider the importance of geographically diverse rural economic development when procuring renewable energy credits.

- (2) A public utility that intends to enter into contracts of less than 10 years in duration shall demonstrate to the commission that these contracts will provide a lower long-term cost of meeting the standard established in 69-3-2004.
- (3) (a) Contracts signed for projects located in Montana must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if the Montana residents have substantially equal qualifications to those of nonresidents.
- (b) Contracts signed for projects located in Montana must require all contractors to pay the standard prevailing rate of wages for heavy construction, as provided in $\frac{18-2-401(13)(a)}{section}$ [section 2], during the construction phase of the project.
- (4) All contracts signed by a public utility to meet the requirements of this part are eligible for advanced approval under procedures established by the commission. Upon advanced approval by the commission, these contracts are eligible for cost recovery from ratepayers, except that nothing in this part limits the commission's ability to subsequently, in any future cost-recovery proceeding, inquire into the manner in which the public utility has managed the contract and to disallow cost recovery if the contract was not reasonably administered.
- (5) A public utility or competitive electricity supplier shall submit renewable energy procurement plans to the commission in accordance with rules adopted by the commission. The plans must be submitted to the commission on or before:
 - (a) January 1, 2007, for the standard required in 69-3-2004(2);
 - (b) June 1, 2008, for the standard required in 69-3-2004(3);
 - (e)(a) June 1, 2013, for the standard required in 69-3-2004(4); and
 - (d)(b) any additional future dates as required by the commission.
- (6) A public utility or competitive electricity supplier shall submit annual reports, in a format to be determined by the commission, demonstrating compliance with this part for each compliance year. The reports must be filed by March 1 of the year following the compliance year.
- (7) For the purpose of implementing this part, the commission has regulatory authority over competitive electricity suppliers."
- **Section 18. Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 18, chapter 2, part 4, and the provisions of Title 18, chapter 2, part 4, apply to [sections 1 through 5].
- **Section 19. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 20. Effective date. [This act] is effective July 1, 2009.

Approved April 17, 2009

CHAPTER NO. 278

[SB 367]

AN ACT REVISING REGISTRATION AND VOTING FOR ABSENT UNIFORMED SERVICES AND OVERSEAS ELECTORS; REQUIRING ELECTION ADMINISTRATORS TO ALLOW ABSENT UNIFORMED

SERVICES AND OVERSEAS ELECTORS TO REGISTER AND VOTE ELECTRONICALLY; AUTHORIZING LATE AND SAME-DAY REGISTRATION AND VOTING BY ABSENT UNIFORMED SERVICES AND OVERSEAS ELECTORS; REVISING WHAT MUST BE INCLUDED IN RULES ADOPTED BY THE SECRETARY OF STATE CONCERNING ELECTRONIC REGISTRATION AND VOTING; REQUIRING THE SECRETARY OF STATE TO REPORT TO THE GOVERNOR AND THE LEGISLATURE; AMENDING SECTIONS 13-21-104, 13-21-201, 13-21-207, AND 13-21-210, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-21-104, MCA, is amended to read:

- "13-21-104. Adoption of rules on electronic registration and voting—acceptance of funds. (1) The secretary of state shall adopt reasonable rules under the rulemaking provisions of the Montana Administrative Procedure Act to implement 13-21-207. The rules are binding upon election administrators. The rules must require compliance with the same time requirements or deadlines as for registration and voting by absentee ballot by use of the public mails. The rules must maintain the accuracy, integrity, and secrecy of the ballot process and must allow registration and voting by facsimile through use of a private corporation or other private entity for transmission of facsimile messages only if the secretary of state finds that the use is essential to the purposes of this chapter.
 - (2) The rules must provide that:
- $\it (a)\ there$ are uniform statewide standards concerning electronic registration and voting;
- (b) regular absentee ballots for a primary, general, or special election are available in a format that allows the ballot to be electronically transmitted to a United States elector as soon as the ballots are available pursuant to 13-13-205;
- (c) a United States elector may, subject to 13-2-304, register and vote up to the time that the polls close on election day;
- (d) a United States elector is allowed to cast a provisional ballot if there is a question about the elector's registration information or eligibility to vote; and
- (e) a ballot cast by a United States elector and transmitted electronically will remain secret, as required by Article IV, section 1, of the Montana constitution. This subsection (2)(e) does not prohibit the adoption of rules establishing administrative procedures on how electronically transmitted votes must be transcribed to an official ballot. However, the rules must be designed to protect the accuracy, integrity, and secrecy of the process.
- (2)(3) The secretary of state may apply for and receive a grant of funds from any agency or office of the United States government or from any other public or private source and may use the money for the purpose of implementing this chapter."

Section 2. Section 13-21-201, MCA, is amended to read:

- "13-21-201. Registration of United States electors simultaneous application for absentee ballot. (1) A United States elector may register with the election administrator in the elector's county of residence by properly completing, signing, and returning:
 - (a) the voter registration form;
 - (b) the federal post card application; or

- (c) the federal write-in absentee ballot as provided in 13-21-205.
- (2) A registration application under subsection (1)(a) or (1)(b) must be received by the election administrator not less than 30 days before the election for the registration to be valid for the election. If the registration application is received less than 30 days before the election, the registration application must be processed for the next election by the time specified in 13-2-304 for late registration.
- (3) A registration application using a federal post card application or the federal write-in absentee ballot transmission envelope must be considered a simultaneous application for absentee ballots under 13-21-210."

Section 3. Section 13-21-207, MCA, is amended to read:

- "13-21-207. Registration and voting by facsimile and internet authorized and voting electronically definition. (1) Notwithstanding other provisions of this title, each election administrator may shall, in any primary election, general election, and special election, allow a United States elector to take the following acts by facsimile transmission, if facsimile facilities are available, or electronically through the internet for a United States elector, if internet facilities that provide for secrecy are available, actions electronically in place of the public mails:
 - (1)(a) register an individual to vote;
 - (2)(b) give notice of registration;
 - (3)(c) receive requests for an absentee ballot;
 - (4)(d) transmit absentee ballots to electors; and
 - (5)(e) receive absentee ballots from electors.
- (2) A ballot cast by a United States elector pursuant to this section may be counted only if it is transmitted by the elector to the election administrator before the close of polls on election day and is received by the election administrator before 5 p.m. on the day after the election. Ballots received pursuant to this section must be counted at the same time as provisional ballots are counted.
- (3) For purposes of this section, "electronically" means by facsimile transmission or electronic mail. The term includes internet-based voting if an internet-based voting system approved by the secretary of state is available to the election administrator."
 - **Section 4.** Section 13-21-210, MCA, is amended to read:
- **"13-21-210. Application for absentee ballots.** (1) (a) A United States elector may apply for a regular absentee ballot as follows:
- (i) by making a written request, which must include the elector's birth date and signature; or
- (ii) by properly completing, signing, and returning to the election administrator the federal post card application.
- (b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.
- (2) An application for a regular absentee ballot must be received by the appropriate county election administrator not less than 30 days before the date of an election. An application for a regular absentee ballot that is received less

than 30 days before the date of an election must be processed for the next election by the time specified in 13-2-304 for late registration.

- (3) An application under this section is valid for all state and local elections in the calendar year in which the application is made and the next two regularly scheduled federal general elections.
- (4) The elector's county election administrator shall provide the elector with a regular absentee ballot for the elections described in subsection (3) as soon as the ballots are printed."
- Section 5. Report by secretary of state. (1) The secretary of state and county election administrators shall work with staff of the department of military affairs and with other interested parties to identify, investigate, and resolve problems with and challenges to implementing efficient, secure, and timely registration and voting for absent uniformed services electors and overseas electors as required by [this act].
- (2) (a) During the 2009-10 interim, the secretary of state shall, whenever requested, report to the state administration and veterans' affairs interim committee on the progress of the investigation.
- (b) The secretary of state shall complete the investigation prior to September 1, 2010. Completion of the investigation includes providing a final report of the secretary of state's and election administrators' findings, conclusions, and specific recommendations to the governor and to the legislature as provided in 5-11-210.
- (c) If the secretary of state recommends statutory changes or anticipates requesting an appropriation from the 62nd legislature as a result of the investigation, the secretary of state shall, at a time requested by the state administration and veterans' affairs interim committee, present to the committee the concept for the legislation, appropriation, or both.
- (3) The state administration and veterans' affairs interim committee shall consider the proposal for legislation as required in 5-5-215.

Section 6. Effective date. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 3] is effective January 1, 2012.

Approved April 17, 2009

CHAPTER NO. 279

[SB 392]

AN ACT AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO REVIEW PARCELS OF LAND SUBMITTED FOR REVIEW BY THE OWNER OF THE PARCEL TO DETERMINE WHETHER THE PARCEL MAY BE DEVELOPED WITH WATER AND WASTEWATER SYSTEMS AND TO PROVIDE ADEQUATE SOLID WASTE DISPOSAL AND STORM WATER MANAGEMENT; AUTHORIZING THE ISSUANCE OF A CERTIFICATE OF SUBDIVISION APPROVAL FOR THE PARCEL; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Voluntary review applications. The department may review any parcel of land submitted for review by the owner of the parcel to determine whether the parcel may be developed with water and wastewater systems and to

provide adequate solid waste disposal and storm water management. Upon making the determinations, the department may issue a certificate of subdivision approval for the parcel.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 76, chapter 4, part 1, and the provisions of Title 76, chapter 4, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2009.

Approved April 17, 2009

CHAPTER NO. 280

[SB 426]

AN ACT ADOPTING THE NATIONAL BISON RANGE WATER COMPACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. United States of America, fish and wildlife service, national bison range - Montana compact ratified. This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims to federal reserved water rights for the National Bison Range administered by the U.S. Fish and Wildlife Service within the State of Montana.

ARTICLE I - RECITALS

WHEREAS, in 1979, the United States brought several actions in the United States District Court for the District of Montana to adjudicate, inter alia, its rights to water with respect to the National Bison Range, see United States v. Abell, No. CV 79-33-M (filed April 5, 1979);

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America; see "the McCarran Amendment," 43 U.S.C. 666(a)(1) (1952);

WHEREAS, the State of Montana in 1979 pursuant to Title 85, Chapter 2 of the Montana Code Annotated (MCA), commenced a general adjudication of the rights to use water within the State of Montana, including all federal reserved and appropriative water rights;

WHEREAS, the Montana Reserved Water Rights Compact Commission, pursuant to 85-2-703, MCA, is authorized to negotiate settlement of water rights claims filed by the United States for areas in which the United States claims reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the National Bison Range, in the State of Montana;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-517 and 519 (1968);

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. §1457 (1986, Supp 1992), inter alia; and

WHEREAS, it is in the best interest of all Parties that the water rights claims for the National Bison Range be settled through agreement between the State of Montana and the United States;

NOW THEREFORE, the Parties agree to enter into this Compact for the purpose of settling the water rights claims of the United States for the National Bison Range.

ARTICLE II - DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

- (1) "Abstract" means the copy of the documents entitled "Abstract of U.S. Fish and Wildlife Service Water Rights" referenced in this Compact as Appendices 3, 4, 5 and 6.
- (2) "Acre-foot" or "Acre-feet" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.
- (3) "Acre-foot per year" or "Acre-feet per year" or "AFY" means an annual quantity of water measured in acre-feet over a period of a year.
- (4) "Animal Unit" means a measure of animal numbers, where one male bison equals 1.5 Animal Units, one female bison equals 0.9 Animal Units, one elk equals 0.75 Animal Units, and one mule deer, whitetail deer, bighorn sheep, or antelope equals 0.2 Animal Units.
- (5) "Arising Under State Law" means, as applied to a water right, a water right created under Montana law and does not include water rights created under federal law.
- (6) "Change in Use" means, as applied to the National Bison Range water right, a change in the point of diversion, the place of use, the purpose of use, or the place of storage.
- (7) "Consumptive Use" means a use of water that removes water from the source of supply such that the quality or quantity is reduced or the timing of return delayed, making it unusable or unavailable for use by others, and includes evaporative loss from impoundments and natural lakes.
- (8) "Department" means the Montana Department of Natural Resources and Conservation, or any successor agency.
- (9) "Effective Date" means the date on which the Compact is given ratification by the Montana Legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever date is latest.
- (10) "FWS" means the United States Fish and Wildlife Service of the United States Department of the Interior, or any successor agency.
- (11) "Ground Water" means any water that is beneath the surface of the ground.
- (12) "National Bison Range" means those lands located in the State of Montana that were withdrawn from disposition and reserved by the Act of May 23, 1908, 35 Stat. 267; and that were expanded by the Agricultural Appropriations Bill of 1910 (35 Stat. 1051 Act of March 4, 1909). The lands that comprise the National Bison Range are depicted on the map attached as Appendix 1 to this Compact.
- (13) "Nonconsumptive Use" means the use of a water right considered to be nonconsumptive by the decree, permit, or law authorizing the use because it results in no depletion of water from the source.

- (14) "Party" or "Parties" means the State of Montana, the United States of America or both.
- (15) "Person" or "Persons" means an individual or individuals or any other entity, public or private, including the State, a tribe and the United States and all officers, agents, and departments thereof.
- (16) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof, and unless otherwise indicated, for purposes of notification or consent "State" means the Director of the Department, or the Director's designee.
- (17) "Tribal Water Right" means those water rights held by the Confederated Salish and Kootenai Tribes (the "Tribes" or "CSKT") or by the United States in trust for the Tribes, their members and allottees.
- (18) "United States" means the federal government and all officers, agencies, and departments thereof, and unless otherwise indicated, for purposes of notification or consent other than service in litigation "United States" means the Secretary of the Department of the Interior, or the Secretary's designee.

ARTICLE III - NATIONAL BISON RANGE WATER RIGHT

The Parties agree that the following water rights are in settlement of the reserved water rights of the United States for the National Bison Range.

- A. Purpose of Reservation for the National Bison Range. The National Bison Range was created on May 23, 1908 for the purpose of being a permanent range for the care and maintenance of a herd of bison and other mammals. 35 Stat. 267, 35 Stat. 1051. An executive order of December 22, 1921, (No. 3596) added the purpose of a bird refuge to the National Bison Range as well.
- B. Quantification. Subject to the terms of Article IV, the United States shall have the right to water for the following purposes from the sources identified on National Bison Range lands.
 - 1. Wildlife Use.
- a. Consumptive Use. The United States has federal reserved water rights for Consumptive Use for wildlife purposes at the locations identified in the table attached as Appendix 2, provided that the total Consumptive Use for wildlife purposes on National Bison Range lands shall not exceed the amount of water needed to feed and water the historic maximum carrying capacity of the National Bison Range of 755 Animal Units. The specific elements of these rights are set forth in the Abstracts attached as Appendix 3 to this Compact.
- b. Nonconsumptive Use. The United States also has federal reserved water rights in the amount of 18.48 Acre-feet per year for largely Nonconsumptive Uses to fill the Ravalli Potholes, when the water is naturally available, and an in-stream flow in the amount of 177 gallons per minute from Mission, Pauline, Trisky and Elk Creeks, when such flows are naturally available. The specific elements of these rights are set forth in the Abstracts attached as Appendix 4 to this Compact.
 - 2. Administrative Uses.
- a. Current Administrative Uses. The United States has federal reserved rights for Consumptive Use for current administrative uses on National Bison Range lands totaling 35.2 Acre-feet per year. The United States also has a federal reserved water right of up to 536 Acre-feet per year of flood flows from Mission Creek for largely Nonconsumptive Uses for administrative purposes,

when such flows are naturally available. The specific elements of these rights are set forth in the Abstracts attached as Appendix 5 to this Compact.

- b. Future Administrative Uses. The United States has federal reserved water rights from Ground Water for Consumptive Use for future administrative uses up to a total additional volume of 15 Acre-feet per year to fulfill the purposes of the National Bison Range. The types of use of the United States' federal reserved water rights for administrative uses may include, but are not limited to: domestic, lawn and garden, storage, and dust abatement.
- 3. Emergency Fire Suppression. The use of water for emergency fire suppression benefits the public, and is necessary for the purposes of the National Bison Range. The United States may, as part of its reserved water right, divert or withdraw water for fire suppression on National Bison Range lands as needed and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be considered an exercise of the United States' water rights for Consumptive Use.
- 4. Period of Use. The period of use of the United States' federal reserved water rights quantified in the Compact shall be from January 1 to December 31 of each year.
- 5. Priority Date. The priority date for the federal reserved water rights set forth in this Compact is May 23, 1908.

ARTICLE IV - IMPLEMENTATION OF COMPACT

A. Abstracts. Concurrent with this Compact, the Parties have prepared Abstracts, copies of which are attached as Appendices 3, 4, and 5 to this Compact, which specifically identify all of the United States' use of water for the National Bison Range described in this Compact and quantified in accordance with this Compact. These abstracts specifically do not include that use of water that is the subject of water right claim number 76L 187042 00, which claim the FWS and the State agree that the FWS shall retain (unless it shall choose voluntarily to withdraw or abandon it in the future) and have adjudicated by the Montana Water Court as a water right Arising Under State Law subject to the terms, conditions and procedures of the Montana Water Use Act, Title 85, Chapter 2, MCA, and the Montana general water rights adjudication. The Parties prepared the Abstracts to comply with the requirements for a final decree as set forth in state law, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstracts are subject to the terms and conditions of this Compact. In the event of a discrepancy between a right listed in an Abstract and that same right as quantified in accordance with Articles III and IV of this Compact, the Parties intend that the quantification in accordance with Articles III and IV of this Compact shall be reflected in a final decree.

B. Enforcement of Water Right.

1. The United States, the State, a holder of a water right Arising Under State Law or a holder of a right to use any portion of the Tribal Water Right, may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' water rights described by this Compact, and a holder of a water right Arising Under State Law or a holder of a right to use any portion of a Tribal Water Right. Resolution of the controversy shall be governed by the terms of this Compact where applicable, or to the extent not applicable, by applicable state, federal and tribal law.

- 2. The United States agrees that a water commissioner appointed by a state or federal court of competent jurisdiction, or other official authorized by law, may enter the National Bison Range for the purpose of data collection, including the collection of information necessary for water distribution on or off the National Bison Range, and to inspect structures for the diversion and measurement of water described in this Compact for Consumptive Use. The terms of entry shall be as specified in an order of a court of competent jurisdiction or other entity authorized by law to prescribe such terms of entry.
- 3. So long as the Department remains the administrative entity responsible for the water rights quantified in this Compact, the Department may enter the National Bison Range at a reasonable hour of the day, for the purposes of data collection on water diversion and stream flow or inspection of devices maintained by the United States pursuant to this Compact. The Department shall notify the United States by certified mail, telephone, e-mail or in person, at least 24 hours prior to entry. If some other body becomes responsible for the administration of the National Bison Range water rights, representatives of that entity may enter the National Bison Range on the same terms and conditions set forth above in this subsection.
- 4. So long as the Department remains the administrative entity responsible for the water rights quantified in this Compact, the United States may request an investigation by the Department of a diversion located on a stream for which a water right is described in this Compact. The Department may investigate. If an investigation occurs, the United States may accompany the Department. If some other body becomes responsible for the administration of the National Bison Range water rights, the United States may request an investigation by that entity in the same manner and on the same terms and conditions set forth above in this subsection.
- 5. The United States shall maintain structures, including wellhead equipment and casing, for the diversion of water authorized for Consumptive Use by this Compact. The United States shall maintain any devices it deems necessary for enforcement of its water right for natural flow described in this Compact.
 - C. Use of Federal Reserved Water Rights.
- 1. Federal Reserved Water Rights. The reserved rights of the United States described in this agreement are federal water rights. Nonuse of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment or forfeiture of those rights. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the National Bison Range.
- 2. Development of Future Uses. The United States, without prior approval of the Department, or any other administrative entity with regulatory authority over the water rights of the National Bison Range, may develop a future use after the Effective Date of this Compact as described in Article III.B.2.(b), provided that:
 - (a) the purpose of use is for the use authorized under Article III.B.2.(a);
- (b) the total quantity of water shall not exceed the amount set forth in Article III.B.2.;
 - (c) the source of supply shall be restricted as set forth in Article III; and

- (d) the use shall not adversely affect a senior water right Arising Under State Law.
 - D. Change in Use of Federal Reserved Water Rights.
- 1. Nonconsumptive Uses. Water rights specified in this Compact for natural flow or other Nonconsumptive Uses shall not be subject to Change in Use, provided that the emergency use of water for fire suppression as provided for in Article III.B.3 shall not be deemed a Change in Use or violation of a water right for natural flow.
- 2. Consumptive Uses. The United States may make a Change in Use of its Consumptive Use water rights described in Article III of this Compact provided that:
- (a) the Change in Use shall be in fulfillment of the purposes of the National Bison Range;
- (b) the total Consumptive Use shall not exceed the amount described in this Compact;
- (c) the Change in Use shall not adversely affect any water right Arising Under State Law; and
- (d) with the exception of the provisions governing a change in the purpose for which the water right is used, the United States, in making the change, shall comply with the provisions of the Montana Water Use Act, Title 85, chapter 2, MCA, applicable to change in appropriation rights at the time of the change.
- 3. Emergency Fire Suppression. The United States' federal reserved water right to divert or withdraw water for emergency fire suppression as described in Article III.B.3 shall not be changed to any other use.
- E. Reporting Requirements. The United States shall provide a report to the Department and the Tribes on an annual basis, or on a periodic basis agreed to by the Parties and the Tribes, containing specific information on:
 - 1. the development of new uses as described in Article III.B.2.(b);
 - 2. changes in use as described in Article IV.D; and
- 3. the source of supply, the dates of use, and the estimated amount of water used for emergency fire suppression as described in Article III.B.3.

ARTICLE V - GENERAL PROVISIONS

- A. No Effect on Tribal Rights or Other Federal Reserved Water Rights. The relationship between the water rights of the United States described in this Compact and any rights to water of any Indian tribe, or any federally derived water right of an individual, or of the United States on behalf of such tribe or individual, shall be determined by the rule of priority. The Parties agree that the water rights described in this Compact are junior to any rights to water of any Indian tribe, or any federally derived water right of an individual, or of the United States on behalf of such tribe or individual, currently quantified or as may be quantified after the Effective Date of this Compact and with a priority date before the Effective Date of this Compact, including aboriginal rights, if any, in the basins affected.
- 2. Nothing in the Compact may be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the FWS at the National Bison Range.

- 3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the water rights of any Indian tribe or tribal member.
- 4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian tribe regarding its boundaries or property interests in the State of Montana.
- B. State Water Rights. Nothing in this Compact may limit the authority of the State, including the authority of a water commissioner authorized by state law, to administer all current and future water rights Arising Under State Law within and upstream of the National Bison Range, provided that in administration of those water rights in which the United States has an interest, such authority is limited to that granted under federal law, and provided that any scheme of comprehensive administration of all water rights located within the exterior boundaries of the Flathead Indian Reservation (which include the water rights recognized in this Compact) that is negotiated and approved in a water rights settlement among the State, the CSKT and the United States shall supersede any administrative provisions in this Compact the conflict with a State-CSKT water rights settlement.
- C. General Disclaimers. Nothing in this Compact may be construed or interpreted:
- 1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;
- 2. as a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to the Montana Water Use Act, Title 85, MCA, in the basins affected by this Compact; or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the Montana Water Use Act, Title 85, MCA, in the basins affected by this Compact;
- 3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;
- 4. to determine the relative rights inter sese of Persons using water under the authority of state or tribal law, or to limit the rights of the Parties or any other Person to litigate any issues or questions not resolved by this Compact;
- 5. to authorize the taking of a water right that is vested under state or federal law;
- 6. to create or deny substantive rights through headings or captions used in this Compact;
- 7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of this Compact;
- 8. to affect or determine the applicability of any state or federal law, including, without limitation, environmental and public safety laws, on activities of the FWS;
- 9. to affect the right of the State to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs, pursuant to a ruling by a State or federal court of competent jurisdiction or Act of Congress;
- 10. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with

regard to the water rights of the United States for the National Bison Range, and does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;

- 11. to prevent the United States from constructing or modifying an outlet to an impoundment at the National Bison Range in compliance with all applicable laws:
- 12. to prevent the United States from seeking a permit to appropriate water under applicable State or other law.
- D. Reservation of Rights. The Parties expressly reserve all rights not granted, described or relinquished in this Compact.
 - E. Severability. The provisions of this Compact are not severable.
- F. Multiple Originals. This Compact is executed in triplicate. Each of the three Compacts bearing original signatures shall be deemed an original.
- G. Notice. Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:
- 1. State: Upon the Director of the Department and such other officials as the Director may designate in writing; and

United States: Upon the Secretary of the Interior and such other officials as the Secretary may designate in writing.

CSKT: Upon the Tribal Chairman of the CSKT and such other officials as the Chairman may designate in writing.

ARTICLE VI - FINALITY

Binding Effect.

- 1. The Effective Date of this Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on the Parties.
- 2. Following the Effective Date, this Compact shall not be modified without the consent of both Parties. Either Party may seek enforcement of this Compact in a court of competent jurisdiction.
- 3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all Persons bound by the final order of the court.
- 4. If an objection to this Compact is sustained pursuant to 85-2-703, MCA, and 85-2-702(3), MCA, this Compact shall be voidable by action of and without prejudice to either Party.
- B. Filing Compact with State Court. Subject to the following stipulations and within one hundred eighty (180) days of the Effective Date of this Compact, the Parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666, for approval in accordance with state law and for the incorporation of the water rights described in this Compact into a decree or decrees entered therein. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the

United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

- C. Dismissal of Filed Claims. At the time the state courts approve the water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all water right claims specified in Appendix 6 of this Compact for the National Bison Range. If this Compact is not approved or a federal reserved water right described herein is not confirmed, any corresponding state law-based claim filed by the FWS for use on the National Bison Range shall not be dismissed.
- D. Settlement of Claims. The Parties intend that the water rights described in this Compact are in full and final settlement of the federal reserved water right claims for the National Bison Range described in this Compact and administered by the FWS on the Effective Date of this Compact. On the Effective Date of this Compact, the United States hereby and in full settlement of any and all claims to federal reserved water rights by the United States, including all claims that the FWS filed or could have filed as part of the ongoing statewide adjudication process, relinquishes forever all claims to federal reserved water rights within the State of Montana for the National Bison Range. The State agrees to recognize the water rights described and quantified herein and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the State. Nothing in this Compact precludes the FWS from filing for future water use permits under Montana state law.
- E. Continuation of Negotiations. The Parties have not finalized agreement on quantification of the water rights for the Charles M. Russell and UL Bend National Wildlife Refuges and UL Bend Wilderness Area, prior to the Effective Date of this Compact. The Parties agree to continue to pursue, in good faith, negotiations toward compacts for the quantification of water rights for these areas. In the event the Parties are unable to agree on quantification, the United States retains its right to have the quantity of any reserved water right for these areas adjudicated in a state or federal court of competent jurisdiction.
- F. Defense of Compact. The Parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the ______ day of _______, 2009.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval. Approved April 17, 2009

CHAPTER NO. 281

[SB 463]

AN ACT CLARIFYING THAT RESPITE CARE WORKERS MAY BE EMPLOYED BY A FAMILY MEMBER; REQUIRING TRAINING AND EDUCATIONAL MATERIALS TO BE PROVIDED TO AN INDIVIDUAL EMPLOYING A RESPITE CARE WORKER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Liability training program and materials for respite care. (1) The department, in conjunction with the department of labor and industry, shall develop a training program and educational materials on labor law and liability issues related to the employment of a person by an individual for respite care services under the exemptions provided in 39-3-406(1)(p), 39-51-204(1)(y), and 39-71-401(2)(u). The educational materials must provide information on the labor law requirements applicable to an individual hiring a person for respite care services.
- (2) The department shall make the training materials available to providers of community-based services for people with developmental disabilities that serve as the organized health care delivery system for respite care funds available from the department for use by individuals who hire and pay a person to provide respite care to a family member or a person for whom they are the legal guardian.
- (3) To qualify for the respite care funds available from the department, an individual shall:
 - (a) receive training offered by a provider; and
- (b) sign a statement acknowledging that the individual has completed the training and has read the related educational materials.
- Section 2. Respite care and employment responsibilities liabilities. (1) Contingent upon approval of the program by the federal government for purposes of receiving federal medicaid funds, the department may make payment to an approved, certified, and qualified medicaid provider who passes through the payment on behalf of a family to a person providing respite care for individuals who, because of age or infirmity, are unable to care for themselves as provided under 29 U.S.C. 213. A qualified medicaid provider who passes through payment may not be considered an employer by the department for the purposes of workers' compensation, unemployment insurance, or wage and hour requirements.
- (2) The department through administrative rule, waiver of a state or federal program providing payment for respite care, or a pilot program may not require a qualified medicaid provider to assume employer responsibilities or liabilities if the family chooses to negotiate the respite care agreement and the qualified provider does not:
 - (a) control the person who provides respite care; or
 - (b) direct the respite care provided by the person.
- (3) (a) The department may provide an option to families to choose self-directed care.
- (b) The department shall continue to provide families the choice of negotiating respite care by using a local qualified medicaid provider to provide pass-through payment and benefiting from the exemptions provided under 39-3-406(1)(p), 39-51-204(1)(y), and 39-71-402(2)(u).
- **Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 53, chapter 20, part 2, and the provisions of Title 53, chapter 20, part 2, apply to [sections 1 and 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2009

CHAPTER NO. 282

[HB 59]

AN ACT REVISING THE TEACHERS' RETIREMENT SYSTEM LAWS; REVISING LAWS TO COMPLY WITH THE PENSION PROTECTION ACT OF 2006; CLARIFYING DEFINITIONS; CLARIFYING WHO MUST BE A MEMBER OF THE SYSTEM; CLARIFYING FAMILY LAW ORDERS; CLARIFYING OPTIONAL RETIREMENT ALLOWANCES; REQUIRING CERTIFICATION OF TERMINATION OF EMPLOYMENT IN COMPLIANCE WITH THE INTERNAL REVENUE CODE; COMPLYING WITH THE FEDERAL HEROES EARNINGS ASSISTANCE AND RELIEF TAX ACT OF 2008; AMENDING SECTIONS 19-20-101, 19-20-302, 19-20-305, 19-20-401, 19-20-409, 19-20-603, 19-20-605, 19-20-701, 19-20-702, 19-20-703, 19-20-718, 19-20-731, 19-20-804, 19-20-905, 19-20-1001, 19-20-1003, 20-15-106, AND 20-15-403, MCA; REPEALING SECTION 19-20-406, MCA; AND PROVIDING AN EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-20-101, MCA, is amended to read:

- "19-20-101. **Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:
- (1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings account, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.
- (2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.
- (3) "Average final compensation" means the average of a member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under 19-20-716(1)(b).
- (4) "Beneficiary" means one or more persons formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.
 - (5) "Creditable service" is that service defined by 19-20-401.
- (6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation.

- (b) Earned compensation does not mean:
- (i) direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;
 - (ii) any direct employer payment or reimbursement for:
 - (A) professional membership dues;
 - (B) maintenance;
 - (C) housing;
 - (D) day care;
 - (E) automobile, travel, lodging, or entertaining expenses; or
- (F) any similar payment for any form of maintenance, allowance, or expenses;
- (iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or
- (iv) any noncash benefit provided by an employer to or on behalf of an employee.
- (c) Unless included pursuant to 19-20-716, earned compensation does not include termination pay.
- (d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.
 - (e) Earned compensation does not include:
- (i) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);
- (ii) payment for sick, annual, or other types of leave that is allowed to a member and that is accrued in excess of that normally allowed; or
- (iii) incentive or bonus payments paid to a member that are not part of a series of annual payments.
 - (7) "Employer" means:
 - (a) the state of Montana;
- (b) the trustees of a public school district, as provided in 20-6-101 and 20-6-701;
 - (c) the office of public instruction;
 - (d) the board of public education;
 - (e) an education cooperative;
 - (f) the Montana school for the deaf and blind, as described in 20-8-101;
 - (g) the Montana youth challenge program, as defined in 10-1-101;
 - (h) a state youth correctional facility, as defined in 41-5-103;
 - (i) the Montana university system;
 - (j) a community college; or
- (k) any other agency or subdivision of the state that employs a person who is designated a member of the retirement system *pursuant to 19-20-302*.
 - (8) "Full-time service" means service that is:

- (a) at least 180 days in a fiscal year; or
- (b) at least 140 hours a month during 9 months in a fiscal year; or
- (c) full-time under an alternative school calendar adopted by a school board that is less than 180 days but meets minimum accreditation requirements of 1,080 hours.
 - (9) "Internal Revenue Code" has the meaning provided in 15-30-101.
- (10) "Member" means a person who has an individual account in the annuity savings account. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.
- (11) "Normal form" or "normal form benefit" means a monthly retirement benefit payable during the lifetime of the retired member.
- (11)(12) "Normal retirement age" means an age no earlier than the age at which the member is eligible to retire:
 - (a) by virtue of age, length of service, or both;
 - (b) without disability; and
- (e) 55 years of age, with the right to receive immediate retirement benefits without an actuarial reduction in the benefits.
- (12)(13) "Part-time service" means service that is less than full-time 180 days in a fiscal year or less than 140 hours a month during 9 months in a fiscal year. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.
- (13) "Prior service" means employment of the same nature as service but rendered before September 1, 1937.
- (14) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).
- (15) "Retired member" means a person who has terminated employment that qualified the person for membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to this chapter.
- (16) "Retirement allowance" means a monthly payment due to a person who has qualified for service or disability retirement or due to a beneficiary as provided in 19-20-1001.
- (17) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.
- (18) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.
- (19) "Service" means the performance of instructional duties or related activities that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.
- (20) "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.
- (21) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment and on which employee and employer contributions have been paid as required by 19-20-716.

- (b) Termination pay does not include:
- (i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and
- (ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).
- (22) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602, 19-20-605, and 19-20-607, and who has a right to a future retirement benefit.
- (23) "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed, and filed with the board, that contains all the required information, including documentation that the board considers necessary."
 - Section 2. Section 19-20-302, MCA, is amended to read:
- **"19-20-302. Active membership.** (1) Unless otherwise provided by this chapter, the following persons *employed by an employer* must be active members of the retirement system:
- (a) a person who is a teacher, principal, or district superintendent as defined in 20-1-101;
- (b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the optional retirement program under Title 19, chapter 21;
- (c) a person employed as a speech-language pathologist, school nurse, professionally qualified person as defined in 20-7-901, paraprofessional who provides instructional support, or dean of students, or school psychologist or;
- (d) a person employed in a teaching or an educational services capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special an education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district:
- (d)(e) a person who is an administrative officer or a member of the instructional staff of the board of public education;
- (e)(f) the superintendent of public instruction or a person employed $as\ a$ teacher or in an instructional educational services capacity by the office of public instruction; and
- (f)(g) except as provided in subsection (2), a person elected to the office of county superintendent of schools;
- (h) a person who is an administrative officer or a member of the instructional or scientific staff of a community college; and
- (i) a person employed in a nonclerical position and who is reported on an employer's annual data collection report submitted to the office of public instruction.
- (2) A retired member elected to the office of county superintendent of schools or appointed to complete the term of an elected county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 and shall, within

- 30 days of taking office, file an irrevocable written election to become or to not become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.
- (3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:
- (a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and
- (b) have the compensation for the person's creditable service totally paid by an employer.
 - (4) (a) A substitute teacher or a part-time teacher's aide:
- (i) shall file an irrevocable written election determining whether to become an active member of the retirement system on the first day of employment; or
- (ii) is required to become an active member of the retirement system after completing 210 hours of employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership under subsection (4)(a)(i).
- (b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute teacher is required to remain a member as long as the teacher is available for employment in that capacity.
- (c) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the first day of employment of the option to elect membership under subsection (4)(a)(i).
- (d) If a substitute teacher or part-time teacher's aide declines to elect membership during the election period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership and the employer shall retain the statement.
- (5) A school district clerk or business official may not become a member of the teachers' retirement system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to remain an active member of the system while employed in that capacity, and any postretirement earnings from employment as a school district clerk or school business official are subject to the limit on earnings provided in 19-20-731.
- (6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike.
- (7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours a day assisting a certified teacher in a classroom.
- (8) (a) An active member of the system concurrently employed in a position identified in subsection (1)(b) may not elect to participate in the optional retirement program under Title 19, chapter 21.
- (b) An employee of the Montana university system who is a participant in the optional retirement program under Title 19, chapter 21, and who is concurrently employed in a position identified in subsections (1)(a) or (1)(c) through $\frac{1}{1}$ (1)(i) is ineligible to be an active member of this system."

Section 3. Section 19-20-305, MCA, is amended to read:

- "19-20-305. Alternate payees family law orders. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.
 - (2) For purposes of this section:
- (a) "actuarially equivalent amount" means the portion of the participant's benefit transferred to an alternate payee and actuarially adjusted to provide a benefit payable for the alternate payee's lifetime;
- (a)(b) "alternate payee" means the former spouse of the member or retiree who is entitled to an actuarially equivalent portion amount or a fixed amount of the member's or retiree's retirement benefit;
- (b)(c) "family law order" means a certified copy of a judgment, decree, or order of a court with competent jurisdiction concerning spousal maintenance or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section; and
 - (e)(d) "participant" means a member or retiree of the retirement system.
- (3) A family law order must identify an alternate payee by full name, current address, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.
 - (4) A family law order may not require:
- (a) a type or form of benefit, option, or payment not available to the affected participant under the retirement system; or
 - (b) an amount of payment greater than that available to a participant.
- (5) (a) The service, disability, or survivor retirement benefit payments or withdrawals of member contributions may be apportioned to an alternate payee by directing payment of:
- (i) an actuarially equivalent amount payable for the life of the alternate payee; or
- (ii) a fixed amount, to be deducted from the participant's benefit, of no more than the amount payable to the participant. A fixed amount must be payable for a determinate period of time not greater than the life of the participant or the life of the benefit recipient under a retirement allowance elected pursuant to 19-20-702.
- (b) (i) The actuarially equivalent service, disability, or survivor retirement benefit payable to the alternate payee must be calculated by taking the total years of service for which the benefit was earned during the marriage divided by the total years of creditable service used in the calculation of the retirement benefit, multiplied by a percentage share of the benefit payable to the alternate payee, multiplied by the total amount payable to the participant. The participant's benefit must be reduced by the amount determined under this subsection (5)(b)(i).
- (ii) The amount payable to the alternate payee, calculated under subsection (5)(b)(i), must be actuarially adjusted to provide a benefit payable for the alternate payee's lifetime.

- (c) The participant's benefit must be reduced by the amount determined under subsection (5)(b)(i).
- (6) The duration of payments to an alternate payee may be limited only to a specified maximum time or for the life of the alternate payee.
- (7)(6) If a participant elects to withdraw the accumulated contributions and forfeit all rights to service, disability, or survivor benefits, the alternate payee is entitled to a percentage of the amount payable as determined by the formula in subsection (5)(b)(i).
- (8)(7) Retirement benefit adjustments for which a participant is eligible after retirement must be apportioned in the same manner as determined under subsection (5)(b)(i).
- (9)(8) Payments of monthly benefits to the alternate payee must commence on the latest of the following dates:
 - (a) the date the participant begins receiving benefits; or
 - (b) the first day of the month following receipt of a certified family law order.
- (10)(9) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.
- (11)(10) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.
- (12)(11) If the participant retired on a disability retirement benefit and the benefit is subsequently canceled pursuant to 19-20-903 or 19-20-905, the alternate payee's payments also terminate. When the participant again qualifies for retirement benefits, the amount payable to the alternate payee must be recalculated pursuant to this section."
 - **Section 4.** Section 19-20-401, MCA, is amended to read:
- **"19-20-401. Creditable service.** (1) The creditable service of a member begins on the date of the member's employment in a capacity prescribed for eligibility in 19-20-302 and accumulates to the member's credit on the basis of the retirement board's policy governing creditable service.
 - (2) The creditable service of a member includes the following:
- (a) each year of service for which contributions to the retirement system were deducted from the member's compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this chapter, and their subsequent amendments, except that credit may not be awarded for those years of service for which the contributions have been withdrawn and not replaced;
- (b) any service awarded by a prior service certificate issued under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, and their subsequent amendments or under the provisions of 19-20-406;
- (e)(b) any out-of-state employment service awarded by the retirement board under the provisions of 19-20-402;
 - (d)(c) any service awarded for employment while on leave under 19-20-403;
- (e)(d) any service in the military, red cross, or merchant marine awarded by the retirement board under 19-20-404;
- (f)(e) any employment service awarded by the retirement board under the provisions of 19-20-408:

- (g)(f) any service transferred after October 1, 1989, from the public employees' retirement system under 19-20-409;
- (h)(g) any service awarded by the retirement board for extension service employment under 19-20-410;
- (i)(h) any service awarded for absence because of employment-related injury under 19-20-411; and
 - (i)(i) any service awarded for service purchased under 19-20-426.
- (3) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service.
- (4) For a member completing only part-time service during the qualifying period, the first full year's teaching salary used to calculate the cost to purchase creditable service is the salary that the member would have earned if the member's first year part-time salary had been full-time."

Section 5. Section 19-20-409, MCA, is amended to read:

- "19-20-409. Transfer of service credits and contributions from public employees' retirement system. (1) An active member may at any time before retirement file a written application with the retirement board to purchase all of the member's previous creditable service in the public employees' retirement system. The amount that must be paid to the retirement system to purchase this service under this section is the sum of subsections (2) and (3).
- (2) The public employees' retirement system shall transfer to the teachers' retirement system an amount equal to 72% of the amount paid by the member.
- (3) The member shall pay either directly or by transferring contributions on account with the public employees' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated, plus accrued interest. Interest must be calculated from the date of termination until a transfer is received by the retirement system, based on the interest tables in use by the public employees' retirement system.
- (4) A member who purchases service from the public employees' retirement system in the teachers' retirement system must have completed 5 years of membership service in the teachers' retirement system to receive credit or purchase military service, out-of-state service, employment while on leave, and private school employment.
- (5) The retirement board shall determine the service credits that may be transferred.
- (6) If an active member who also has creditable service in the public employees' retirement system before becoming a member of the teachers' retirement system dies before purchasing this service in the teachers' retirement system and if the member's service credits from both systems, when combined, entitle the member's beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before payment of the death benefit, the public employees' retirement board must transfer to the teachers' retirement system the contributions necessary to purchase this service in the teachers' retirement system as provided in subsections (2) and (3).

- (7) (a) If the teachers' retirement board determines that an individual's membership was erroneously classified and reported to the public employees' retirement system, the public employees' retirement board shall transfer to the teachers' retirement system the member's accumulated contributions and service, together with employer contributions plus interest.
- (b) For the period of time that the employer contributions are held by the public employees' retirement system, interest paid on employer contributions transferred under this subsection (7) must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request.
- (c) Any employee and employer contributions due as calculated in 19-20-602 and 19-20-605, plus interest, are the liability of the employee and the employing entity where the error occurred.
- (8) A vested member who participated in the public employees' retirement system defined contribution plan provided for in Title 19, chapter 3, part 21, prior to becoming a member of the teachers' retirement system may purchase creditable service for the time spent as a participant in the defined contribution plan if:
- (a) the member has 5 years of membership service and has completed at least 1 full year in the teachers' retirement system following the member's public employees' retirement system service;
- (b) for each full year or portion of a year to be purchased pursuant to this subsection (8), the member contributes the actuarial cost of the service based on the most recent valuation of the system; and
- (c) the member has withdrawn the member's money in the member's public employees' retirement system defined contribution plan account or has rolled over the amount required to purchase service in accordance with this subsection (8).
- (9) Creditable service purchased under subsection (8) must be determined according to the laws and rules governing service credit in the public employees' retirement system."
 - Section 6. Section 19-20-603, MCA, is amended to read:
- "19-20-603. Withdrawal of accumulated contributions options. An inactive member electing to do so or a person whose membership terminates without a prospect or anticipation that the member will return to work for an employer within 60 days of termination may withdraw the member's accumulated contributions from the annuity savings account in the retirement system in accordance with the following provisions:
- (1) An inactive member under the provisions of 19-20-303(1) or (3) may elect, without right of revocation, to withdraw the member's accumulated contributions. If the member does not withdraw the accumulated contributions, the member remains an inactive member of the retirement system with the right to qualify for its benefits.
- (2) Upon recovery from a disabling illness or separation from the armed forces, a person qualifying as an inactive member under the provisions of 19-20-303(2) may withdraw the member's accumulated contributions unless the member returns to active membership.
- (3) Upon written application to the board, a terminating member may have the payment of all or any portion of the member's accumulated contributions rolled over or transferred into another qualified eligible retirement plan or a

Roth IRA, provided for under 26 U.S.C. 408A, designated by the member. The portion not rolled over or transferred must be paid directly to the terminating member. The board shall provide forms for filing the written application. The terminating member is responsible for correctly designating an account or plan eligible to receive the tax-deferred amount in order to continue the tax-deferred status of the amount. To the extent required by section 401(a)(31) of the Internal Revenue Code, the board shall allow members and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

(4) If a nonvested member terminates with accumulated contributions of less than \$200, the board shall pay the accumulated contributions in a lump sum as soon as administratively feasible without a written application from the member unless there is a return to service. Upon the payment of accumulated contributions, the member is considered to have withdrawn from the system."

Section 7. Section 19-20-605, MCA, is amended to read:

- "19-20-605. Pension accumulation account employer's contribution. (1) The pension accumulation account is the account in which the reserves for payment of retirement allowances and benefits must be accumulated and from which retirement allowances and benefits must be paid to retirees or their beneficiaries. Contributions to and payments from the pension accumulation account must be made as provided in this section.
- (2) Except as provided in subsection (3), for each member employed during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to:
- (a) beginning July 1, 2007, through June 30, 2009, 9.47% of total earned compensation; and
 - (b) beginning July 1, 2009, 9.85% of total earned compensation.
- (3) For each member employed by a school district, an education cooperative, a county, or a community college during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to 7.47% of total earned compensation.
- (4) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.
- (5) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.
- (6) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.
- (7) All interest and other earnings realized on the money of the retirement system must be credited to the pension accumulation account, and the amount required to allow regular interest on the annuity savings account must be transferred to that account from the pension accumulation account.
- (8) The board may transfer from the pension accumulation account to the expense account an amount necessary to cover expenses of administration."

Section 8. Section 19-20-701, MCA, is amended to read:

"19-20-701. Benefits. The retirement, disability, and other benefits of the retirement system shall must be granted on the basis of the provisions of this chapter. A member's written application for benefits must include a statement certifying there has been a bona fide separation from service, including whether there are any intentions to be reemployed with the same employer that would be prohibited under the Internal Revenue Code."

Section 9. Section 19-20-702, MCA, is amended to read:

- "19-20-702. Optional allowances. (1) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the optional allowances described in subsection (2) or (3) in lieu of the normal form of retirement allowance, which is provided for in 19-20-902 and part 8 of this chapter. If a member dies within 30 days after retirement, the member's election to receive an optional allowance is void and the member's death will be considered as that of an active member.
- (2) An optional allowance is the actuarial equivalent of the member's service retirement or disability retirement allowance at the time of the member's retirement effective date and provides an allowance payable to the member throughout the member's lifetime and, upon the member's death, an allowance payable to the person that the member nominated by written designation, duly acknowledged and filed with the retirement board at the time of the member's retirement, in accordance with one of the following options:
- (a) Option A—the optional allowance will be paid to the member throughout the member's lifetime and, upon the member's death, continue throughout the lifetime of the member's designated beneficiary.
- (b) Option B—the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, one-half of the optional allowance will be continued throughout the lifetime of the member's designated beneficiary.
- (c) Option C—the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, two-thirds of the optional allowance will be continued throughout the lifetime of the member's designated beneficiary.
- (d)(3) (a) Period certain and life—a retirement allowance will be paid for a certain period of time or for the member's lifetime, whichever is greater.
- (i) The member shall elect one of the following certain time periods: In lieu of any other option available in this section, a member may elect to receive one of the following allowances that must be paid over the certain period of time or for the member's lifetime, whichever is greater:
- (A)(i) 10 years if the member is 75 years of age or younger at the time of retirement; or
- (B)(ii) 20 years if the member is 65 years of age or younger at the time of retirement.
- (ii)(b) At the time of retirement, the member shall file with the board a written nomination of beneficiaries to receive payments if the member dies before the end of the certain period elected. Unless limited by a family law order, the nominated beneficiary may be changed by the member at any time by filing with the board a written notice designating different beneficiaries.
- (3)(4) (a) Upon written application to the retirement board, a retired member whose effective date of retirement is before October 1, 1993, and who is receiving an optional retirement allowance may select a different actuarially

equivalent optional allowance and designate a different beneficiary, select a different option, or convert the member's optional retirement allowance to a normal form of retirement allowance if:

- (i) the original beneficiary has died. The benefit must convert to the normal form of retirement allowance effective the first of the month following the death of the designated beneficiary.
- (ii) the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must convert to the normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.
- (b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement or disability allowance to reflect the change.
- (4)(5) A retired member receiving an optional retirement allowance pursuant to subsection (2)(a), (2)(b), or (2)(c) that is effective after October 1, 1993, may file a written application to select a different actuarially equivalent optional allowance and designate a different beneficiary or to revert the optional retirement allowance to the full normal form of retirement allowance available at the time of retirement if:
- (a) the original beneficiary has died. The benefit must revert to the full normal form of retirement allowance effective the first of the month following the death of the designated beneficiary.
- (b) the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must revert to the full normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.
- (5)(6) The normal form of retirement allowance available must be increased by the value of any postretirement adjustments received by the member since the effective date of retirement.
- (6)(7) The retired member shall file the written application required by subsection (3) (4) or (4) (5) with the board to designate a different beneficiary or to select an actuarially equivalent optional allowance, or both, within 18 months of the death or divorce of the designated beneficiary."

Section 10. Section 19-20-703, MCA, is amended to read:

- **"19-20-703. Payments to be monthly.** (1) All retirement allowances must be paid in equal monthly installments.
 - (2) The retirement allowance may commence:
- (a) no earlier than the first day of the month following the member's termination date or on the first day of the month following the date when the member first becomes eligible, whichever date is later; or
 - (b) if requested by the inactive member in writing:
 - (i) on the first day of a later month; or
 - (ii) on the first day of the month following the member's 60th birthday.

- (3) Distribution of a *an inactive* member's benefit must begin by the later of the April 1 following the calendar year in which a member attains age 70 1/2 or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the board shall begin distribution of the monthly benefit as provided in 19-20-702(2)(d)(i)(A) 19-20-702(3)(a)(i).
- (4) The life expectancy of a member or the member's beneficiary may not be recalculated after benefits commence."
 - Section 11. Section 19-20-718, MCA, is amended to read:
- **"19-20-718. Maximum contribution limitation.** (1) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the system required under part 4 or *part* 6 of this chapter that would exceed the limits in section 415(c) or 415(n) of the Internal Revenue Code by using the following methods:
- (a) The board may establish a periodic payment plan in order to avoid a contribution in excess of the limits of section 415(c) or 415(n) of the Internal Revenue Code.
- (b) If the board's option in subsection (1)(a) will not avoid a contribution in excess of the limits in section 415(c) of the Internal Revenue Code, the board may direct the excess contribution to the qualified governmental excess benefit arrangement pursuant to section 415(m) of the Internal Revenue Code if a qualified governmental excess benefit arrangement has been established pursuant to 19-20-212.
- (2) If the board's options in subsections (1)(a) and (1)(b) will not avoid a contribution in excess of the limits of section 415(c) of the Internal Revenue Code, the board shall reduce or refuse the contribution.
- (3) The board shall use the provisions of section 415(n) of the Internal Revenue Code, as the provisions apply to a government plan, to facilitate member's service purchases. An eligible participant in a retirement plan, as defined by section 1526 of the Taxpayer Relief Act of 1997, 26 U.S.C. 415, may purchase service credit without regard to the limitations of section 415(c)(1) of the Internal Revenue Code under the Montana statutes in effect on August 5, 1997.
- (4) (a) For the purpose of calculating the maximum contribution under section 415 of the Internal Revenue Code, the definitions of "compensation", "wages", and "salary" include the amount of any elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member by reason of section 125, 132(f), 403(b), or 457 of the Internal Revenue Code. Any changes in the maximum limits under section 415 of the Internal Revenue Code must be applied prospectively.
- (b) For limitation years beginning after December 31, 2000, compensation must also include any elective amounts that are not able to be included in the gross income of the member by reason of section 132(f)(4) of the Internal Revenue Code.
- (c) For limitation years beginning on and after September 1, 2009, compensation for the limitation year must also include compensation paid by the later of 2.5 months after a member's severance from employment or the end of the

limitation year that includes the date of the member's severance from employment if:

- (i) the payment is regular compensation for services during the member's regular working hours or compensation for services outside the member's regular working hours, such as overtime or shift differential, commissions, bonuses, or other similar payments, and absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or
- (ii) the payment is for unused accrued sick, vacation, or other leave that the member would have been able to use if employment had continued.
- (d) For limitation years beginning on or after September 1, 2009, a member's compensation for purposes of this section may not exceed the annual limit under section 401(a)(17) of the Internal Revenue Code."

Section 12. Section 19-20-731, MCA, is amended to read:

- "19-20-731. Postretirement employment limitations cancellation and recalculation of benefits. (1) (a) Except as otherwise provided in this section, a retired member may be employed part-time by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:
 - (i) one-third of the sum of the member's average final compensation; or
- (ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.
- (b) For the purposes of this subsection (1), the maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all remuneration paid to the retired member, excluding:
- (i) the amount of health insurance premiums paid by the employer on the retired member's behalf;
 - (ii) the value of housing provided by the employer to the retired member;
- (iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;
- (iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and
 - (v) payroll taxes paid by the employer on behalf of the retired member.
- (2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.
- (3) Except as provided in subsection (5), the retirement benefit of a retired member:
- (a) employed in a part-time position or earning more than allowed by subsections (1) and (2) must be temporarily reduced by \$1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be canceled if the retired

member's earnings over the maximum allowed exceed the gross monthly benefit amount.

- (b) employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment.
- (4) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection (3), the retirement benefit of a member:
- (a) who was reemployed and earned less than 1 year of creditable service must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later. The reinstated retirement benefit is the amount and option that the retired member would have been entitled to receive had the retired member not returned to employment.
- (b) who was reemployed and earned at least 1 year of creditable service must be recalculated under 19-20-804 if the member has attained normal retirement age would qualify for a service retirement benefit under 19-20-801 or under 19-20-802 if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated normal form benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were canceled.
- (5) If an early-retired a retired member under 19-20-802 who has not attained normal retirement age is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled.
- (6) For purposes of this section, "position eligible to participate in the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor, as those terms are defined in 39-8-102.
- (7) The retirement allowance of any retired member who is employed in a position and who elects to participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the optional retirement program."
 - Section 13. Section 19-20-804, MCA, is amended to read:
- "19-20-804. Allowance for service retirement. Upon termination, a member who has attained normal retirement age qualifies for benefits pursuant to 19-20-801 must receive a retirement allowance equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service and service transferred under 19-20-409."

Section 14. Section 19-20-905, MCA, is amended to read:

"19-20-905. Cancellation of allowance and restoration of membership. (1) If a disabled retiree is employed full-time in a capacity that would otherwise meet the eligibility requirements of active membership, as

provided under 19-20-302, the retiree's retirement allowance must cease. If the retiree is employed full-time by an employer covered under this chapter, the retiree shall must again become an active member of the retirement system. Any prior service certificate on the basis of which the member's service was computed at the time of the member's disability retirement must be restored to full force, and upon the member's subsequent retirement, the member must be credited with the prior service and all subsequent service as a member.

(2) If the member is restored to active membership on or after the attainment of the age of 55 years, the member's retirement allowance upon subsequent retirement may not exceed the retirement allowance that the member would have received had the member remained in service during the period of the member's previous retirement or the sum of the retirement allowance that the member was receiving immediately prior to the member's last restoration to service and the retirement allowance that the member would have received on account of the member's service since the member's last restoration had the member entered service at that time as a new member."

Section 15. Section 19-20-1001, MCA, is amended to read:

- **"19-20-1001.** Allowances for death of member. (1) If a member dies before retirement, the member's accumulated contributions must be paid to the member's estate or to the beneficiary that the member nominated by a written application in a manner prescribed by the board and filed with the retirement board prior to the member's death.
- (2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the nominated beneficiary may elect to receive a retirement allowance. The retirement allowance must be determined as prescribed in 19-20-804 and section 5, Chapter 549, Laws of 1981 without reference to 19-20-715, in the same manner as if the member elected option A provided for in 19-20-702(2)(a).
- (b) The effective date of the retirement allowance provided for in subsection (2)(a) is the earlier of:
 - (i) the first of the month following the date of death; or
- (ii) the effective date of the member's retirement, as acknowledged in writing by the retirement system before the member's death.
- (c) In the event that payments made to the beneficiary do not equal the amount of the member's accumulated contributions before the member's death, the difference between the total retirement allowance payments made and the amount of the accumulated contributions at the time of the member's death must be paid to the beneficiary's estate.
- (3) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year before the member's death, a lump-sum death benefit of \$500 is payable to the member's designated beneficiary.
- (4) If a deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to the member's death, the sum of \$200 a month must be paid to each minor child of the deceased member until the child reaches 18 years of age.
- (5) If the member nominated more than one beneficiary to receive payment of a benefit provided by this section upon the member's death *or if a family law order has been issued*, then:

- (a) each beneficiary and alternate payee, if applicable, is entitled to share in that benefit: and
- (b) if a beneficiary predeceases the member, the benefit must be divided among the surviving beneficiaries."

Section 16. Section 19-20-1003, MCA, is amended to read:

- "19-20-1003. Payment of death benefits. (1) Death benefits paid from the system are subject to the requirements of this section.
- (2) Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations adopted under that section.
- (3) The amount of benefits payable to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirements of the Internal Revenue Code.
- (4) If the member dies before retirement benefits commence and a benefit is payable pursuant to 19-20-1001, distributions to the member's beneficiaries must begin as soon as administratively feasible and must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. If the beneficiary has not elected the form of payment by the date on which the beneficiary is to receive the benefit and the beneficiary is eligible for a monthly benefit, the benefit must be paid as provided in 19-20-702(2)(d)(i)(A) 19-20-702(3)(a)(i) or a lump sum must be paid if that is the only benefit due the beneficiary."
- Section 17. Compliance with federal act. With respect to a member's death occurring on or after January 1, 2007, while a member is performing qualified military service covered under the Heroes Earnings Assistance and Relief Tax Act of 2008, Public Law 110-245, and to the extent required by section 401(a)(37) of the Internal Revenue Code, 26 U.S.C. 401(a)(37), the designated beneficiaries are entitled to benefits that the system would have provided if the member had resumed employment and then died and that are contingent on the member's death while employed.

Section 18. Section 20-15-106, MCA, is amended to read:

- "20-15-106. Retirement systems for employees, and teachers, and administrators. (1) Teachers and administrators of a community college district are subject to and eligible for the benefits of the Montana teachers' retirement system pursuant to the provisions of Title 19, chapter 20.
- (2) The employees of a community college district not eligible for teachers' retirement system benefits are subject to and eligible for the benefits of the Montana public employees' retirement system *pursuant to Title 19, chapters 2 and 3*"

Section 19. Section 20-15-403, MCA, is amended to read:

"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-401, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 19-20-302, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106,

 $40\text{-}6\text{-}237,\ 49\text{-}3\text{-}101,\ 49\text{-}3\text{-}102,\ 52\text{-}2\text{-}617,\ 53\text{-}20\text{-}304,\ 82\text{-}10\text{-}201\ through}$ $82\text{-}10\text{-}203,\ 85\text{-}7\text{-}2158,\ and\ 90\text{-}6\text{-}208\ and\ Rules}\ 4D(2)(g)\ and\ 15(c),\ M.R.Civ.P.,\ as\ amended$

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

Section 20. Repealer. Section 19-20-406, MCA, is repealed.

Section 21. Codification instruction. [Section 17] is intended to be codified as an integral part of Title 19, chapter 20, part 10, and the provisions of Title 19, chapter 20, part 10, apply to [section 17].

Section 22. Effective date. [This act] is effective July 1, 2009.

- **Section 23. Retroactive applicability.** (1) The amendment to the definition of full-time service in 19-20-101 applies retroactively, within the meaning of 1-2-109, to full-time service on or after January 1, 2005.
- (2) [Section 11] applies retroactively, within the meaning of 1-2-109, to pension year benefits beginning after January 1, 2001.
- (3) [Section 17] applies retroactively, within the meaning of 1-2-109, to teachers' retirement system member deaths on and after January 1, 2008.

Approved April 17, 2009

CHAPTER NO. 283

[HB 109]

AN ACT GENERALLY REVISING THE STATUTES CONCERNING CERTAIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS; REQUIRING THE PUBLIC EMPLOYEE RETIREMENT BOARD TO ADOPT RULES; AMENDING SECTIONS 19-2-303, 19-2-506, 19-2-704, 19-2-710, 19-2-715, 19-2-801, 19-2-908, 19-3-201, 19-3-316, 19-3-403, 19-3-504, 19-3-513, 19-3-906, 19-3-1015, 19-3-1106, 19-3-1210, 19-3-2111, 19-3-2133, 19-5-601, 19-5-612, 19-5-801, 19-5-802, 19-6-612, 19-7-404, 19-7-612, 19-8-712, 19-9-904, 19-9-1101, 19-13-104, 19-13-704, 19-13-803, 19-13-804, 19-17-107, 19-17-401, 19-17-408, AND 19-17-504, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-2-303, MCA, is amended to read:

- "19-2-303. **Definitions.** Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:
- (1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.
- (2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.
- (3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

- (4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.
- (5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.
- (6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.
- (7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.
 - (8) "Annuity" means:
- (a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or
- (b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.
 - (9) "Benefit" means:
- (a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or
- (b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.
- (10) "Board" means the public employees' retirement board provided for in 2-15-1009.
 - (11) "Contingent annuitant" means a person:
- (a) under option 2 or 3 provided for in 19-3-1501, one natural person designated to receive a continuing monthly benefit after the death of a retired member; or
- (b) under option 4 provided for in 19-3-1501, a natural person, charitable organization, estate, or trust that may receive a continuing monthly benefit after the death of a retired member.
 - (12) "Covered employment" means employment in a covered position.
- (13) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.
- (14) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.
- (15) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.
 - (16) "Department" means the department of administration.

- (17) "Designated beneficiary" means the person, charitable organization, estate, or trust for the benefit of a natural person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.
- (18) "Disability" or "disabled" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.
- (19) "Early retirement benefit" means the retirement benefit payable to a member following early retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.
- (20) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.
- (21) "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.
- (22) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:
 - (a) the position exists to perform the element;
 - (b) there are a limited number of employees to perform the element; or
 - (c) the element is highly specialized.
- (23) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.
- (24) "Inactive member" means a member who terminates service and does not retire or take a refund of the member's accumulated contributions.
 - (25) "Internal Revenue Code" has the meaning provided in 15-30-101.
 - (26) "Member" means either:
- (a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or
 - (b) a person with a retirement account in the defined contribution plan.
- (27) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.
- (28) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future.
- (b) Normal cost does not include any portion of the supplemental costs of a retirement plan.
- (29) "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age, length of service, or both, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

- (30) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.
- (31) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.
- (32) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.
- (33) "Regular contributions" means contributions required from members under a retirement plan.
- (34) "Regular interest" means interest at rates set from time to time by the board.
 - (35) "Retirement" or "retired" means the status of a member who has:
 - (a) terminated from service; and
 - (b) received and accepted a retirement benefit from a retirement plan.
- (36) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.
 - (37) "Retirement benefit" means:
- (a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement, early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.
- (b) in the case of the defined contribution plan, a benefit as defined in subsection (9)(b).
- (38) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.
- (39) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.
- (40) "Service" means employment of an employee in a position covered by a retirement system.
- (41) "Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.
- (42) "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.
- (43) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.
- (44) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service

performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

- (45) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.
- (46) "Termination of employment", "termination from employment", "terminated employment", "terminated from employment", "terminate employment", or "terminates employment" means that:
- (a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both; and
- (b) the member is no longer receiving compensation for covered employment, other than any outstanding lump-sum payment for compensatory leave, sick leave, or annual leave.
- (47) "Termination of service", "termination from service", "terminated from service", "terminated service", "terminating service", or "terminates service" means that:
- (a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both for at least 30 days;
- (b) the member is no longer receiving compensation for covered employment; and
- (c) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled. For the purposes of this subsection (47), compensation does not mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.
- (48) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.
- (49) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:
 - (a) the member's contribution account;
 - (b) the vested portion of the employer's contribution account; and
 - (c) the member's account for other contributions.
 - (50) "Vested member" or "vested" means:
- (a) with respect to a defined benefit plan, a member or the status of a member who has at least 5 years of membership service; or
- (b) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.
- (51) "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the

board, that contains all required information, including documentation that the board considers necessary.

(52) "Written instrument" includes an electronic record containing an electronic signature, as defined in 30-18-102."

Section 2. Section 19-2-506, MCA, is amended to read:

- "19-2-506. Payment of contributions by employers accompanying reports penalty. (1) The board shall prescribe by rule the procedure for payment of retirement contributions for the retirement systems administered by the board. Each employer shall pick up the employee contributions and remit the employer and employee contributions required by the member's retirement system. Payments must be considered delinquent until both the required contributions and the valid payroll report are received by the board.
- (2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or \$10 a day, whichever is greater. The board may, in its discretion, waive the penalty. The collection may be made by either:
 - (a) an action in a court of competent jurisdiction against the employer; or
- (b) deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state.
- (3) (a) The board shall prescribe by rule the procedure for submitting employer reports. The reports must include data about member and nonmember employees who work for the employer. The data required must include items such as compensation paid, hourly rates, changes in pay status, current home addresses, and any other data concerning employees that the board needs to administer the specific retirement system or plan. The board shall establish
- (b) The rules must specify the employee categories to be reported, the data required, the method of reporting, the reporting period, and the frequency of reports needed to meet the demands of the relevant retirement system or plan.
- (c) The board may establish by rule the penalty fees for noncompliance in reporting any of the required information and the procedure for collection of the fees.
- (4) Each employer shall furnish additional information concerning members that the board may request in connection with claims by members for benefits or service under a retirement system.
- (5) The board, from time to time, may send materials to an employer for redistribution to employees. To facilitate distribution, each employer shall provide the board with a point of contact responsible for distributing the materials."

Section 3. Section 19-2-704, MCA, is amended to read:

- "19-2-704. Purchasing service credits allowed payroll deduction. (1) Subject to the rules promulgated by the board, an eligible member may elect to make additional contributions to purchase service credits as provided by the statutes governing the retirement system.
- (2) Subject to any statutory provision establishing stricter limitations, only active or vested inactive members are eligible to purchase or transfer service credit, membership service, or contributions.
- (3) A member who wishes to redeposit amounts withdrawn under 19-2-602 or who is eligible to purchase service credit as provided by the statutes

governing the retirement system to which the member belongs may elect to make a lump-sum payment by personal check or rollover of funds from another eligible plan, to make installment payments, or to make a combination of a lump-sum payment and installment payments.

- (4) Installment payments must be *made by personal check* paid directly to the board, unless the member elects to make payments by irrevocable payroll deduction. The minimum installment period for payments made directly to the board is 3 months, and the maximum installment period is 5 years.
- (5) To elect installment payments by irrevocable payroll deduction, the member shall file with the board and the member's employer an irrevocable, written application and authorization for payroll deductions. The application and authorization:
 - (a) must be signed by the member and the member's employer;
- (b) must specify the dollar amount of each deduction and the number of deductions to be made, subject to any maximum amounts or duration established by state or federal law:
- (c) must provide that the deductions are to be made over a period of time of no less than 3 months and no more than 5 years in duration;
- (d) may not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the board; and
- (e)(d) must specify that the additional contributions being picked up, although designated as employee contributions, are being paid by the employer directly to the board in lieu of contributions paid directly by the employee.
- (6) If the board notifies the employer that a proper written application and authorization has been filed with the board, the employer shall initiate the payroll deduction as follows:
- (a) An employer shall pick up the member's elective additional contributions made pursuant to a payroll deduction authorization. The contributions picked up by the employer must be paid from the same source as is used to pay compensation to the member and must be included as part of the member's earned compensation before the deduction is made.
- (b) Employee contributions, even though designated as employee contributions for state law purposes, are paid by the member's employer in lieu of contributions paid directly by the member to the board.
- (c) The member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the board.
- (d) The effective date of the employer pickup and payment pursuant to this section is the date on which the employee's additional contribution is first deducted from the employee's compensation. However, the effective date may not be prior to the date that the member properly completes the written application and authorization for payroll deductions and files it with the board. The pickup may not apply to any additional contributions made before the effective date or to any contributions related to compensation earned for services rendered before the effective date.
- (e) Installment payments initiated by contract prior to July 1, 1999, may be paid by payroll deduction only if the member files a written application and authorization for payroll deductions pursuant to this section. If the member does not file a written application and authorization for payroll deductions

pursuant to this section, the installment contract payments agreed to by the member must be paid by the member directly to the board.

- (f) A member may file more than one irrevocable payroll deduction agreement and authorization as long as a subsequent deduction authorization does not amend a previous irrevocable authorization. A member may not prepay an amount under an irrevocable payroll deduction agreement without terminating employment, except when a member with an existing contract to purchase service credit elects to transfer to the defined contribution retirement plan pursuant to 19-3-2111(7) or to the optional retirement program pursuant to 19-3-2112(2)(j) becomes a member of another retirement system by an authorized election and the service purchase is in accordance with 19-2-715.
- (7) If a member terminates employment or dies before completing all payments required by a payroll deduction authorization filed pursuant to this section, the deduction authorization expires and the board shall prorate the service credit based on the amount paid unless further payment is made as provided in this subsection. In the case of a termination from employment, the member may make a lump-sum payment for up to the balance of the service credit remaining to be purchased, subject to the limitations of section 415 of the Internal Revenue Code. In the case of death of the member, the payment may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code."

Section 4. Section 19-2-710, MCA, is amended to read:

"19-2-710. Nonapplication of part to defined contribution plan. Except as otherwise provided in 19-2-715 and chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan."

Section 5. Section 19-2-715, MCA, is amended to read:

- "19-2-715. Purchase of Montana public service. (1) (a) A An active member may, at any time before retirement, file a written application with the board to purchase as service credit in the member's retirement system all or any portion of the member's previous service credit in the public employees', judges', highway patrol officers', sheriffs', game wardens' and peace officers', firefighters' unified, or municipal police officers' retirement system if the member has:
 - (i) received or is eligible to receive a refund of accumulated contributions; or
- (ii) become a member of one of the other retirement systems covered under chapter 3, 5, 6, 7, 8, 9, or 13 of this title.
- (b) To purchase this service credit, the member shall pay the actuarial cost of the service credit in the member's current retirement system, based on the system's most recent actuarial valuation and the annual compensation of the member, minus the employer contribution provided in subsection (1)(c).
- (c) Upon receiving the member's payment under subsection (1)(b), the board shall transfer from the member's former retirement system to the member's current retirement system an amount equal to the employer contributions made on compensation during the member's former service, but no more than an amount equal to the normal cost contribution rate minus the employee contribution rate in the member's current retirement system according to the system's most recent actuarial valuation.
- (d) If the member was formerly in the public employees' retirement system's defined contribution plan, the member shall pay the actuarial cost of the service credit in the member's current retirement system, based on the system's most

recent actuarial valuation and the annual compensation of the member. The member is eligible to transfer the vested portion of the member's defined contribution account to pay the balance due. Any nonvested portion of the defined contribution account is forfeited pursuant to 19-3-2117.

- (2) (a) An active member may, at any time before retirement, file a written application with the board to purchase all or a portion of service credit for full-time service performed previous employment for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's former public employer. To purchase service credit under this section, the member shall pay the actuarial cost of the service credit in the member's current retirement system, as determined by the board, based on the system's most recent actuarial valuation. For the purpose of this subsection (2)(a), a political subdivision of the state includes a school district.
- (b) The board is the sole authority under subsection (2)(a) in determining what constitutes full-time public service, subject to 19-2-403."

Section 6. Section 19-2-801, MCA, is amended to read:

- "19-2-801. Designation of beneficiary. (1) (a) In the absence of any statutory beneficiaries, designated beneficiaries are the natural persons, charitable organizations, estate of the payment recipient, or trusts for the benefit of natural living persons that the member or payment recipient designates on the membership card or other form provided by the board. Unless otherwise provided by statute, a member or payment recipient may revoke the designation and name different designated beneficiaries by filing with the board a new membership card or other form provided by the board. The Except as provided in subsection (1)(b), the most recent beneficiary designation filed with the board is effective for all purposes.
- (b) A member may elect to either override or retain the member's existing beneficiary designation when completing a membership card for temporary or secondary employment with another employer within the same Title 19 retirement system.
- (2) If a statutory or designated beneficiary predeceases the member or payment recipient, the predeceased beneficiary's share must be paid to the remaining statutory or designated beneficiaries in amounts proportional to each remaining statutory or designated beneficiary's original share.
- (3) A statutory or designated beneficiary who renounces an interest in the payment rights of a member or payment recipient will be considered, with respect to that interest, as having predeceased the member or payment recipient."

Section 7. Section 19-2-908, MCA, is amended to read:

- "19-2-908. Time of commencement of benefit rulemaking. (1) (a) The board shall grant a benefit to any active or inactive member who is vested, or the member's statutory or designated beneficiary, who has fulfilled all eligibility requirements, terminated service, and filed the appropriate written application with the board. However, the board may, on its own accord and without a written application, begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.
- (b) A member may apply for retirement benefits before termination from employment, but commencement of the benefits must be as provided in this section.

- (2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first day of the month following the eligible member's last day of membership service employment or, if requested by the inactive member in writing, on the first day of a later month following filing of the written application.
- (b) If an elected official's term of office expires before the 15th day of the month, the official may elect that service retirement benefits from a defined benefit plan commence on the first day of the month following the official's last full month in office. An official electing this option shall file a written application with the board. An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating highest average compensation or final average compensation, as defined under the provisions of the appropriate retirement system, in the partial month ending the official's term, and compensation earned in that partial month is not subject to employer or employee contributions.
- (3) (a) Subject to the provisions of subsection (3)(b), the disability retirement benefit payable to a member must commence on the day following the member's termination from employment.
- (b) The guaranteed annual benefit adjustment payable pursuant to 19-3-1605, 19-5-901, 19-6-710, 19-6-711, 19-7-711, 19-8-1105, 19-9-1009, 19-9-1010, 19-9-1013, 19-13-1010, and 19-13-1011 may not be paid retroactively. The guaranteed annual benefit adjustment begins on January 1 of the year after the member has received an amount equal to or greater than 12 months of disability benefit payments.
- (4) Monthly survivorship benefits from a defined benefit plan must commence on the day following the death of the member.
- (5) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board.
- (6) With respect to the defined contribution plan, the board shall adopt rules regarding the commencement of benefits that are consistent with applicable provisions of the Internal Revenue Code and its implementing regulations."

Section 8. Section 19-3-201, MCA, is amended to read:

- "19-3-201. Contracts with political subdivisions. (1) Any municipal corporation, county, or public agency in the state may become a contracting employer and make all or specified groups of its employees members of the retirement system by through a contract entered into between the board and the legislative body of the contracting employer. The contract must provide that all employees eligible under this chapter must become members. Contracts executed prior to July 1, 2009, that limit membership to a specific group or groups of employees remain valid. The contract may include any provisions that are consistent with chapter 2 and this chapter and necessary in the administration of the retirement system as it affects the contracting employer and its employees.
- (2) The approval of the contract is subject to the following provisions, in addition to the other provisions of chapter 2 and this chapter:
- (a) The legislative body of the contracting employer shall adopt a resolution of intention to approve the contract and containing a summary of the major provisions of the retirement system. The contract may not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at the

election must include the summary of the retirement system as set forth in the resolution. The election must be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract must be by the affirmative vote of two-thirds of the members of the legislative body within 40 days after the adoption of the resolution.

- (b) The contract must specify that the provisions of the retirement system apply to all employees on the effective date of the contract and to all employees hired after the effective date of the contract. An employee's membership in either the defined benefit plan or the defined contribution plan is determined on an individual basis as provided in this chapter.
- (c) The contract may be amended in the manner prescribed in this section for the original approval of contracts. The contract must be approved by the board. The board may disapprove of a contract if, in the board's sole discretion, the contract adversely affects the interests of the retirement system. Any amendments to the retirement system made pursuant to Montana laws immediately apply to and become a part of the contract.
- (3) The termination of the contract is subject to the following provisions, in addition to the other provisions of this chapter:
- (a) The legislative body of a contracting employer shall adopt a resolution giving notice to its employees that it intends to terminate retirement system coverage.
- (b) All employees covered under the retirement system must be given notice of the termination resolution and be permitted to vote for or against the resolution by secret ballot.
- (c) If a majority of covered employees votes for termination, the legislative body, within 20 days after the approval of the resolution by the employees, may adopt by a two-thirds majority a resolution terminating coverage under the system effective the last day of that month and forward the resolution and a certified copy of the election results to the board.
- (d) Upon receipt of the termination resolution, the board may request an actuarial valuation of the liabilities of the terminating agency to the retirement system, and the board may withhold approval of the termination of contract until satisfactory arrangements are made to provide funding for any excess accrued liabilities not previously funded by the terminating agency."

Section 9. Section 19-3-316, MCA, is amended to read:

- "19-3-316. Employer contribution rates. (1) Each employer shall contribute to the system. Except as provided in subsection (2), the employer shall pay as employer contributions 6.9% of the compensation paid to all of the employer's employees plus any additional contribution under subsection (3), except for those employees properly excluded from membership. Of employer contributions made under this subsection for both defined benefit plan and defined contribution plan members, a portion must be allocated for educational programs as provided in 19-3-112. Employer contributions for members under the defined contribution plan must be allocated as provided in 19-3-2117.
- (2) Local government and school district employer contributions must be the total employer contribution rate provided in subsection (1) minus the state contribution rates under 19-3-319.
- (3) Subject to subsection (4), each employer shall contribute to the system an additional employer contribution equal to the following percentage 0.27% of the

compensation paid to all of the employer's employees, except for those employees properly excluded from membership:

- (a) beginning July 1, 2007, 0.135%; and
- (b) beginning July 1, 2009, 0.27%.
- (4) (a) The board shall periodically review the additional employer contribution provided for under subsection (3) and recommend adjustments to the legislature as needed to maintain the amortization schedule set by the board for payment of the system's unfunded liabilities.
- (b) The employer contribution required under subsection (3) terminates on July 1 $\frac{1}{1}$ immediately following the board's receipt of the system's actuarial valuation if:
- (i) the actuarial valuation determines that the period required to amortize the system's unfunded liabilities, including adjustments made for any benefit enhancements enacted by the legislature after the valuation, is less than 25 years; and
- (ii) terminating the additional employer contribution would not cause the amortization period as of the most recent actuarial valuation to exceed 25 years."

Section 10. Section 19-3-403, MCA, is amended to read:

- "19-3-403. Exclusions from membership. The following persons may not become members of the retirement system and, except as provided in subsection (7), may not later purchase previous service under 19-3-505:
 - (1) inmates of state institutions;
- (2) persons in state institutions principally for the purpose of training but who receive compensation;
 - (3) independent contractors;
- (4) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision of the state and who are receiving credit in the other system for employment. It is the purpose of this subsection to prevent a person from receiving credit for the same employment in two retirement systems supported wholly or in part by public funds, except when the service qualifies and is applied for and the service credit is purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the state, is required to become a member of any other system described in this subsection is considered, with regard to that employment, an inactive member of the retirement system, except that the member is not eligible for retirement or a refund of the member's accumulated contributions. Exclusion under this subsection is subject to the following exceptions:
- (a) The employees of an employer who has entered into a collective bargaining agreement involving a multiemployer pension plan qualified by the internal revenue service and that requires contributions by the employer for the members of the bargaining unit remain eligible, if otherwise qualified, for membership in the retirement system.
- (b) For the purpose of this subsection (4), persons receiving pensions, retirement benefits, or other payments from any source on account of employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

- (5) substitute teachers or part-time teacher's aides who may elect to join the teachers' retirement system in accordance with 19-20-302(4);
- (5)(6) court commissioners, elected officials, or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;
- (6)(7) full-time students employed at and attending the same public elementary school, high school, community college, or unit of the state university system, except that a person excluded from membership as a student of a public community college or a unit of the state university system who later becomes an active member by otherwise becoming an employee may affirmatively exercise the option of purchasing the service credit excluded by this subsection by applying to the board in writing after becoming an active member and become eligible to receive service credit for the excluded service under the provisions of 19-3-505."

Section 11. Section 19-3-504, MCA, is amended to read:

- "19-3-504. Absence due to illness or injury. (1) Time, not to exceed 5 years, during which a member is absent from service because of injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment. However, the member may not earn service eredits credit for this period unless the member files with the board a written notice of the member's intent to purchase the time of absence and complies with subsections (2) and (3) subsection (2), in which case the absence is considered as time spent in service for both service credit and membership service.
- (2) (a) A member absent because of an employment-related *illness or* injury entitling the member to workers' compensation payments may, upon the member's return to service, or upon termination of employment if the member cannot return to service due to the illness or injury, contribute to the retirement system an amount equal to the contributions that would have been made by the member to the system during the absence. The amount of contributions owed will be based on the basis of the member's compensation at the commencement of the member's absence, plus regular interest accruing from 1 year from the date after the member returns to service or terminates employment to the date the member contributes for the period of absence.
- (b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.
- (3) At some time after returning to service, a member shall file with the board a written notice of the member's intent to pay the contributions under subsection (2).
 - (4) A member loses the right to contribute for an:
- (a) the entire absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602; or for
- (b) the period of time during which retirement benefits are received if the member retires during the absence."

Section 12. Section 19-3-513, MCA, is amended to read:

- **"19-3-513. Application to purchase additional service.** (1) Subject to 19-3-514, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.
- (2) To purchase this service credit under this section, a member shall pay the actuarial cost of the service credit, based on the system's most recent actuarial valuation.
- (3) Service credit purchased under this section is not membership service and may not be used to qualify a member for service retirement.
- (4) Once a member has at least 25 years of membership service, purchases of one-for-five service will be used to adjust the early retirement reduction required in 19-3-906."

Section 13. Section 19-3-906, MCA, is amended to read:

- "19-3-906. Early retirement benefit. (1) The amount of retirement benefit payable to a member following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that would have been payable to the member commencing at age 60 or upon completion of 30 years of membership service pursuant to 19-3-904.
- (2) The early retirement benefit must be determined as prescribed in 19-3-904, with the exception that the benefit must be reduced as follows:
- (a) by 1/2 of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 30 years of membership service; and
- (b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 30 years of membership service.
- (3) The actuarial reduction provided for in this section must be adjusted for any additional service credit one-for-five service purchased under 19-3-513 once the member has at least 25 years of membership service."

Section 14. Section 19-3-1015, MCA, is amended to read:

- "19-3-1015. Medical examination of disability retiree cancellation and reinstatement. (1) The board may, in its discretion, require a disabled member to undergo a medical examination. The examination must be made by a board-approved physician or surgeon appointed by the board, at a place mutually agreed upon on by the retired member and the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements of either the position held by the member when the member retired or the position proposed to be assigned to the member. If the board determines that the member is not incapacitated or if the member refuses to submit to a medical examination, the member's disability retirement benefit must be canceled.
- (2) If the board determines that a disabled member should no longer be subject to medical review, the board may grant service retirement status to the member without recalculating the monthly benefit. The board shall notify the

member in writing as to the change in status. If the disabled member disagrees with the board's determination, the member may file a written application with the board requesting that the board reconsider its action. The written application for reconsideration must be filed within 60 days after receipt of the notice of the status change.

- (3) (a) Except as provided in subsections (3)(b) and (3)(c), a member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if the member was an employee of the state or of the university. If the member was an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the disability retirement benefit has been canceled and that the former employee is eligible for reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have.
- (b) A member who is employed by an employer forfeits any right to reinstatement provided by this section.
- (c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.
- (4) If a member whose disability retirement benefit is canceled is not reemployed in a position subject to the retirement system, the member is considered, for the purposes of 19-2-602, to have terminated service coincident with the commencement of the member's retirement benefit."

Section 15. Section 19-3-1106, MCA, is amended to read:

- "19-3-1106. Limited reemployment reduction of service retirement benefit upon exceeding limits exceptions. (1) A retired member under 65 years of age who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 960 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 960-hour limitation in any calendar year after retirement must be temporarily reduced \$1 for each \$1 earned after working 960 hours in that calendar year.
- (2) A retiree 65 years of age or older who returns to employment covered by the retirement system is either subject to the 960-hour limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree's current annual retirement benefits, will not exceed the member's annualized highest average compensation, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree's benefits must be temporarily reduced \$1 for each \$1 of compensation earned in service beyond the applicable limitation during that calendar year.
- (3) A *The employer of a* retiree returning to employment covered by the retirement system and the returning employee's employer shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any month pay period after retirement. The certification of hours and compensation may be submitted electronically pursuant to rules adopted by the board.

- (4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.
- (5) The following members who return to employment covered by the retirement system are not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3):
 - (a) a retired member who is 70 1/2 years of age or older; or
- (b) an elected official in a covered position who declines optional membership as provided in 19-3-412.
- (6) For the purposes of this section, "employment covered by the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor as those terms are defined in 39-8-102."

Section 16. Section 19-3-1210, MCA, is amended to read:

"19-3-1210. Death payments to designated beneficiaries of retired members. If a retired member dies without designating a contingent annuitant under 19-3-1501, the member's designated beneficiary or, if there is no surviving designated beneficiary, the member's estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account."

Section 17. Section 19-3-2111, MCA, is amended to read:

"19-3-2111. Plan membership — written election required — failure to elect — effect of election. (1) Except as otherwise provided in this part:

- (a) (i) a member who is an active member of the defined benefit plan on the date that the defined contribution plan becomes effective may, within 12 months after that date, elect to transfer to and become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period;
- (ii) a member who was an inactive member of the defined benefit plan on the *effective* date that of the defined contribution plan becomes effective and who is rehired into covered employment after the plan effective date may, within the 12-month period provided for in subsection (2)(a), elect to transfer to and become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period;
- (b) a member who is initially hired into covered employment on or after the *effective* date that of the defined contribution plan becomes effective may, within the 12-month period provided for in subsection (2)(a), elect to become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.
- (2) (a) Elections made pursuant to this section must be made on a form prescribed by the board and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board.
- (b) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.
- (c) An election under this section, including the default election pursuant to subsection (2)(b), is a one-time irrevocable election. Subject to 19-3-2113, this

subsection (2)(c) does not prohibit a new election after a member has terminated membership in either plan and returned to covered employment.

- (3) A member in either the defined benefit plan or the defined contribution plan who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.
- (4) A system member may not simultaneously be a member of the defined benefit plan and the defined contribution plan and must be a member of either the defined benefit plan or the defined contribution plan. A period of service may not be credited in more than one retirement plan within the system.
- (5) The provisions of this part do not prohibit the board from adopting rules to allow an employee to elect the defined contribution plan from the first day of covered employment.
- (6) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the defined contribution plan unless the order is modified to apply under the defined contribution plan.
- (7) (a) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the defined contribution plan unless the member first completes or terminates the contract for purchase of service credit.
- (b) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.
- (c) If a member who files an election to transfer membership fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract."
 - Section 18. Section 19-3-2133, MCA, is amended to read:
- **"19-3-2133. Employee investment advisory council.** (1) The board shall create an employee investment advisory council. The advisory council shall meet at least four times a year to:
- (1)(a) advise the board concerning the operation of the defined contribution plan, including the selection of the initial investment alternatives to be provided pursuant to 19-3-2122;
- (2)(b) advise the board about negotiating, contracting, or modifying services for the state deferred compensation plan provided for in chapter 50; and
- (3)(c) review existing deferred compensation plans and to advise the board on the administration of the program.
 - (2) The advisory council is not subject to 2-15-122."
 - Section 19. Section 19-5-601, MCA, is amended to read:
- "19-5-601. Disability retirement benefit. (1) In Except as provided in subsections (2) and (3), in the case of the disability of a member, a disability retirement benefit must be granted the member in an amount actuarially equivalent to the service retirement benefit standing to the member's credit at the time of the member's disability retirement.

- (2) If the disability is a direct result of any service or duty for the Montana judiciary, the member's disability retirement benefit must be:
- (1) the greater of one-half of the member's current salary or the contingent annuitant's benefit, if applicable, for a person not covered under 19-5-901; or
- (2) the greater of one-half of the member's highest average compensation or the contingent annuitant's benefit, if applicable, for a person covered under 19-5-901.
- (3) If the member was retired at the time of becoming disabled, the member must continue to receive the same retirement benefit previously elected."

Section 20. Section 19-5-612, MCA, is amended to read:

- "19-5-612. Medical examination of disability retiree cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at the recipient's place of residence or at another a place mutually agreed on, by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated or if the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled.
- (2) The cancellation of a disability retirement benefit because a recipient is no longer incapacitated may not prejudice any right of the recipient to a retirement benefit other than a disability retirement benefit."

Section 21. Section 19-5-801, MCA, is amended to read:

- "19-5-801. Payments upon employment-related death. (1) If Except as provided in subsection (3), if the board finds that a member died as a direct and proximate result of injury received in the course of the member's service or duty, a survivorship benefit must be paid to the member's designated beneficiary.
 - (2) The survivorship benefit is the greater of the following:
 - (a) the equivalent of the contingent annuitant's benefit, if applicable; or
- (b) the member's service retirement benefit standing to the member's credit on the date of death.
- (3) If the member was retired at the time of death, the provisions of 19-5-701 apply."

Section 22. Section 19-5-802, MCA, is amended to read:

- "19-5-802. Payments in case of death from other causes. (1) If a retired member not covered under 19-5-901 dies without designating a contingent annuitant under 19-5-701(2), the member's designated beneficiary must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account. At the designated beneficiary's request, the lump sum may be paid as an actuarially equivalent annuity that will not be subject to increases for any purpose.
- (2) If a retired member covered under 19-5-901 dies without designating a contingent annuitant under 19-5-701(2), the member's designated beneficiary must be paid the amount, if any, of the member's accumulated contributions

calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(3) If a *vested* member dies before reaching normal retirement age, the member's designated beneficiary is entitled to a monthly survivorship benefit that is the actuarial equivalent of the involuntary retirement benefit provided in 19-5-503."

Section 23. Section 19-6-612, MCA, is amended to read:

- "19-6-612. Medical examination of disability retiree cancellation of benefit. (1) The board may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at the recipient's place of residence or at another a place mutually agreed on, by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled.
- (2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may file a written application with the board requesting that the board reconsider its action. The request for reconsideration must be filed within 60 days after receipt of the notice of the status change.
- (3) (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in a comparable pay and benefit category within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.
- (b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.
- (4) The department of justice may request a medical or psychological review as to the ability of the recipient to return to work as a member of the highway patrol. If the board's findings are upheld, the department of justice shall pay the cost of the review."

Section 24. Section 19-7-404, MCA, is amended to read:

"19-7-404. Employer contributions. (1) Each employer shall pay 9.535% of the compensation paid to all of the employer's employees plus any additional contribution under subsection (3), except for those employees properly excluded from membership.

- (2) If the required contribution to the retirement system exceeds the funds available to a county from general revenue sources, a county may, subject to 15-10-420, budget, levy, and collect annually a tax on the taxable value of all taxable property within the county that is sufficient to raise the amount of revenue needed to meet the county's obligation.
- (3) Subject to subsection (4), each employer shall contribute to the system an additional employer contribution equal to the following percentage 0.58% of the compensation paid to all of the employer's employees, except for those employees properly excluded from membership:
 - (a) beginning July 1, 2007, 0.29%; and
 - (b) beginning July 1, 2009, 0.58%.
- (4) (a) The board shall periodically review the additional employer contribution provided for under subsection (3) and recommend adjustments to the legislature as needed to maintain the amortization schedule set by the board for payment of the system's unfunded liabilities.
- (b) The employer contribution required under subsection (3) terminates on July 1 immediately following the *board's receipt of the* system's actuarial valuation if:
- (i) the actuarial valuation determines that the period required to amortize the system's unfunded liabilities, including adjustments made for any benefit enhancements enacted by the legislature after the valuation, is less than 25 years; and
- (ii) terminating the additional employer contribution would not cause the amortization period as of the most recent actuarial valuation to exceed 25 years."

Section 25. Section 19-7-612, MCA, is amended to read:

- "19-7-612. Medical examination of disability retiree cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at the recipient's place of residence or at another a place mutually agreed on, by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (2) or when, if a position is available, the recipient cannot be reinstated under subsection (2) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.
- (2) (a) Except as provided in subsection (2)(b), a person other than an elected official whose disability retirement benefit is canceled because the person is no longer incapacitated must be reinstated to the position held by the person immediately before the person's retirement or to a position in a comparable pay and benefit category within the person's capacity, whichever is first open. The fact that the person was retired for disability may not prejudice any right to reinstatement to duty that the person may have or claim to have.

- (b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.
- (3) The public body required to reinstate a person under subsection (2) may request a medical or psychological review as to the ability of the member to return to work as a member of the sheriff's office. If the board's findings are upheld, the public body shall pay the cost of the review."

Section 26. Section 19-8-712, MCA, is amended to read:

- "19-8-712. Medical examination of disability retiree cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at the recipient's place of residence or at another a place mutually agreed on, by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.
- (2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may file a written application with the board requesting that the board reconsider its action. The request for reconsideration must be filed within 60 days after receipt of the notice of the status change.
- (3) (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in a comparable pay and benefit category within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have
- (b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.
- (4) The member's former employer may request a medical or psychological review as to the ability of the recipient to return to work as a peace officer. If the board's findings are upheld, the former employer shall pay the cost of the review."

Section 27. Section 19-9-904, MCA, is amended to read:

"19-9-904. Termination of disability benefit. The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a

board-approved physician or surgeon at the recipient's place of residence or at another a place mutually agreed on, by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If an inactive member is determined by the board to be no longer disabled, the inactive member's disability retirement benefit must be canceled when the inactive member is offered a position under 19-9-905 or when, if a position is available, the former employee could not be reinstated under 19-9-905 for reasons unrelated to the disability. If the inactive member refuses to submit to a medical examination, the inactive member's disability retirement benefit must cease as of the date of the determination. The inactive member must be notified of the determination by the board. The board may review the status of an inactive member at any time."

Section 28. Section 19-9-1101, MCA, is amended to read:

"19-9-1101. Preretirement death benefits. Upon the death of an active member, the member's surviving spouse or dependent child is eligible for benefits equal to one-half of the member's final average compensation, payable as provided in 19-9-804(2). If the deceased member has completed over 20 years of membership service, the survivorship benefit must equal 2.5% of the member's final average compensation for each year of membership service credit."

Section 29. Section 19-13-104, MCA, is amended to read:

- "19-13-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:
- (1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.
 - (2) "Compensation" means:
- (a) for a full-paid firefighter, the remuneration paid from funds controlled by an employer in payment for the member's services before any pretax deductions allowed by state and federal law are made;
 - (b) for a part-paid firefighter employed by a city of the second class:
- (i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or
- (ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.
 - (c) Compensation for full-paid and part-paid firefighters does not include:
- (i) overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave; and
 - (ii) maintenance, allowances, and expenses.
 - (3) "Dependent child" means a child of a deceased member who is:

- (a) unmarried and under 18 years of age; or
- (b) unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.
 - (4) "Employer" means:
- (a) any city that is of the first or second class or that elects to join this retirement system under 19-13-211 or.;
 - (b) a city or a rural fire district referred to in 19-13-210(3);
- (c) with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department of military affairs established in 2-15-1201; and
- (d) any other statutorily allowed entity that elects to join this retirement system pursuant to 19-13-210.
- (5) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.
- (6) "Full-paid firefighter" means a person appointed by an employer as a firefighter under the standards provided in 7-33-4106 and 7-33-4107.
- (7) "Highest average compensation" means the monthly compensation of a member averaged over the highest consecutive 36 months of the member's active service or, in the event a member has not served at least 36 consecutive months, the total compensation earned divided by the number of months of service. Lump-sum payments for annual leave paid to the member upon termination of employment may be used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of highest average compensation.
- (8) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member reaches both 50 years of age or older and completes 5 or more years of membership service.
- (9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of \$300 a year for service as a firefighter and who is appointed by an employer as a firefighter under the standards provided in 7-33-4106 and 7-33-4107.
- (10) "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second class.
- (11) "Retirement date" means the date on which the first payment of benefits is payable.
- (12) "Retirement system" means the firefighters' unified retirement system provided for in this chapter.
- (13) "Surviving spouse" means the spouse married to a member at the time of the member's death."

Section 30. Section 19-13-704, MCA, is amended to read:

- "19-13-704. Amount of service retirement benefit. (1) Except as provided in subsection (2), a member who retires with at least 5 years of membership service must receive a service retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit.
- (2) A member hired before July 1, 1981, who does not elect to be covered under 19-13-1010 is entitled to the greater of:

- (a) the benefit provided under subsection (1); or
- (b) (i) if the member retires with less than 20 years of membership service, a benefit equal to 2% of the member's highest monthly compensation for each year of service; or
- (ii) if the member retires with 20 or more years of membership service, a benefit equal to 50% of the member's highest monthly compensation plus 2% of the member's highest monthly compensation for each year of service credit over 20 years.
- (3) Upon a retired member's death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the member leaves one or more dependent children, the children are entitled to receive the benefit as long as they remain dependent children as defined in 19-13-104."
 - Section 31. Section 19-13-803, MCA, is amended to read:
- "19-13-803. Amount of disability retirement benefit. (1) A member who becomes disabled:
- (a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's highest average compensation;
- (b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit, but no less than one-half of the member's highest average compensation.
- (2) Upon the death of a member receiving a disability retirement benefit under this section, the member's surviving spouse or dependent child is eligible for benefits as provided in 19-13-104."
 - Section 32. Section 19-13-804, MCA, is amended to read:
- "19-13-804. Medical examination of disability retiree cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination—at the board's expense. The examination must be made by a board-approved physician or surgeon at the recipient's place of residence or at another a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense. Based on the results Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient has the physical or mental capacity to can perform the essential elements required by the recipient's former of the position held by the recipient when the recipient retired.
- (2) If the board determines that the recipient is not incapacitated, if the recipient refuses to submit to a medical examination, or if, when a position is available, the recipient cannot be reinstated under 19-13-805 for reasons unrelated to the disability, the recipient's disability retirement benefit must be canceled. The board shall notify the recipient of this determination and the cancellation of the recipient's benefit.
- (2)(3) The cancellation of a disability retirement benefit because a member is no longer incapacitated does not prejudice any right of the member to a service retirement benefit."
 - Section 33. Section 19-17-107, MCA, is amended to read:

- "19-17-107. Employment of actuary biennial annual investigation. (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public pension systems. The actuary is the technical adviser to the board on matters regarding the actuarial funding of the pension trust fund.
- (2) The board shall require the actuary to make a biennial an annual actuarial valuation of the assets and liabilities of the pension trust fund. The actuarial valuation must include the sufficiency of the fund to pay full and partial benefits to members and benefit recipients and must include recommendations for any changes that should be made to those benefits or the contributions to the pension trust fund to ensure the actuarial soundness of the pension trust fund.
- (3) The board shall require the actuary to conduct periodic actuarial experience studies of the pension trust fund and to recommend any changes in actuarial assumptions or tables based upon the studies."

Section 34. Section 19-17-401, MCA, is amended to read:

- **"19-17-401. Eligibility for pension and disability benefits.** (1) To qualify for a full pension, partial pension, or disability benefit under this chapter, a member shall meet the requirements of subsections (2) or (3) and (4).
- (2) (a) For a full pension benefit, a member must have completed 20 years of service and must have attained 55 years of age, but need not be an active member of a fire company when 55 years of age is reached.
- (b) A member who is prevented from completing at least 20 years of service may qualify for a partial pension benefit if the member has completed at least 10 years of service and has attained 60 years of age, but need not be an active member of any fire company when 60 years of age is reached.
- (3) An active member of a fire company whose duty-related injury results in permanent total disability, as defined in 39-71-116 and determined pursuant to 19-17-410, is eligible, regardless of age or service, to receive a disability benefit.
 - (4) Except as provided in subsection (5):
- (a) to receive a pension or disability benefit, a volunteer firefighter may not be an active member of any fire company; and
- (b) a volunteer firefighter who receives a pension or disability benefit under this chapter may not become an active member of any fire company.
- (5) (a) In the event of a declared national, state, or local emergency affecting Montana, a retired volunteer firefighter who is not receiving a disability benefit under this chapter may return to active service with a fire company for the duration of the declared emergency without becoming an active member under the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan and without loss of previously earned benefits. Only the fire chief of the fire company may determine who may return to active service. The fire chief shall prescribe the duties of any retired volunteer firefighter returning to active service.
- (b) A member who is receiving a full pension benefit, as provided in 19-17-404, may return to service with a volunteer fire company without loss of benefits. A member returning to service under this section may not be considered an active member earning service credit. The fire chief shall prescribe the duties of any retired volunteer firefighter returning to service."

Section 35. Section 19-17-408, MCA, is amended to read:

"19-17-408. Medical review of certain disability retirees. The board may require a member who receives a disability benefit to undergo periodic medical examinations. The examinations must be made by a board-approved physician or surgeon at the member's residence or a place mutually agreeable to the board, the physician or surgeon, and the member and at the board's expense. Upon the basis of these examinations and the advice of the board's consulting physician, the board shall determine, by reason of physical or mental capacity, whether the member remains permanently and totally disabled."

Section 36. Section 19-17-504, MCA, is amended to read:

"19-17-504. Medical expenses. (1) The board shall authorize payment of some or all medical expenses resulting from an injury or illness that was incurred in the line of duty, as described in 19-17-105, and that required the services of a physician, surgeon, or nurse, whether or not the member was hospitalized. The payments must equal the amount of the member's necessary and reasonable out-of-pocket medical expenses that resulted directly from the injury or illness and that were billed within 36 months following the date of the injury or illness. The member shall file a claim for reimbursement within 12 months of the date of the bill. The total claim for reimbursement may not exceed \$25,000.

(2) If an injury incurred in the line of duty results in the loss by amputation of an arm, hand, leg, or foot, the enucleation of an eye, or the loss of any natural teeth, the board shall authorize either a payment for the cost of a prosthesis or a payment of \$1,500 to help defray the cost of a prosthesis, whichever is less. The prosthesis may be replaced when necessary, but not more often than every 5 years. The board shall authorize payment of not more than \$1,500 of the replacement costs."

Section 37. Effective date. [This act] is effective July 1, 2009.

Approved April 17, 2009

CHAPTER NO. 284

[HB 170]

AN ACT GENERALLY REVISING STATUTES GOVERNING VARIOUS STATE RETIREMENT SYSTEMS IN ORDER TO ENSURE THAT THOSE SYSTEMS CONSTITUTE QUALIFIED RETIREMENT PLANS UNDER THE INTERNAL REVENUE CODE; AMENDING SECTIONS 5-2-304, 19-2-303, 19-2-602, 19-2-902, 19-2-907, 19-2-1001, 19-2-1002, 19-2-1005, 19-3-315, 19-3-412, 19-3-1501, 19-3-2123, 19-3-2126, 19-5-701, 19-7-1001, 19-8-801, 19-9-301, 19-9-1206, 19-9-1208, 19-13-210, AND 19-13-301, MCA; AND PROVIDING AN EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-304, MCA, is amended to read:

"5-2-304. Participation in public retirement systems. (1) The purpose of this section is to allow a person who is elected or appointed to the Montana legislature and who is also a member of a retirement system provided for in Title 19, chapter 3, 5, 6, 7, 8, 9, 13, 20, or 21, by virtue of the person's nonlegislative employment to continue the person's participation in the public retirement system of which the person is a member.

- (2) This section is not intended to provide duplicate credit for the same service in two retirement systems supported wholly or in part by public funds. This section does not affect contribution rates or benefit payments specifically provided for in the laws governing the operation of individual retirement systems.
- (3) (a) A person who is an inactive or retired member of a retirement system provided for in Title 19, chapter 5, 6, 7, 8, 9, 13, 20, or 21, and who is elected or appointed to be a legislator may:
- (i) return to active membership in the system of which the person is an inactive or retired member under the requirements of that system; or
- (ii) remain an inactive or retired member of the retirement system and become an active member of the public employees' retirement system pursuant to 19-3-412.
- (b) A person who is an inactive or retired member of the public employees' retirement system provided for in Title 19, chapter 3, and who is elected or appointed to the legislature may return to active membership in the public employees' retirement system but cannot simultaneously be an inactive or retired member of the system as a result of prior covered terminated employment and an active member of the retirement system under 19-3-412 or this section.
- (4) (a) A person who is an active member of a public retirement system governed by state law and who is elected or appointed to be a legislator may, but is not required to, continue the person's participation in that public retirement system while engaged in official duties as a legislator.
- (b) To continue participation as an active member in the public retirement system, a legislator shall, within $180\,90$ days of taking office and in a manner prescribed by the appropriate board, file an irrevocable written election with the teachers' retirement board or the public employees' retirement board.
- (5) A legislator who elects to continue participation as an active member as provided in subsection (4) shall continue the payments into the fund of the retirement system at the rate currently in effect in the system based on the legislator's monthly salary as a member of that system.
- (6) The state contribution must be made by legislative appropriation. It must equal the appropriate employer contribution at the rate currently in effect in the system."
 - Section 2. Section 19-2-303, MCA, is amended to read:
- "19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:
- (1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.
- (2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.
- (3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

- (4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board
- (5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.
- (6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.
- (7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.
 - (8) "Annuity" means:
- (a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or
- (b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.
 - (9) "Benefit" means:
- (a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or
- (b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.
- (10) "Board" means the public employees' retirement board provided for in 2-15-1009.
- (11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.
 - (12) "Covered employment" means employment in a covered position.
- (13) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.
- (14) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.
- (15) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.
 - (16) "Department" means the department of administration.
- (17) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.
- (18) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

- (18)(19) "Disability" or "disabled" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.
 - (20) "Distributee" means:
 - (a) a member:
 - (b) a member's surviving spouse;
- (c) a member's spouse or former spouse who is the alternate payee under a family law order as defined in 19-2-907; or
- (d) effective January 1, 2007, a member's nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)(E).
- (19)(21) "Early retirement benefit" means the retirement benefit payable to a member following early retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.
- (22) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:
- (a) an individual retirement account described in section 408(a) of the Internal Revenue Code, 26 U.S.C. 408(a);
- (b) an individual retirement annuity described in section 408(b) of the Internal Revenue Code, 26 U.S.C. 408(b);
- (c) an annuity plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);
- (d) a qualified trust described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);
- (e) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b);
- (f) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b), that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from a plan under this title; or
- (g) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code, 26 U.S.C. 408A.
 - (23) "Eligible rollover distribution":
- (a) means any distribution of all or any portion of the balance from a retirement plan to the credit of the distributee, as provided in [section 9];
- (b) effective January 1, 2002, includes a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p).
- (20)(24) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(21)(25) "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

 $\frac{(22)}{(26)}$ "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

- (a) the position exists to perform the element;
- (b) there are a limited number of employees to perform the element; or
- (c) the element is highly specialized.

(23)(27) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(24)(28) "Inactive member" means a member who terminates service and does not retire or take a refund of the member's accumulated contributions.

(25)(29) "Internal Revenue Code" has the meaning provided in 15-30-101.

(26)(30) "Member" means either:

- (a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or
 - (b) a person with a retirement account in the defined contribution plan.

(27)(31) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(28)(32) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future.

(b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

(29)(33) "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age, length of service, or both, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

(30)(34) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(31)(35) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(32)(36) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

(33)(37) "Regular contributions" means contributions required from members under a retirement plan.

(34)(38) "Regular interest" means interest at rates set from time to time by the board.

- (35)(39) "Retirement" or "retired" means the status of a member who has:
- (a) terminated from service; and
- (b) received and accepted a retirement benefit from a retirement plan.
- (36)(40) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.
 - (37)(41) "Retirement benefit" means:
- (a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement, early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.
- (b) in the case of the defined contribution plan, a benefit as defined in subsection (9)(b).
- (38)(42) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.
- (39)(43) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.
- (40)(44) "Service" means employment of an employee in a position covered by a retirement system.
- (41)(45) "Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.
- (42)(46) "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.
- (43)(47) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.
- (44)(48) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.
- (45)(49) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.
- (46)(50) "Termination of employment", "termination from employment", "terminated employment", "terminated from employment", "terminate employment", or "terminates employment" means that:
- (a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both; and

- (b) the member is no longer receiving compensation for covered employment, other than any outstanding lump-sum payment for compensatory leave, sick leave, or annual leave.
- (47)(51) "Termination of service", "termination from service", "terminated from service", "terminated service", "terminating service", or "terminates service" means that:
- (a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both for at least 30 days;
- (b) the member is no longer receiving compensation for covered employment; and
- (c) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled. For the purposes of this subsection (47) (51), compensation does not mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.
- (48)(52) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.
- (49)(53) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:
 - (a) the member's contribution account;
 - (b) the vested portion of the employer's contribution account; and
 - (c) the member's account for other contributions.
 - (50)(54) "Vested member" or "vested" means:
- (a) with respect to a defined benefit plan, a member or the status of a member who has at least 5 years of membership service; or
- (b) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.
- (51)(55) "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary."
 - Section 3. Section 19-2-602, MCA, is amended to read:
- "19-2-602. Refund of member's contributions on termination of service. (1) Except as provided in this section, any member who has terminated service, other than by death or retirement, must be paid the member's accumulated contributions upon the filing of a written application by the member and board approval. Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions.
- (2) A nonvested member who has terminated service with accumulated contributions of less than \$200 must be paid the accumulated contributions in a lump sum as soon as administratively feasible without a written application being filed by the member.
- (3) A nonvested member who has terminated service with accumulated contributions of \$200 to \$1,000 must be paid the accumulated contributions in a

lump sum as soon as administratively feasible, unless a written application is filed pursuant to subsection (4).

- (4) Upon the filing of a written application by an alternate payee eligible to receive a single distribution of \$200 or more under 19-2-907 or 19-2-909 or by a member who is terminating service and is eligible to receive a refund of \$200 or more of accumulated contributions, the board shall make a direct rollover distribution as of any eligible rollover distribution allowed under section 401(a)(31) of the Internal Revenue Code, 26 U.S.C. 401(a)(31) section 401(a)(31). The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law or to. As of January 1, 2008, an eligible retirement plan includes a Roth IRA, provided for under 26 U.S.C. 408A. The applicant is responsible for designating an eligible retirement plan on forms provided by the board. The portion of the account that is not an eligible for direct rollover distribution must be paid directly to the recipient."
 - Section 4. Section 19-2-902, MCA, is amended to read:
- "19-2-902. Payment of benefits. (1) A retirement benefit or survivorship benefit granted under a retirement system subject to this chapter, other than a benefit under the defined contribution plan, must be payable in monthly installments, except as provided in this part.
- (2) (a) If the total actuarial present value of a benefit payable to a member or beneficiary is equal to or less than \$5,000 elects, the board shall pay the present value of the benefit to the member or beneficiary in a single lump sum unless the member or beneficiary chooses to receive a monthly benefit.
- (b) The lump sum must be paid at the time the initial monthly benefit would otherwise be payable.
- (c) An election to receive a monthly benefit single lump sum must be made at least 30 days prior to the first payment date.
- (3) If a benefit recipient dies before the last day of the month, a smaller pro rata amount otherwise payable to the payment recipient must be paid to the designated beneficiary, statutory beneficiary, or contingent annuitant or to the benefit recipient's estate, as appropriate."
 - Section 5. Section 19-2-907, MCA, is amended to read:
- **"19-2-907. Alternate payees** family law orders rulemaking. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.
 - (2) For purposes of this section:
- (a) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section and with section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p); and
- (b) "participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.
- (3) A family law order must identify a participant and an alternate payee by full name, current address, date of birth, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other

process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

- (4) A Except as provided in subsection (6)(a), a family law order may not require:
- (a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or
- (b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.
- (5) With respect to a defined benefit plan, a family law order may provide for payment to an alternate payee only as follows:
- (a) Retirement benefit payments or refunds may be apportioned by directing payment of either a percentage of the amount payable or a fixed amount of no more than the amount payable to the participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified.
- (b) The maximum amount of disability or survivorship benefits that may be paid to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. The maximum amount paid may be zero, depending on the member's age and service credit at the time of disability or death. Conversion of a disability retirement to a service retirement pursuant to 19-2-406(4), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be paid to an alternate payee.
- (c) Retirement benefit adjustments for which a participant is eligible after retirement may be paid as a percentage only if existing benefit payments are paid as a percentage. The adjustments must be paid as a percentage in the same ratio as existing benefit payments.
- (d) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system or plan allows for that option.
- (6) With respect to a defined contribution plan, a family law order may provide for payment to an alternate payee only as follows:
- (a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount paid may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may be established for an alternate payee, but money in the account The alternate payee's portion must be totally disbursed to the alternate payee as soon as administratively feasible upon the participant's termination of service or death board's approval of the family law order.
- (b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.
- (7) The duration of monthly payments paid from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee,

or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

- (8) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.
- (9) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.
- (10) The board shall adopt rules to provide for the administration of family law orders."

Section 6. Section 19-2-1001, MCA, is amended to read:

- **"19-2-1001. Maximum contribution and benefit limitations.** (1) *(a)* Employee contributions paid to and retirement benefits paid from a retirement system or plan may not exceed the annual limits on contributions and benefits, respectively, allowed by section 415 of the Internal Revenue Code, *26 U.S.C.* 415
- (b) For purposes of determining whether the annual limitations in subsection (1)(a) are met:
- (i) all defined benefit plans of the employer, whether or not terminated, must be treated as a single defined benefit plan;
- (ii) all defined contribution plans of the employer, whether terminated or not, must be treated as a single defined contribution plan;
- (iii) retirement systems and plans established under Title 19 must be prioritized for disqualification purposes above any plans not established under Title 19; and
- (iv) retirement systems and plans established under Title 19 that must be aggregated for purposes of the limits in section 415 of the Internal Revenue Code, 26 U.S.C. 415, must be prioritized for qualification purposes based on the system or plan providing the member with the highest benefit.
- (2) A member may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A) of the Internal Revenue Code, 26~U.S.C.~415(b)(1)(A), subject to the applicable adjustments in section 415(b)~415(d) of the Internal Revenue Code, 26~U.S.C.~415(d).
- (3) Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to a retirement system or plan if the amount of the contribution would exceed the limits provided in section 415 of the Internal Revenue Code, by using the following methods:
- (a) If the law requires a lump-sum payment for the purchase of service credit, the board may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under section 415(c) or 415(n) of the Internal Revenue Code, 26 U.S.C. 415(c) or 415(n).
- (b) If payment pursuant to subsection (3)(a) will not avoid a contribution in excess of the limits imposed by section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c), the board shall either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.
- (4) (a) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more

contributions to purchase permissive service credit under a retirement system or plan to which this section applies, then the requirements of this section will be treated as met only if:

- (i) except as provided in subsection (4)(b), the requirements of section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), are met, determined by treating the accrued benefit derived from all the contributions as an annual benefit for purposes of section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b); or
- (ii) except as provided in subsection (4)(c), the requirements of section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c), are met, determined by treating all the contributions as annual additions for purposes of section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c).
- (b) For purposes of applying subsection (4)(a)(i), the retirement system or plan may not fail to meet the reduced limit under section 415(b)(2)(C) of the Internal Revenue Code, 26 U.S.C. 415(b)(2)(C), solely by reason of subsection (4)(a).
- (c) For purposes of applying subsection (4)(a)(ii), the retirement system or plan may not fail to meet the percentage limitation under section 415(c)(1)(B) of the Internal Revenue Code, 26 U.S.C. 415(c)(1)(B) solely by reason of this subsection (4).
- (5) For purposes of subsection (4), the term "permissive service credit" means service credit:
- (a) specifically recognized by a plan subject to this chapter for purposes of calculating a plan member's benefit under the member's plan;
 - (b) that the plan member has not received under the plan;
- (c) that the plan member may receive only by making a voluntary additional contribution, in an amount determined under the plan, that does not exceed the amount necessary to fund the benefit attributable to the service credit; and
- (d) effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, service credit for periods for which there is no performance of service, which, notwithstanding subsection (5)(b), may include service credit purchased in order to provide an increased benefit under the plan.
- (6) A retirement system or plan fails to meet the requirements of subsection (4) if:
 - (a) more than 5 years of nonqualified service credit are taken into account; or
- (b) any nonqualified service credit is taken into account before the plan member has at least 5 years of participation under the plan.
- (7) For purposes of subsection (6), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:
- (a) service, including parental, medical, sabbatical, and similar leave, as an employee of the government of the United States, any state or political subdivision of a state, or any agency or instrumentality of a state or of a political subdivision of a state, other than military service or service for credit that was obtained as a result of a repayment of a refund as described in section 415(k)(3) of the Internal Revenue Code, 26 U.S.C. 415(k)(3);
- (b) service, including parental, medical, sabbatical, and similar leave, as an employee, other than an employee described in subsection (7)(a), of an education

organization described in section 170(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 170(b)(1)(A)(ii), that is a public, private, or sectarian school that provides elementary or secondary education through grade 12 or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

- (c) service as an employee of an association of employees who are described in subsection (7)(a); or
- (d) military service, other than qualified military service under section 414(u) of the Internal Revenue Code, 26 U.S.C. 414(u), recognized by the system or plan.
- (8) In the case of service described in subsection (7)(a), (7)(b), or (7)(c), service must be nonqualified service if recognition of the service would cause a plan member to receive a retirement benefit for the same service under more than one plan.
- (9) In the case of a trustee-to-trustee transfer after December 31, 2001, to which section 403(b)(13)(A) or 457(e)(17)(A) of the Internal Revenue Code, 26 U.S.C. 403(b)(13)(A) or 457 (e)(17)(A), applies, without regard to whether the transfer is made between plans maintained by the same employer:
- (a) the limitations in subsection (7) do not apply in determining whether the transfer is for the purchase of permissive service credit; and
- (b) the distribution rules applicable to the plan under federal law apply to those amounts and any benefits attributable to those amounts.
- (10) (a) For purposes of this subsection (10), an eligible plan member is an individual who became a member of the plan before January 1, 1998.
- (b) For an eligible plan member, the limitation in section 415(c)(1) of the Internal Revenue Code, 26 U.S.C. 415(c)(1), may not be applied to reduce the amount of permissive service credit that may be purchased to an amount less than the amount that was allowed to be purchased under the terms of the applicable law in effect on August 5, 1997.
- (4)(11) The limitation year for purposes of section 415 of the Internal Revenue Code, 26 U.S.C. 415, is the calendar year beginning each January 1 and ending December 31.
- (5)(12) (a) "Salary" or any other similar term used, for the purposes of determining compliance with section 415 of the Internal Revenue Code, 26 U.S.C. 415, includes and for no other purposes, means compensation as defined in 26 CFR 1.415(c)-1 through 1.415(c)-2(d)(4). However:
- (i) employee contributions picked up under section 414(h)(2) of the Internal Revenue Code, 26 U.S.C. 414(h)(2), are excluded from salary; and
- (ii) the amount of an elective deferral, as defined in section 402(g) of the Internal Revenue Code, 26 U.S.C. 402(g), or any other contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member because of sections section 125, 403(b), or 457 of the Internal Revenue Code, 26 U.S.C. 125, 403(b), or 457, is included in the definition.
- (b) For limitation years beginning after December 31, 2000, the term includes any elective amounts that are not includable in the gross income of the member by reason of section 132(f)(4) of the Internal Revenue Code, 26 U.S.C. 132(f)(4).
- (c) For limitation years beginning no later than January 1, 2008, the term includes compensation paid by the later of 2.5 months after a member's severance

from employment or the end of the limitation year that includes the date of the member's severance from employment if:

- (i) the payment is regular compensation for services during the member's regular working hours or compensation for services outside the member's regular working hours such as overtime or shift differential, commissions, bonuses, or other similar payments and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or
- (ii) the payment is for unused accrued bona fide sick, vacation, or other leave that the member would have been able to use if employment had continued.
- (d) For limitation years beginning on or after January 1, 2009, the term, as calculated, may not exceed the annual limit under section 401(a)(17) of the Internal Revenue Code, 26 U.S.C. 401(a)(17).
- (13) For the purposes of applying the limits on a defined benefit plan member's annual benefit under section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), the following apply:
- (a) Prior to January 1, 2009, any automatic adjustment under the retirement system or a plan subject to this chapter must be taken into consideration when determining a member's applicable limit.
- (b) On or after January 1, 2009, with respect to a member who does not receive a portion of the member's annual benefit in a lump sum:
- (i) a member's applicable limit must be applied to the member's annual benefit in the first limitation year without regard to any automatic cost-of-living increases;
- (ii) to the extent the member's annual benefit equals or exceeds the applicable limit, the member is no longer eligible for cost-of-living increases until the benefit plus the accumulated increases are less than the limit; and
- (iii) in any subsequent limitation year, the member's annual benefit, including any automatic cost-of-living increase applicable, is subject to the applicable benefit limit, including any adjustment to the dollar limit in section 415(b)(1)(A) of the Internal Revenue Code, 26 U.S.C. 415(b)(1)(A), under section 415(d) of the Internal Revenue Code, 26 U.S.C. 415(d) and the implementing regulations.
- (c) On or after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit must be applied, taking into consideration automatic cost-of-living increases as required by section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), and applicable U.S. treasury regulations.
- (d) (i) A member's annual benefit payable under the member's plan in any limitation year may not be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to section 415(d) of the Internal Revenue Code, 26 U.S.C. 415(d), and the implementing regulations.
- (ii) If the form of benefit without regard to the automatic benefit increase feature is not a straight life or a qualified joint and survivor annuity, then this subsection (13)(d) is applied by either reducing the limit in section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the following assumptions that take into account the death benefits under the form of benefit:

- (A) for a benefit paid in a form to which section 417(e)(3) of the Internal Revenue Code, 26 U.S.C. 417(e)(3), does not apply, the actuarially equivalent straight life annuity benefit that is the greater of:
- (I) the annual amount of any straight life annuity payable to the member under the member's plan commencing at the same annuity starting date as the form of benefit payable to the member; or
- (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption, or the applicable statutory interest assumption, and the applicable mortality table described in 26 CFR 1.417(e)-1(d)(2); or
- (B) for a benefit paid in a form to which section 417(e)(3) of the Internal Revenue Code, 26 U.S.C. 417(e)(3), applies, the actuarially equivalent straight life annuity benefit that is the greatest of:
- (I) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table or tabular factor specified in the plan for actuarial experience;
- (II) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5% interest assumption, or the applicable statutory interest assumption, and the applicable mortality table for the distribution under 26 CFR 1.417(e)-1(d)(2); or
- (III) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using as the applicable interest rate for the distribution under 26 CFR 1.417(e)-1(d)(3) prior to January 1, 2009, the 30-year treasury rate in effect for the month prior to retirement or, on or after January 1, 2009, the 30-year treasury rate in effect for the first day of the plan year with a 1-year stabilization period and, in either case, the applicable mortality table for the distribution under 26 CFR 1.417(e)-1(d)(2).
- (iii) With respect to subsections (13)(d)(ii)(A) and (13)(d)(ii)(B), the board's actuary may reduce the limitation found in section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), for testing purposes using the assumptions specified in subsections (13)(d)(ii)(A) and (13)(d)(ii)(B)."
 - Section 7. Section 19-2-1002, MCA, is amended to read:
- "19-2-1002. Vesting of retirement benefits upon termination *Termination* of plan. (1) Upon termination of a retirement system or plan, termination of employment of a substantial number of members that would constitute a partial termination of the retirement system or plan, or complete discontinuance of contributions to that retirement system or plan, the retirement benefit accrued to each member directly affected by the occurrence becomes fully vested and nonforfeitable to the extent funded.
- (2) A plan member is 100% vested in the member's accumulated contributions at all times.
- (3) At any time prior to satisfaction of all liabilities to members and their beneficiaries under the retirement system or plan, any part of a member's accumulated contributions may not be used for or diverted to purposes other than the exclusive benefit of members and their beneficiaries."
 - Section 8. Section 19-2-1005, MCA, is amended to read:

"19-2-1005. Compensation limit. A retirement system or plan subject to this chapter may not take into account compensation of a member in excess of the amount permitted in Internal Revenue Code section 401(a)(17) of the Internal Revenue Code, 26 U.S.C. 401(a)(17), as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Internal Revenue Code, 26 U.S.C. 401(a)(17)(B)."

Section 9. Limitations on eligible rollover distributions. (1) An eligible rollover distribution may not include:

- (a) any distribution that is one of a series of substantially equal periodic payments made at least annually for:
 - (i) the life or the life expectancy of the distributee;
- (ii) the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary; or
 - (iii) a specified period of 10 years or more;
- (b) any distribution to the extent the distribution is required under section 401(a)(9) of the Internal Revenue Code, 26 U.S.C. 401(a)(9);
 - (c) the portion of any distribution that is not includable in gross income; or
- (d) any other distribution that is reasonably expected to total less than \$200 during the year.
- (2) Effective January 1, 2002, a portion of a distribution may not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. However, that portion may be transferred only to:
- (a) an individual retirement account or annuity described in section 408(a) or (b) of the Internal Revenue Code, 26 U.S.C. 408(a) or (b);
- (b) a qualified defined contribution plan described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);
- (c) a qualified plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);
- (d) on or after January 1, 2007, a qualified defined benefit plan described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a); or
- (e) an annuity contract described in section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b), that agrees to separately account for amounts that are transferred and earnings on those amounts, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not includable.
- Section 10. Compliance with federal restrictions on interest rate crediting. Interest credited on any refund of accumulated member contributions under a defined benefit plan subject to Title 19, chapter 2, must comply with any applicable provisions of the federal Age Discrimination in Employment Act, Public Law 90-202, and any applicable U.S. treasury regulations establishing market rates of return for purposes of complying with that federal act.

Section 11. Section 19-3-315, MCA, is amended to read:

- "19-3-315. Member's contribution to be deducted. (1) Each member's contribution is 6.9% of the member's compensation.
- (2) Payment of salaries or wages less the contribution is full and complete discharge and acquittance of all claims and demands for the service rendered by

members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this chapter.

- (3) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, 26 U.S.C. 414(h)(2), shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.
- (4) (a) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system.
- (b) In the case of a member of the defined benefit plan, these contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.
- (c) In the case of a member of the defined contribution plan, these contributions must be allocated as provided in 19-3-2117.
- (5) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and compensation. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 12. Section 19-3-412, MCA, is amended to read:

- **"19-3-412. Optional membership.** (1) Except as provided in 5-2-304 and subsection (2) of this section, the following employees and elected officials in covered positions shall elect either to become active members of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (3):
- (a) elected officials of the state or local governments, including individuals appointed to fill the unexpired term of elected officials, who:
- (i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or
- (ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the defined contribution plan at the time of their election;
- (b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;
 - (c) employees directly appointed by the governor;
- (d) employees working 10 months or less for the legislative branch to perform work related to the legislative session;
 - (e) the chief administrative officer of any city or county;
 - (f) employees of county hospitals or rest homes.
- (2) A member who is elected to a local government position in which the member works less than 960 hours in a calendar year may, within $180\,90\,\mathrm{days}$ of being elected, decline optional membership with respect to the member's elected position.
- (3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1) and provide written application forms to each employer.

- (b) Each employee or elected official in a position covered under subsection (1) shall obtain the written application form from the employer and complete and return it to the board.
 - (c) The written application must be filed with the board:
- (i) for an employee described in subsection (1)(d), within 300 90 days of the commencement of the employee's employment; and
- (ii) for an employee or elected official described in subsection (1)(a), (1)(b), (1)(c), (1)(e), or (1)(f), within 180~90 days of the commencement of the employee's or elected official's employment.
- (d) The employer shall retain a copy of the employee's or elected official's written application.
- (4) If the employee or elected official fails to file the written application required under subsection (1) with the board within the time allowed in subsection (3), the employee or elected official waives membership.
- (5) An employee or elected official who declines optional membership may not receive membership service or service credit for the employment for which membership was declined.
- (6) An employee or elected official who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.
- (7) Except as provided in subsection (2), membership in the retirement system is not optional for an employee or elected official who is already a member. Upon employment in a position for which membership is optional:
- (a) a member who was an active member before the employment remains an active member;
- (b) a member who was an inactive member before the employment becomes an active member; and
- (c) a member who was a retired member before the employment is subject to part 11 of this chapter.
- (8) (a) An employee or elected official who declines membership for a position for which membership is optional may not later become a member while still employed with the same employer but in that a different optional membership position.
- (b) An elected official who declines membership for a position for which membership is optional may not later become a member if reelected to the same optional membership position.
- (b)(c) If, after a break in service of 30 days or more, an employee who was employed in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership.
- (e)(d) If the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.
- (9) An employee accepting a position that requires membership must become a member even if the employee previously declined membership and did not have a 30-day break in service."

Section 13. Section 19-3-1501, MCA, is amended to read:

- "19-3-1501. Optional forms of benefits designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. An optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:
- (a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:
- (i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or
- (ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (1)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date
- (b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;
- (c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:
- (i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:
- (A) a 10-year period certain if the member retired at 75 years of age or younger; or
- (B) a 20-year period certain if the member retired at 65 years of age or younger;
- (ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis.
- (2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.
- (3) If a benefit recipient or the recipient's the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.
- (4) If a the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, then the election is void.

- (5) (a) Upon filing a written application with the board, a A retired member who is receiving an optional retirement benefit that became effective before October 1, 1999, may designate a different contingent annuitant, select a different option, or convert pursuant to subsection (1)(a) or (1)(b) may file a written application with the board to have the member's optional retirement benefit revert to a the regular retirement benefit available at the time of the member's retirement if:
- (i)(a) the original contingent annuitant has died; in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or
- (ii)(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has no not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must then revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the original contingent annuitant.
- (b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change.
- (6) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement, designate a different contingent annuitant, or select a different option if:
- (i) the contingent annuitant has died, in which case the optional benefit may revert effective on the first day of the month following the contingent annuitant's death; or
- (ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary has no right to receive the optional retirement benefit as part of a family law order, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the contingent annuitant.
- (b) A regular retirement benefit provided pursuant to this subsection (6) must be increased by the amount of any postretirement adjustments received by the member since the effective date of the member's retirement.
- (6) A member who applies to revert under subsection (5) shall, at the time of the application, choose one of the following alternatives:
- (a) revert to the member's original retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;
- (b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or
 - (c) select a different option and name a new contingent annuitant.
- (7) If the member selects an alternative under subsection (6)(b) or (6)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of this election.

(7)(8) A written application pursuant to subsection (5) or (6) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 14. Section 19-3-2123, MCA, is amended to read:

- "19-3-2123. Payout of vested account balances when terminating plan membership. Except as provided in 19-3-2142, any time after termination of service, a member or the member's beneficiary may terminate plan membership by filing a written application with the board and removing the member's vested account balance from the plan through any combination of the following payout options, each of which is subject to applicable regulations of the internal revenue service:
- (1) a direct rollover to an eligible retirement plan or to, which includes an individual retirement account or annuity and, effective January 1, 2008, a Roth IRA provided for in section 408A of the Internal Revenue Code, 26 U.S.C. 408A, pursuant to section 401(a)(31) of the Internal Revenue Code, 26 U.S.C. 401(a)(31);
- (2) a regular rollover to an eligible retirement plan pursuant to section 402(c) of the Internal Revenue Code, 26 U.S.C. 402(c); or
 - (3) a lump-sum distribution of the member's vested account balance."

Section 15. Section 19-3-2126, MCA, is amended to read:

- "19-3-2126. Refunds minimum account balance adjustment by rule. (1) Before termination of service, a member may not receive a refund of any portion of the member's vested account balance.
- (2) Except as provided in 19-3-2142, a member who terminates service and whose vested account balance is less than \$200 must be paid the vested account balance in a lump sum. If the member's employer contribution account is not vested, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117. The payment must be made as soon as administratively feasible without a written application from the member.
- (3) Except as provided in 19-3-2142, unless a written application is made pursuant to subsection (4)(a), a member who terminates service and whose vested account balance is between \$200 and \$5,000 \$1,000 must be paid the vested account balance in a lump sum. The payment must be made as soon as administratively feasible. If the member's employer contribution account is not vested, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117.
- (4) (a) Except as provided in 19-3-2142, upon the written application of a member terminating service whose vested account balance is \$200 or more, the board shall make a direct rollover distribution pursuant to section 401(a)(31) of the Internal Revenue Code, 26 U.S.C. 401(a)(31), of the eligible rollover distribution portion of that balance. To receive the direct rollover distribution, the member is responsible for correctly designating, on forms provided by the board, an eligible retirement plan that allows the rollover under applicable federal law.
- (b) The direct rollover distribution must be paid directly to the an eligible retirement plan allowed under applicable federal law that, effective January 1, 2008, includes a Roth IRA provided for in section 408A of the Internal Revenue Code, 26 U.S.C. 408A.
- (5) A member who terminates service with an account balance greater than \$5,000 \$1,000, whether vested or not, may remain in the plan.

- (6) The board may by rule adjust the minimum account balance provided in this section as necessary to maintain reasonable administrative costs and to account for inflation and in accordance with the requirements of section 401(a)(31)(B) of the Internal Revenue Code, 26 U.S.C. 401(a)(31)(B), and applicable regulations."
 - Section 16. Section 19-5-701, MCA, is amended to read:
- "19-5-701. Optional forms of benefits designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. An optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:
- (a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:
- (i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or
- (ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (1)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting
- (b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;
- (c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:
- (i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:
- (A) a 10-year period certain if the member retired at 75 years of age or younger; or
- (B) a 20-year period certain if the member retired at 65 years of age or younger;
- (ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis.
- (2) The member or designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.
- (3) If a benefit recipient or the recipient's the member or designated beneficiary or the named contingent annuitant dies before the first payment has

been made under option 2 or 3, the election of the option is automatically canceled

- (4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.
- (5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the *member*'s optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:
- (i)(a) the *original* contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or
- (ii)(b) the member's marriage to the *original* contingent annuitant is *has* been dissolved and the beneficiary original contingent annuitant has no not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907, in which case the. The benefit must then revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the *original* contingent annuitant.
- (b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the amount of any postretirement adjustments received by the member since the effective date of the member's retirement.
- (6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant. A member who applies to revert under subsection (5) shall, at the time of the application, choose one of the following alternatives:
- (a) revert to the member's original retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;
- (b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or
 - (c) select a different option and name a new contingent annuitant.
- (7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:
 - (i) the original contingent annuitant has died; or
- (ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has no right to receive the optional retirement benefit as part of a family law order.
- (b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change. If the member selects an alternative under subsection (6)(b) or (6)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of this election.
- (8) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 17. Section 19-7-1001, MCA, is amended to read:

- "19-7-1001. Optional forms of benefits designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. An optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit, depending on the option selected, to a contingent annuitant, as follows:
- (a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:
- (i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or
- (ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (1)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date
- (b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;
- (c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:
- (i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:
- (A) a 10-year period certain if the member retired at 75 years of age or younger; or
- (B) a 20-year period certain if the member retired at 65 years of age or younger;
- (ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis.
- (2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.
- (3) If a benefit recipient or the recipient's the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.
- (4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

- (5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the *member*'s optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:
- (i)(a) the *original* contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or
- (ii)(b) the member's marriage to the *original* contingent annuitant is *has* been dissolved and the beneficiary original contingent annuitant has no not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907, in which case the. The benefit must revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the contingent annuitant.
- (b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the amount of any postretirement adjustments received by the member since the effective date of the member's retirement.
- (6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant. member who applies to revert under subsection (5) shall, at the time of the application, choose one of the following alternatives:
- (a) revert to the member's original retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;
- (b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or
 - (c) select a different option and name a new contingent annuitant.
- (7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:
 - (i) the original contingent annuitant has died; or
- (ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has no right to receive the optional retirement benefit as part of the a family law order.
- (b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change. If the member selects an alternative under subsection (6)(b) or (6)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of the election.
- (8) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 18. Section 19-8-801, MCA, is amended to read:

"19-8-801. Optional forms of benefits — **designation of contingent annuitant.** (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must *be converted*, in lieu of all other benefits under this chapter, be converted into an optional retirement benefit

that is the actuarial equivalent of the original benefit. An optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:

- (a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:
- (i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or
- (ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (1)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.
- (b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;
- (c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:
- (i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:
- (A) a 10-year period certain if the member retired at 75 years of age or younger; or
- (B) a 20-year period certain if the member retired at 65 years of age or younger;
- (ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis.
- (2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.
- (3) If a benefit recipient or the recipient's the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.
- (4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.
- (5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the *member*'s optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

- (i)(a) the *original* contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or
- (ii)(b) the member's marriage to the *original* contingent annuitant is has been dissolved and the beneficiary original contingent annuitant has no not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907, in which ease the. The benefit must then revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the *original* contingent annuitant.
- (b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the amount of any postretirement adjustments received by the member since the effective date of the member's retirement.
- (6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant. A member who applies to revert under subsection (5) shall, at the time of the application, choose one of the following alternatives:
- (a) revert to the member's original retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;
- (b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or
 - (c) select a different option and name a new contingent annuitant.
- (7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:
 - (i) the original contingent annuitant has died; or
- (ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order.
- (b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change. If the member selects an alternative under subsection (6)(b) or (6)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of the election.
- (8) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."
 - Section 19. Section 19-9-301, MCA, is amended to read:
- "19-9-301. Active membership—inactive vested member—inactive nonvested member. (1) A police officer becomes an active member of the retirement system:
 - (a) on the date the police officer's service with an employer commences;
- (b) on July 1, 1977, if the police officer is employed by an employer on that date; or
- (c) in the case of an employer that elects to join the retirement system, as provided in 19-9-207, on the effective date of the election if the police officer is

employed by the employer on that date. A person who is a member of the public employees' retirement system on the date of the employer's election may remain in the public employees' retirement system or may elect to become a member of the municipal police officers' retirement system by filing a an irrevocable written election with the board no later than $30\ 90$ days after the date of the employer's election.

- (2) Upon becoming eligible for membership, the police officer shall complete the forms and furnish the proof required by the board.
- (3) A member becomes an inactive member on the first day of an approved absence from service of a substantial duration.
- (4) (a) An inactive member with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.
- (b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer contributions.
- (5) (a) An inactive member with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.
- (b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 20. Section 19-9-1206, MCA, is amended to read:

- "19-9-1206. Survivorship benefits. (1) If a participant dies prior to the receipt of the DROP benefit pursuant to 19-9-1208, the participant's surviving spouse or dependent child is entitled to receive a lump-sum payment equal to the participant's DROP benefit and the member's accumulated contributions minus any benefits paid from the member's DROP account, including monthly DROP accruals.
- (2) If there is no surviving spouse or dependent child, the designated beneficiary is entitled to receive a lump-sum payment equal to the participant's DROP benefit.
- (3) The benefit paid pursuant to this section must include interest *credited* to the participant's account as follows:
- (a) through June 30, 2009, interest must be credited every fiscal yearend at a rate reflecting the retirement system's annual investment earnings from the date the member's DROP period commenced for the applicable fiscal year;
- (b) after June 30, 2009, interest must be credited every fiscal yearend at the actuarially assumed rate of return. Proportionate interest must be credited for distributions taking place at other than a fiscal yearend."

Section 21. Section 19-9-1208, MCA, is amended to read:

- **"19-9-1208. Distribution of DROP benefit.** (1) Upon termination of service, a participant is entitled to:
 - (a) receive a lump-sum distribution of the participant's DROP benefit;
- (b) roll the participant's DROP benefit into another eligible retirement plan in a manner prescribed and authorized by the board; or
- (c) any other distribution or method of payment of the DROP benefit approved by the board.

- (2) A distribution pursuant to this section is subject to the provisions of 19-2-907 and 19-2-909 and all other applicable provisions of Title 19 and the Internal Revenue Code.
- (3) The amount of a distribution, rollover, transfer, or other payment of a DROP benefit pursuant to this section must include interest *credited to the participant's account as follows:*
- (a) through June 30, 2009, interest must be credited every fiscal yearend at the rate reflecting the retirement system's annual investment earnings from the date the member's DROP period commenced for the applicable fiscal year;
- (b) after June 30, 2009, interest must be credited every fiscal yearend at the actuarially assumed rate of return. Proportionate interest must be credited for distributions taking place at other than a fiscal yearend."

Section 22. Section 19-13-210, MCA, is amended to read:

- "19-13-210. Participation in retirement system. (1) Cities of the first and second class that employ full-paid firefighters shall participate in the retirement system. If a city of the first or second class is reduced to a city of the third class or a town under 7-1-4118, it shall continue to participate in the retirement system as long as it has retired firefighters or survivors eligible to receive retirement benefits.
- (2) Firefighters hired by the Montana air national guard on or after October 1, 2001, or on or after the date of the execution of an agreement between the department of military affairs and the board, whichever is later, shall participate in the retirement system.
- (3) (a) A city that is not covered under subsection (1) and that has full-paid firefighters covered by the public employees' retirement system and any rural fire district department with full-paid firefighters covered by the public employees' retirement system may elect to be covered under the retirement system as provided in 19-13-211.
- (b) An election by a city fire department or a rural fire department to be covered by the retirement system must be made through adoption of a resolution an ordinance stating that the governing body of the city or the fire district agrees to be bound by the provisions of the retirement system.
- (c) A similar election may be made by a rural fire district through adoption of a resolution stating that the governing body of the fire district agrees to be bound by the provisions of the retirement system.
- (d) The ordinance or resolution must specify the effective date of the department's election. The provisions of the retirement system become applicable on the effective date specified in the adopted ordinance or resolution. A certified copy of the ordinance or resolution must be provided to the board.
- (4) The following are the terms and conditions of an election by a fire department to join the retirement system pursuant to subsection (3):
- (a) Each firefighter employed by the fire department before the effective date of the department's election must be given 180 90 days from the effective date of the department's election to make an individual, one-time, irrevocable election to remain in the public employees' retirement system or to join the retirement system. Failure to make an election under this subsection (4)(a) must be considered an election to remain in the public employees' retirement system.

- (b) Each firefighter employed by the fire department who is hired on or after the effective date of the department's election must be covered by the retirement system.
- (c) A firefighter electing to join the retirement system may retain prior service in the public employees' retirement system or qualify purchase the prior service in and transfer that prior service to the retirement system as provided for in 19-2-715."
 - **Section 23.** Section 19-13-301, MCA, is amended to read:
- "19-13-301. Active membership inactive vested member inactive nonvested member. (1) Except as provided in subsection (7), a full-paid firefighter becomes an active member of the retirement system:
 - (a) on the first day of the firefighter's service with an employer;
- (b) on July 1, 1981, if the firefighter is employed by an employer on that date; or
- (c) in the case of an employer who elects to join the retirement system, as provided in 19-13-211, on the effective date of the election if the firefighter is employed by the employer on that date.
- (2) Upon becoming eligible for membership, the firefighter shall complete the forms and furnish any proof required by the board.
- (3) A part-paid firefighter may elect to become a member of the retirement system by filing a membership application an irrevocable written election with the board within 6 menths 90 days of becoming a part-paid firefighter.
- (4) An active member becomes an inactive member upon the occurrence of the earliest of the following:
 - (a) the date on which the member ceases service with an employer;
- (b) the 31st day of an approved absence from active duty with an employer; or
- (c) the date on which the member ceases to be employed because of a reduction of the number of firefighters in the fire department as provided in 7-33-4125.
- (5) (a) An inactive member with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.
- (b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.
- (6) (a) An inactive member with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.
- (b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.
- (7) (a) A firefighter previously employed in a position covered under the public employees' retirement system and who is first hired into a position covered under the firefighters' unified retirement system after attaining 45 years of age may elect to remain in the public employees' retirement system.
- (b) A firefighter making an *irrevocable* election to remain in the public employees' retirement system shall make the election in a manner prescribed by

the board within 30 90 days of being hired into the position otherwise covered under the firefighters' unified retirement system.

- (8) A retired member who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 480 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit."
- Section 24. Compliance with federal laws regarding military service. (1) With respect to a member's death occurring on or after January 1, 2007, while the member is performing qualified military service covered under the Heroes Earnings Assistance and Relief Tax Act of 2008, Public Law 110-245, and to the extent required by section 401(a)(37) of the Internal Revenue Code, 26 U.S.C. 401(a)(37), the designated beneficiaries are entitled to benefits that the system would have provided if the member's death had occurred while in covered employment.
- (2) With respect to a member's disability occurring on or after January 1, 2009, while the member is performing qualified military service covered under the Heroes Earnings Assistance and Relief Tax Act of 2008, Public Law 110-245, and to the extent required by section 401(a)(37) of the Internal Revenue Code, 26 U.S.C. 401(a)(37), the member is entitled to any benefits that the system would have provided had the member become disabled while in covered employment.
- **Section 25. Codification instruction.** [Sections 9, 10, and 24] are intended to be codified as an integral part of Title 19, chapter 2, part 10, and the provisions of Title 19, chapter 2, part 10, apply to [sections 9, 10, and 24].
 - Section 26. Effective date. [This act] is effective July 1, 2009.
- **Section 27. Retroactive applicability.** The following sections apply retroactively, within the meaning of 1-2-109, to the following provisions or events:
- (1) The definition of "distributee" in 19-2-303 applies retroactively to January 1, 2007, as provided in that section.
- (2) The definition of "eligible retirement plan" in 19-2-303 applies retroactively to January 1, 2002, and January 1, 2008, as provided in that section.
- (3) The definition of "eligible rollover distribution" in 19-2-303 applies retroactively to January 1, 2002, as provided in that section.
- (4) Section 19-2-602(4) applies retroactively to January 1, 2008, for the determination of an eligible retirement plan as provided in that subsection.
- (5) Section 19-2-1001(4)(a) applies retroactively to January 1, 1998, for a permissive service credit contribution as provided in that subsection.
- (6) Section 19-2-1001(5)(d) applies retroactively to January 1, 1998, for permissive service credit contributions as provided in that subsection.
- (7) Section 19-2-1001(7) applies retroactively to January 1, 1998, for the definition of "nonqualified service credit" as provided in that subsection.
- (8) Section 19-2-1001(9) applies retroactively to December 31, 2001, for trustee-to-trustee transfers as provided in that subsection.
- (9) Section 19-2-1001(10) applies retroactively to years before January 1, 1998, for a determination as to who is an eligible plan member.
- (10) Section 19-2-1001(12) applies retroactively to the definition of "salary" as provided in that subsection.

- (11) Section 19-2-1001(13) applies retroactively to January 1, 2001, January 1, 2008, and January 1, 2009, for the limits on a defined benefit plan member's annual benefit as provided in that subsection.
- (12) Section 19-3-2123(1) applies retroactively to January 1, 2008, for a determination as to what constitutes an eligible retirement plan as provided in that subsection.
- (13) Section 19-3-2126(4)(b) applies retroactively to January 1, 2008, for a determination as to what constitutes an eligible retirement plan as provided in that subsection.
- (14) [Section 24] applies retroactively to retirement system member deaths on and after January 1, 2007, and to retirement system member disabilities on and after January 1, 2009.

Approved April 17, 2009

CHAPTER NO. 285

[SB 22]

AN ACT CREATING THE WATER POLICY COMMITTEE; ALLOWING THE WATER POLICY COMMITTEE TO STUDY ANY ISSUE RELATED TO WATER POLICY; MODIFYING THE STATUTORY PROVISIONS REQUIRING THE ENVIRONMENTAL QUALITY COUNCIL TO STUDY WATER POLICY ISSUES; REQUIRING THE WATER POLICY COMMITTEE TO COORDINATE WITH THE ENVIRONMENTAL QUALITY COUNCIL AND ANY OTHER COMMITTEE TO AVOID DUPLICATION OF EFFORTS; AMENDING SECTIONS 5-5-202 AND 85-2-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Water policy committee. (1) There is a water policy committee. Except as provided in subsection (2), the committee is treated as an interim committee for the purposes of 5-5-211 through 5-5-214. The committee shall:

- (a) determine which water policy issues it examines;
- (b) conduct interim studies as assigned pursuant to 5-5-217;
- (c) subject to the provisions of 5-5-202(4), coordinate with the environmental quality council and other interim committees to avoid duplication of efforts; and
- (d) report its activities, findings, recommendations, and any proposed legislation as provided in 5-11-210.
- (2) At least two members of the committee must possess experience in agriculture.

Section 2. Section 5-5-202, MCA, is amended to read:

"5-5-202. Interim committees. (1) During an interim when the legislature is not in session, the committees listed in subsection (2) are the interim committees of the legislature. They are empowered to sit as committees and may act in their respective areas of responsibility. The functions of the legislative council, legislative audit committee, legislative finance committee, environmental quality council, water policy committee, and state-tribal relations committee are provided for in the statutes governing those committees.

- (2) The following are the interim committees of the legislature:
- (a) economic affairs committee;
- (b) education and local government committee;
- (c) children, families, health, and human services committee;
- (d) law and justice committee;
- (e) energy and telecommunications committee;
- (f) revenue and transportation committee; and
- (g) state administration and veterans' affairs committee.
- (3) An interim committee or the environmental quality council may refer an issue to another committee that the referring committee determines to be more appropriate for the consideration of the issue. Upon the acceptance of the referred issue, the accepting committee shall consider the issue as if the issue were originally within its jurisdiction. If the committee that is referred an issue declines to accept the issue, the original committee retains jurisdiction.
- (4) If there is a dispute between committees as to which committee has proper jurisdiction over a subject, the legislative council shall determine the most appropriate committee and assign the subject to that committee."

Section 3. Section 85-2-105, MCA, is amended to read:

- "85-2-105. Environmental quality council water policy duties. (1) The environmental quality council shall meet as often as necessary, including during the interim between sessions, to perform the duties specified within this section.
 - (2) On a continuing basis, the environmental quality council shall may:
- (a) advise the legislature on the adequacy of the state's water policy and on important state, regional, national, and international developments that affect Montana's water resources;
- (b) oversee the policies and activities of the department, other state executive agencies, and other state institutions as those policies and activities affect the water resources of the state;
- (c) assist with interagency coordination related to Montana's water resources; and
- (d) communicate with the public on matters of water policy as well as the water resources of the state.
 - (3) On a regular basis, the environmental quality council shall:
- (a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;
- (b) analyze and comment on the report of the status of the state's renewable resource grant and loan program required by 85-1-621, when filed by the department;
- (c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;
- (d) analyze, verify, and comment on the adequacy of and information contained in the water information system maintained by the natural resource information system under 90-15-305; and
 - (e) report to the legislature as provided in 5-11-210.

(4) The legislative services division shall provide staff assistance to the environmental quality council to carry out its water policy duties."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 5, chapter 5, part 2, and the provisions of Title 5, chapter 5, part 2, apply to [section 1].

Section 5. Effective date. [This act] is effective July 1, 2009.

Approved April 17, 2009

CHAPTER NO. 286

[SB 57]

AN ACT GENERALLY REVISING THE LAWS RELATING TO SPECIAL DISTRICTS; ALLOWING FOR THE CREATION OF SPECIAL DISTRICTS BY LOCAL GOVERNMENTS WORKING INDIVIDUALLY AND JOINTLY; ESTABLISHING UNIFORM STANDARDS FOR THE CREATION, ADMINISTRATION, AND OPERATION OF SPECIAL DISTRICTS BY GOVERNING BODIES AND ELECTED OR APPOINTED BOARDS; ELIMINATING SPECIFIC PROVISIONS RELATING TO CEMETERY DISTRICTS, COUNTY MUSEUMS, FACILITIES FOR THE ARTS, MUSEUM DISTRICTS, COUNTY PARK DISTRICTS, COUNTY FAIR COMMISSIONS, COUNTY FAIR DISTRICTS, MULTICOUNTY FAIR DISTRICTS, JOINT SOLID WASTE MANAGEMENT DISTRICTS, LOCAL IMPROVEMENT DISTRICTS, MOSQUITO CONTROL DISTRICTS, MULTIJURISDICTIONAL SERVICE DISTRICTS, PARK MAINTENANCE DISTRICTS, ROAD IMPROVEMENT DISTRICTS, RODENT CONTROL DISTRICTS, SOLID WASTE MANAGEMENT DISTRICTS, AND TELEVISION DISTRICTS; GRANTING RULEMAKING AUTHORITY; AMENDING SECTIONS 7-1-201, 53-30-503, AND 70-30-102, MCA; REPEALING SECTIONS 7-11-1101, 7-11-1105, 7-11-1106, 7-11-1107, 7-11-1111, 7-12-4001, 7-13-201, 7-13-202, 7-13-203, 7-13-204, 7-13-205, 7-13-206, 7-13-207, 7-13-208, 7-13-209, 7-13-210, $7-13-211,\ 7-13-212,\ 7-13-213,\ 7-13-215,\ 7-13-216,\ 7-13-217,\ 7-13-218,\ 7-13-231,$ $7-13-232,\, 7-13-233,\, 7-13-234,\, 7-13-235,\, 7-13-236,\, 7-13-237,\, 7-13-301,\, 7-13-302,\, 7-13-232,\, 7-13-233,\, 7-13-234,\, 7-13-235,\, 7-13-236,\, 7-13-237,\, 7-13-301,\, 7-13-302,\, 7-13-236,\, 7-13-236,\, 7-13-237,\, 7-13-301,\, 7-13-302,\, 7-13-236,\, 7-13-236,\, 7-13-237,\, 7-13-301,\, 7-13-302,\, 7-13-236,\, 7-13-236,\, 7-13-237,\, 7-13-301,\, 7-13-302,\, 7-13-236,$ 7-13-303, 7-13-304, 7-13-305, 7-13-306, 7-13-307, 7-13-308, 7-13-309, 7-13-310, 7-13-311, 7-13-2501, 7-13-2502, 7-13-2503, 7-13-2504, 7-13-2505, 7-13-2506, 7-13-2507, 7-13-2508, 7-13-2509, 7-13-2510, 7-13-2521, 7-13-2527, 7-13-2528, 7-13-2529, 7-13-2541, 7-13-2542, 7-14-2701, 7-14-2702, 7-14-2703, 7-14-2704, 7-14-2705, 7-14-2706, 7-14-2707, 7-14-2708, 7-14-2709, 7-14-2710, 7-14-2711, $\begin{array}{c} 7\text{-}14\text{-}2712, \ 7\text{-}14\text{-}2713, \ 7\text{-}14\text{-}2714, \ 7\text{-}14\text{-}2715, \ 7\text{-}14\text{-}2716, \ 7\text{-}14\text{-}2717, \ 7\text{-}14\text{-}2718, \ 7\text{-}14\text{-}2719, \ 7\text{-}14\text{-}2720, \ 7\text{-}14\text{-}2721, \ 7\text{-}14\text{-}2731, \ 7\text{-}14\text{-}2732, \ 7\text{-}14\text{-}2733, \ 7\text{-}14\text{-}2734, \ 7\text{-}14\text{-}2735, \ 7\text{-}14\text{-}2736, \ 7\text{-}14\text{-}2737, \ 7\text{-}14\text{-}2738, \ 7\text{-}14\text{-}2739, \ 7\text{-}14\text{-}2740, \ 7\text{-}14\text{-}2741, \ 7\text{-}1$ 7-14-2742, 7-14-2743, 7-14-2744, 7-14-2745, 7-14-2746, 7-14-2751, 7-14-2752, 7-14-2753, 7-14-2754, 7-14-2755, 7-14-2756, 7-14-2757, 7-14-2758, 7-14-2759, 7-14-2760, 7-14-2761, 7-14-2762, 7-14-2763, 7-14-2901, 7-14-2902, 7-14-2903, $7\text{-}14\text{-}2907,\ 7\text{-}14\text{-}2908,\ 7\text{-}16\text{-}2201,\ 7\text{-}16\text{-}2202,\ 7\text{-}16\text{-}2203,\ 7\text{-}16\text{-}2205,\ 7\text{-}16\text{-}2211,$ 7-16-2212, 7-16-2213, 7-16-2214, 7-16-2215, 7-16-2216, 7-16-2217, 7-16-2218, 7-16-2219, 7-16-2401, 7-16-2402, 7-16-2403, 7-16-2411, 7-16-2412, 7-16-2413, 7-16-2421, 7-16-2422, 7-16-2423, 7-16-2431, 7-16-2433, 7-16-2441, 7-16-2442, 7-16-2443, 7-21-3401, 7-21-3406, 7-21-3407, 7-21-3408, 7-21-3409, 7-21-3410, 7-21-3412, 7-21-3413, 7-21-3421, 7-21-3422, 7-21-3423, 7-21-3424, 7-21-3425,

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Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purpose of [sections 1 through 20] is to allow for the creation and governance of special districts.

Section 2. Definitions. As used in [sections 1 through 20], the following definitions apply:

- (1) "Governing body" means the legislative authority of a local government.
- (2) "Local government" means a city, town, county, or consolidated city-county government or any combination of these acting jointly.
- (3) (a) "Special district" means a unit of local government that is authorized by law to perform a single function or a limited number of functions.
- (b) The term includes but is not limited to cemetery districts, museum districts, park districts, fair districts, solid waste districts, local improvement districts, mosquito control districts, multijurisdictional districts, road districts, rodent control districts, television districts, and districts created for any public or governmental purpose not specifically prohibited by law. The term also includes any district or other entity formed to perform a single or limited number of functions by interlocal agreement.
- (c) The term does not include business improvement districts, cattle protective districts, conservancy districts, conservation districts, water and sewer districts, planning and zoning districts, drainage districts, grazing districts, hospital districts, irrigation districts, library districts, livestock protective committees, parking districts, resort area districts, rural improvement districts, special improvement districts, lighting districts, rural fire districts, street maintenance districts, tax increment financing districts, urban transportation districts, water conservation and flood control projects, and weed management districts.

Section 3. Authorization to create special districts. (1) Whenever the public convenience and necessity may require:

- (a) the governing body may create a special district to serve the inhabitants of the special district; or
- (b) petitioners may initiate the creation of a special district to serve inhabitants of the special district.
- (2) (a) Subject to subsection (2)(b), a petition to institute the creation of a special district must be signed by 40% of registered voters or 40% of owners of

real property within the boundary of the proposed special district and submitted to the clerk of the governing body.

- (b) If a proposed special district would be financed by a mill levy, a petition to institute the creation of the special district must be signed by 40% of registered voters or 40% of property taxpayers within the boundary of the proposed district.
 - (c) The form of the petition may be prescribed by the governing body.
 - (d) Subject to subsection (2)(c), the petition must:
 - (i) require the printed name of each signatory;
- (ii) specify whether the signatory is a property taxpayer or owner of real property within the proposed special district and the address of that property;
- (iii) describe the type of special district being proposed and the general character of any proposed improvements and program to be administered within the special district;
- (iv) designate the method of financing any proposed improvements and program within the special district;
- (v) include a general description of the areas to be included in the proposed special district; and
- (vi) specify whether the proposed special district would be administered by the local governing body or an appointed or elected board.
- (3) Within 30 days of receipt of a petition to create a special district, the clerk of the governing body shall:
- (a) certify that the petition is sufficient under the provisions of subsection (2) and present it to the governing body at its next meeting; or
- (b) reject the petition if it is insufficient under the provisions of subsection (2).
- (4) A defect in the contents of the petition or in its title, form of notice, or signatures may not invalidate the petition and subsequent proceedings as long as the petition has a sufficient number of qualified signatures attached.
- **Section 4. Determining special district boundaries.** (1) The boundaries of the proposed special district must be mapped and clearly described before the district may be approved.
- (2) The governing body or petitioners shall consult with a professional land surveyor, as defined in 37-67-101, to prepare a legal description of the boundaries for the proposed special district.
- (3) The boundaries must follow property ownership, precinct, school district, municipal, and county lines as far as practical.
- Section 5. Public hearing resolution of intention to create special district. (1) The governing body shall hold at least one public hearing concerning the creation of a proposed special district prior to the passage of a resolution of intention to create the special district. A resolution of intention to create a special district may be based upon a decision of the governing body or upon a petition that contains the required number of signatures.
 - (2) The resolution must designate:
 - (a) the proposed name of the special district;
 - (b) the necessity for the proposed special district;

- (c) a general description of the territory or lands to be included within the proposed special district, giving the boundaries of the proposed special district;
- (d) the general character of any proposed improvements and the proposed location for the proposed program or improvements;
- (e) the estimated cost and method of financing the proposed program or improvements;
- (f) any requirements specifically applicable to the type of special district; and
- (g) whether the proposed special district would be administered by the governing body or an appointed or elected board.
- (3) (a) The governing body shall publish notice of passage of the resolution of intention to create a special district as provided in 7-1-2121 and 7-1-2122 or 7-1-4127 and 7-1-4129, as applicable. The notice must contain a notice of a hearing and the time and place where the hearing will be held.
- (b) At the same time that notice is published pursuant to subsection (3)(a), the governing body shall provide a list of those properties subject to potential assessment, fees, or taxation under the creation of the proposed special district. The list may not be distributed or sold for use as a mailing list in accordance with 2-6-109.
- (c) A copy of the notice described in subsection (3)(a) must be mailed to the owners of the property included on the list referred to in subsection (3)(b).
- Section 6. Right to protest procedure hearing. (1) An owner of property that is liable to be assessed for the program or improvements in the proposed special district has 30 days from the date of the first publication of the notice of passage of the resolution of intention to make a written protest against the proposed program or improvements.
- (2) The protest must be in writing, identify the property in the district owned by the protestor, be signed by all of the owners of that property, and be delivered to the clerk of the governing body, who shall endorse on the protest the date of receipt.
- (3) (a) For purposes of this section, "owner" means, as of the date a protest is filed, the record owner of fee simple title to the property or the contract buyer on file with the county clerk and recorder.
- (b) The term does not include a tenant of or other holder of a leasehold interest in the property.
- (4) An owner of property created as a condominium may protest pursuant to the provisions in [section 18].
- (5) (a) At the hearing provided for in [section 5], the governing body shall consider all protests.
- (b) In determining the sufficiency of protest, each protest must be weighted in proportion to the amount of the assessment to be levied against the lot or parcel with respect to which it is made.
- (c) If the protest is made by the owners of property in the proposed district to be assessed for more than 50% of the cost of the proposed program or improvements, in accordance with the method or methods of assessment, further proceedings may not be taken by the governing body for at least 12 months.
- (d) In determining whether or not sufficient protests have been filed in the proposed special district to prevent further proceedings, property owned by a

governmental entity must be considered the same as any other property in the district.

- (e) The decision of the governing body is final and conclusive.
- (f) The governing body may adjourn the hearing from time to time.

Section 7. Referendum — **election.** (1) The governing body may order a referendum on the creation of the proposed special district to be submitted to the registered voters who reside within the proposed special district and the individuals qualified to vote pursuant to subsections (5) and (6).

- (2) The referendum must state:
- (a) the type and maximum rate of the initial proposed assessments or fees that would be imposed, consistent with the requirements of [sections 5(2)(e) and 15];
- (b) the type of activities proposed to be financed, including a general description of the program or improvements;
- (c) a general description of the areas included in the proposed special district; and
- (d) whether the proposed special district would be administered by the governing body or an appointed or elected board.
- (3) The referendum must be held in conjunction with a regular or primary election or must be conducted by mail ballot election as provided in Title 13, chapter 19.
- (4) The proposition to be submitted to the electorate must read: "Shall the proposition to organize (name of proposed special district) be adopted?"
- (5) Except as provided in subsection (6), an individual is entitled to vote on the proposition if the individual:
- (a) meets all qualifications required of electors under the general election laws of the state; and
- (b) is a resident of or owner of taxable real property in the area subject to the proposed special district.
- (6) An individual who is the owner of real property described in subsection (5)(b) need not possess the qualifications required of an elector in subsection (5)(a) if the individual is qualified to vote in any county of the state and files proof of registration with the election administrator at least 20 days prior to the referendum in which the individual intends to vote.
- (7) The referendum must be conducted, the vote canvassed, and the result declared in the same manner as provided by Title 13 in respect to general elections, so far as it is applicable, except as provided in subsection (3).
- (8) If the referendum is approved, the election administrator of each county shall:
- (a) immediately file with the secretary of state a certificate stating that the proposition was adopted and record the certificate in the office of the clerk and recorder of the county or counties in which the special district is situated; and
- (b) notify any municipalities lying within the boundaries of the special district.
- **Section 8.** Certificate of establishment. (1) Upon receipt of the certificate referred to in [section 7(8)], the secretary of state shall, within 10 days, issue a certificate reciting that the specified district has been established

according to the laws of the state of Montana. A copy of the certificate must be transmitted to and filed with the clerk and recorder of the county or counties in which the district is situated.

- (2) When the certificate is issued by the secretary of state, the district named in the certificate is established with all the rights, privileges, and powers set forth in [section 12].
- Section 9. Order creating district power to implement program. (1) The governing body may create a special district and establish assessments or fees if the governing body finds that insufficient protests have been made in accordance with [section 6] or if the eligible registered voters have approved a referendum as provided in [section 7].
- (2) To create a special district, the governing body shall issue an order or pass an ordinance or resolution in accordance with the resolution of intention introduced and passed by the governing body or in accordance with the terms of the referendum. This must be done within 30 days of the end of the protest period or approval of the referendum.
- (3) If the governing body creates the special district of its own accord and without a referendum being held, a copy of the order, ordinance, or resolution creating the district, certified by the clerk of the governing body, must be delivered to the clerk and recorder of the county or counties in which the special district is situated and to the secretary of state, who shall issue a certificate of establishment in accordance with [section 8].
- Section 10. Additional reporting procedures coordination of information collection, transfer, and accessibility. (1) Within 60 days after the creation of a special district or by January 1 of the effective tax year, whichever occurs first, the governing body shall provide to the department of revenue a:
 - (a) legal description of the special district;
 - (b) map of its boundaries;
- (c) list of the property taxpayers or owners of real property within the special district's boundaries; and
- (d) copy of the resolution establishing the special district, including any adopted method of assessment.
- (2) The department of revenue shall review the information provided in accordance with subsection (1) and work with the governing body to identify and correct any discrepancies before the information is recorded by the department.
- (3) If the governing body intends to submit any digital information to the department of revenue for the purposes of subsection (4)(b), the governing body shall notify the department of revenue as to the expected date of submission and submit the digital information in a manner prescribed by the department of revenue in consultation with the department of administration.
- (4) The department of administration, in coordination with the department of revenue, governing bodies, and other appropriate entities, may develop standards, best practices, and procedures for:
- (a) collecting and transferring between agencies any digital information submitted by a governing body for purposes of subsection (4)(b); and
- (b) creating digital information to map special districts for land information purposes authorized in Title 90, chapter 1, part 4, that can be accessed through

the department's base map service center's website and discovered through the Montana geographical information system portal at the Montana state library.

Section 11. Limitations on lawsuits. (1) A finding of the governing body in favor of the genuineness and sufficiency of the petition or election is final and conclusive against all persons except the state of Montana upon suit brought by the attorney general.

- (2) A lawsuit filed by the attorney general must be filed by the earlier of:
- (a) 1 year after the order, ordinance, or resolution creating the special district is approved by the governing body; or
- (b) the issuance of bonds to implement the program or improvements approved for the special district.
- Section 12. Governance powers and duties. (1) A special district must be administered and operated either by the governing body or by a separate elected or appointed board as determined by the governing body.
- (2) (a) If the special district is governed by a separate board, the board must be established in accordance with Title 7, chapter 1, part 2, and specific powers and duties granted to the board and those specifically withheld must be stated.
- (b) The governing body may grant additional powers to the board. This includes the authorization to use privately contracted legal counsel or the attorney of the governing body. If privately contracted counsel is used, notice must be provided to the attorney of the governing body.
 - (c) The governing body has ultimate authority under this subsection (2).
- (3) The entity chosen to administer the special district, as provided in subsection (1), may:
- (a) implement a program and order improvements for the special district designed to fulfill the purposes of the special district;
 - (b) administer the budget of the special district;
 - (c) employ personnel;
- (d) purchase, rent, or lease equipment, personal property, and material necessary to develop and implement an effective program;
- (e) cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of federal, state, or local government, in order to develop and implement an effective program;
- (f) receive gifts, grants, or donations for the purpose of advancing the program and, by gift, deed, devise, or purchase, acquire land, facilities, buildings, and material necessary to implement the purposes of the special district:
- (g) construct and maintain facilities and buildings necessary to accomplish the purposes of the special district;
- (h) provide grants to private, nonprofit entities as part of implementing an effective program;
 - (i) adopt a seal and alter it at the entity's pleasure;
 - (j) administer local ordinances as appropriate;
- (k) establish district capital improvement funds pursuant to 7-6-616, maintenance funds, and debt service funds; and
 - (l) borrow money by the issuance of:

- (i) general obligation bonds as authorized by the governing body pursuant to Title 7, chapter 6, part 40, and the appropriate provisions of Title 7, chapter 7, part 22 or 42; or
- (ii) revenue bonds for the lease, purchase, and maintenance of land, facilities, and buildings and the funding of projects in the manner and subject to the appropriate provisions of Title 7, chapter 7, part 25 or 44.
- (4) The entity chosen to administer the special district shall submit annual budget and work plans to the governing body for review and approval.
- (5) The right to exercise eminent domain pursuant to 70-30-102 is limited to cemetery districts.
- **Section 13. Multiple jurisdictions.** (1) A special district created by a combination of local governments acting together must be administered according to an interlocal agreement. The interlocal agreement may determine whether the administrative body of the special district consists of the entire membership of all governing bodies from the participating jurisdictions or representatives of each governing body or jurisdiction.
- (2) A special district created by a combination of local governments acting together may enlarge an existing service district, but may not supersede or void an existing contract, district, or interlocal agreement under which the same service is currently provided to residents of one or more of the participating jurisdictions. The local governments acting together may agree to alter an existing contract, district, or interlocal agreement as necessary.
- (3) The local governments shall proportionally share the ownership of real or personal property acquired by the district pursuant to their interlocal agreement.
- **Section 14. Alteration of special districts.** (1) The governing body may change the boundaries of any special district by resolution.
- (2) The boundaries may be altered by petition after complying with the requirements for petitions as provided in [section 3].
- (3) Alteration of boundaries is also subject to procedures for public notice, protest, referendum, certification, reporting, and establishment of assessment as provided in [sections 4 through 11 and 15].
 - (4) Changes made to the boundaries may not:
- (a) occur more than once each year unless the governing body makes a special finding that an alteration is necessary;
- (b) delete any portion of the area if the deletion will create an island of included or excluded lands;
- (c) delete any portion of the area that is negatively contributing or may reasonably be expected to negatively contribute to environmental impacts that fall within the scope of the special district's program; and
 - (d) affect indebtedness existing at the time of the change.
- **Section 15. Financing for special district.** (1) The governing body shall make assessments or impose fees for the costs and expenses of the special district based upon a budget proposed by the governing body or separate board administering the district pursuant to [section 12].
- (2) For the purposes of this section, "assessable area" means the portion of a lot or parcel of land that is benefited by the special district. The assessable area may be less than but may not exceed the actual area of the lot or parcel.

- (3) The governing body shall assess the percentage of the cost of the program or improvements:
 - (a) against the entire district as follows:
- (i) each lot or parcel of land within the special district may be assessed for that part of the cost that its assessable area bears to the assessable area of the entire special district, exclusive of roads, streets, avenues, alleys, and public places;
- (ii) if the governing body determines that the benefits derived from the program or improvements by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the special district without regard to the assessable area of the lot or parcel;
- (iii) each lot or parcel of land, including the improvements on the lot or parcel, may be assessed for that part of the cost of the special district that its taxable valuation bears to the total taxable valuation of the property of the district;
- (iv) each lot or parcel of land may be assessed based on the lineal front footage of any part of the lot or parcel that is in the district and abuts the area to be improved or maintained;
- (v) each lot or parcel of land within the district may be assessed for that part of the cost that the reasonably estimated vehicle trips generated for a lot or parcel of its size in its zoning classification bear to the reasonably estimated vehicle trips generated for all lots in the district based on their size and zoning classification; or
- (vi) any combination of the assessment options provided in subsections (3)(a)(i) through (3)(a)(v) may be used for the special district as a whole; or
- (b) based upon the character, kind, and quality of service for a residential or commercial unit, taking into consideration:
 - (i) the nature of the property or entity assessed;
 - (ii) a calculated basis for the program or service, including volume or weight;
- (iii) the cost, incentives, or penalties applicable to the program or service practices; or
 - (iv) any combination of these factors.
- (4) If property created as a condominium is subject to assessment, each unit within the condominium is considered a separate parcel of real property subject to separate assessment and the lien of the assessment. Each unit must be assessed for the unit's percentage of undivided interest in the common elements of the condominium. The percentage of the undivided ownership interest must be as set forth in the condominium declaration.
- Section 16. Notice of resolution for assessment assessment. (1) The governing body shall estimate, as near as practicable, the cost of each established special district annually by the later of the second Monday in August or within 45 calendar days after receiving certified taxable values from the department of revenue.
- (2) The governing body shall pass and finally adopt a resolution specifying the special district assessment option and levying and assessing all the property within the special district with an amount equal to the annual cost of the program and improvements.

- (3) The resolution levying the assessment to defray the cost of the special district must contain or refer to a list that describes the lot or parcel of land assessed with the name of the owner of the lot or parcel, if known, and the amount assessed.
- (4) The resolution must be kept on file in the office of the clerk of the governing body.
- (5) A notice, signed by the clerk of the governing body, stating that the resolution levying a special assessment or changing the method of assessment to defray the cost of the special district is on file in the clerk's office and subject to inspection must be published as provided in 7-1-2121 or 7-1-4127. The notice must state the time and place at which objections to the final adoption of the resolution will be heard by the governing body and must contain a statement setting out the method of assessment being proposed for adoption or the change in assessment being proposed for adoption. The time for the hearing must be at least 5 days after the final publication of the notice.
- (6) The notice and hearing process may be included in the local government's general budgeting process as provided in Title 7, chapter 6, part 40.
- (7) At the time set, the governing body shall meet and hear all objections that may be made to the assessment or any part of the assessment, may adjourn from time to time for that purpose, and may by resolution modify the assessment.
- (8) A copy of the resolution, certified by the clerk of the governing body, must be delivered to the department of revenue by the third Monday in August or within 45 calendar days after receiving certified taxable values from the department of revenue.
- Section 17. Collection of special district assessments. (1) When a resolution of assessment has been certified by the clerk of the local government, the county treasurer, the city treasurer, or the town clerk, as provided in 7-12-4182, shall collect the assessment in the same manner and at the same time as property taxes for general purposes are collected.
- (2) All money received by the special district, including interest and earnings accrued, must be deposited in an account held only for the special district by the office of the county treasurer, city treasurer, or town clerk.
- Section 18. Payment of assessment under protest action to recover. (1) When an assessment made under [sections 1 through 20] is considered unlawful by the party whose property is charged or from whom the payment is demanded, the person may pay the assessment or any part of the assessment considered to be unlawful under protest to the county treasurer, city treasurer, or town clerk, whoever is charged with collection of the assessment.
- (2) The party paying under protest or the party's legal representative may bring an action in any court of competent jurisdiction against the officer to whom the assessment was paid or against the local government on whose behalf the assessment was collected to recover the assessment or any portion of the assessment paid under protest. An action instituted to recover the assessment paid under protest must be commenced within 90 days after the date of payment.
- (3) The assessment paid under protest must be held by the county treasurer, city treasurer, or town clerk until the determination of an action brought for the recovery of the assessment.
- (4) If the assessment considered to be unlawful pertains to property created as a condominium and the property is not solely a certain unit in the

condominium, then the owner of the property created as a condominium that is entitled to protest is considered to be the collective owners of all units having an undivided ownership interest in the common elements of the condominium.

- (5) An owner of property created as a condominium may protest against the method of assessment or vote at an election of the special district only through a president, vice president, secretary, or treasurer of the condominium owners' association who timely presents to the secretary of the special district the following:
 - (a) a writing identifying the condominium property;
- (b) the condominium declaration or other condominium document that shows how votes of unit owners in the condominium are calculated;
- (c) original signatures of owners of units in the condominium having an undivided ownership interest in the common elements of the condominium sufficient to constitute an affirmative vote for an undertaking relating to the common elements under the condominium declaration; and
- (d) a certificate signed by the president, vice president, secretary, or treasurer of the condominium owners' association certifying that the votes of the unit owners, as evidenced by the signatures of the owners, are sufficient to constitute an affirmative vote of the condominium owners' association to protest against the method of assessment.
- Section 19. Assessments as liens. (1) An assessment made and levied to defray the cost and expenses of the program or improvements, together with any percentages imposed for delinquency and for cost of collection, constitutes a lien upon the property on which the assessment is made and levied from the date of the passage of the resolution levying the assessment. This lien may be extinguished only by payment of the assessment, with all penalties, costs, and interest, or by sale of the property as provided in subsection (2).
- (2) When the payment of an installment of an assessment becomes delinquent, all payments of subsequent installments of the assessment may, at the option of the governing body and upon adoption of the appropriate resolutions, become delinquent. Upon delinquency in one or all installments, the whole property must be sold in the same manner as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent.
- **Section 20. Dissolution of special district.** (1) A special district may be dissolved if it is considered to be in the best interest of a local government or the inhabitants of the local government or if the purpose for creating the special district has been fulfilled and the special district is not needed in perpetuity.
- (2) The governing body may pass a resolution of intention to dissolve a special district upon its own request or upon request of the separate board administering the special district.
- (3) After the passage of the resolution provided for in subsection (2), the clerk of the local government that established the special district shall publish a notice, as provided in 7-1-2121 or 7-1-4127, of the intention to dissolve the district.
- (4) The notice must specify the boundaries of the special district to be dissolved, the date of the passage of the resolution of intention to dissolve, the date set for the passage of the resolution of dissolution, and that the resolution

will be passed unless the clerk of the local government receives written protest in advance from:

- (a) 40% of registered voters or 40% of the owners of real property in the district; or
- (b) 40% of registered voters or 40% of the property taxpayers in the district if the district program or improvements have been financed through a mill levy.
- (5) If the special district is dissolved, the clerk of the local government shall immediately send written notice to:
 - (a) the secretary of state; and
- (b) the department of revenue, providing the same information required in [section 10] when a district is created. The department of revenue and the department of administration shall respond to the dissolution in the same manner they respond to the creation of a district, as described in [section 10].
- (6) The dissolution of a special district may not relieve the property owners from the assessment and payment of a sufficient amount to liquidate all charges existing against the special district prior to the date of dissolution.
- (7) Any assets remaining after all debts and obligations of the special district have been paid, discharged, or irrevocably settled must be:
 - (a) deposited in the general fund of the local government;
- (b) in the case of multiple local governments, divided in accordance with their interlocal agreement and deposited in the general fund of each local government; or
- (c) transferred to a new special district that has been created to provide substantially the same service as provided by the dissolved special district.
- (8) If the remaining assets are derived from private grants or gifts that restrict the use of those funds, the funds must be returned to the grantor or donor
- Section 21. Multijurisdictional public library districts administration. A multijurisdictional public library district created under the provisions of [sections 1 through 20] must be administered according to the provisions of 22-1-305 through 22-1-317.

Section 22. Section 7-1-201, MCA, is amended to read:

- **"7-1-201. Boards.** (1) A board of county commissioners may by resolution establish the administrative boards, districts, or commissions allowed by law or required by law to be established pursuant to 7-1-202, 7-1-203, [sections 1 through 20], and this section and listed in 7-1-202. The resolution creating an administrative board, district, or commission must specify:
 - (a) the number of board, district, or commission members;
 - (b) the terms of the members;
- (c) whether members are entitled to mileage, per diem, expenses, and salary; and
- (d) any special qualifications for membership in addition to those established by law.
- (2) (a) An administrative board, district, or commission may be assigned responsibility for a department or service district.
 - (b) An administrative board, district, or commission may:

- (i) exercise administrative powers as granted by resolution, except that it may not pledge the credit of the county or impose a tax unless specifically authorized by state law;
- (ii) administer programs, establish policy, and adopt administrative and procedural rules.
- (c) The resolution creating an administrative board, district, or commission must grant the board, district, or commission all powers necessary and proper to the establishment, operation, improvement, maintenance, and administration of the department or district.
- (d) If authorized by resolution, an administrative board, district, or commission may employ personnel to assist in its functions.
- (3) (a) Administrative boards, districts, and commissions may be made elective.
- (b) If an administrative board is made elective and if the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. A position for which there were no nominees must be filled by appointment by the county commissioners for the same term as if the position were filled by election. If there is only one nominee for a position, the nominee may be declared elected by acclamation.
- (4) Administrative boards, districts, and commissions may not sue or be sued independently of the local government unless authorized by state law.
- (5) Members must be appointed by the county commissioners. The county commissioners shall post prospective membership vacancies at least 1 month prior to filling the vacancy.
- (6) The county commissioners shall maintain a register of appointments, including:
 - (a) the name of the board, district, or commission;
 - (b) the date of appointment and confirmation, if any is required;
 - (c) the length of term;
- (d) the name and term of the presiding officer and other officers of each administrative board, district, or commission; and
 - (e) the date, time, and place of regularly scheduled meetings.
- (7) Terms of all members, except elected members, may not exceed 4 years. Unless otherwise provided by resolution, members shall serve terms beginning on July 1 and shall serve at the pleasure of the county commissioners.
- (8) An administrative board, district, or commission must consist of a minimum of 3 members and must have an odd number of members.
- (9) The resolution creating an administrative board, district, or commission may provide for voting or nonvoting ex officio members.
- (10) Two or more local governments may provide for joint boards, districts, or commissions to be established by interlocal agreements.
- (11) A majority of members constitutes a quorum for the purposes of conducting business and exercising powers and responsibilities. Action may be taken by a majority vote of members present and voting, unless the resolution creating the board, district, or commission specifies otherwise.

- (12) An administrative board, district, or commission shall provide for the keeping of written minutes, including the final vote on all actions and the vote of each member
- (13) An administrative board, district, or commission shall provide by rule for the date, time, and place of regularly scheduled meetings and file the information with the county commissioners.
- (14) Unless otherwise provided by law, a person must be a resident of the county to be eligible for appointment to an administrative board, district, or commission. The county commissioners may prescribe by resolution additional qualifications for membership.
- (15) A person may be removed from an administrative board, district, or commission for cause by the county commissioners or as provided by resolution.
- (16) A resolution creating an administrative board, district, or commission must contain, if applicable, budgeting and accounting requirements for which the board, district, or commission is accountable to the county commissioners.
- (17) If a municipality creates a special district in accordance with [sections 1 through 20], the governing body of the municipality shall comply with this section if the governing body chooses to have the special district governed by a separate board."

Section 23. Section 7-1-202, MCA, is amended to read:

- **"7-1-202. Creation of new boards.** Subject to 7-1-201 and 7-1-203 and in addition to the following, a county may create administrative boards, districts, and commissions that are not otherwise provided for by law:
 - (1) county building commission;
 - (2) cemetery districts;
 - (3) county fair commission;
 - (4)(4) mosquito control board;
 - (5)(5) museum board;
 - (6)(6) board of park commissioners;
 - (7) road district;
 - (7)(8) rodent control board;
 - (8)(9) solid waste district;
 - (9)(10) television district;
 - (10)(11) weed management district."

Section 24. Section 7-6-2527, MCA, is amended to read:

- **"7-6-2527. Taxation public and governmental purposes.** A county may impose a property tax levy for any public or governmental purpose not specifically prohibited by law. Public and governmental purposes include but are not limited to:
 - (1) district court purposes as provided in 7-6-2511;
- (2) county-owned or county-operated health care facility purposes as provided in 7-6-2512;
- (3) county law enforcement services and maintenance of county detention center purposes as provided in 7-6-2513 and search and rescue units as provided in 7-32-235;

- (4) multijurisdictional service purposes as provided in 7-11-1106 [section 13]:
- (5) transportation services for senior citizens and persons with disabilities as provided in 7-14-111;
 - (6) support for a port authority as provided in 7-14-1132;
- (7) county road, bridge, and ferry purposes as provided in 7-14-2101, 7-14-2501, 7-14-2502, 7-14-2503, 7-14-2801, and 7-14-2807;
- (8) recreational, educational, and other activities of the elderly as provided in 7-16-101;
- (9) purposes of county fair activities, parks, cultural facilities, and any county-owned civic center, youth center, recreation center, or recreational complex as provided in 7-16-2102, and 7-16-2109, and 7-21-3410;
- (10) programs for the operation of licensed day-care centers and homes as provided in 7-16-2108 and 7-16-4114;
- (11) support for a museum, facility for the arts and the humanities, collection of exhibits, or a museum district as provided in 7-16-2205 a museum, facility for the arts and the humanities, collection of exhibits, or a museum district created under provisions of former Title 7, chapter 16, part 22, or [sections 1 through 20];
- (12) extension work in agriculture and home economics as provided in 7-21-3203;
 - (13) weed control and management purposes as provided in 7-22-2142;
 - (14) insect control programs as provided in 7-22-2306;
 - (15) fire control as provided in 7-33-2209;
 - (16) ambulance service as provided in 7-34-102;
 - (17) public health purposes as provided in 50-2-111 and 50-2-114;
 - (18) public assistance purposes as provided in 53-3-115;
 - (19) indigent assistance purposes as provided in 53-3-116;
 - (20) developmental disabilities facilities as provided in 53-20-208;
 - (21) mental health services as provided in 53-21-1010;
 - (22) airport purposes as provided in 67-10-402 and 67-11-302;
 - (23) purebred livestock shows and sales as provided in 81-8-504;
 - (24) economic development purposes as provided in 90-5-112; and
- (25) prevention programs, including programs that reduce substance abuse."

Section 25. Section 7-7-2101, MCA, is amended to read:

- "7-7-2101. Limitation on amount of county indebtedness. (1) A county may not issue bonds or incur other indebtedness for any purpose in an amount, including existing indebtedness, that in the aggregate exceeds 2.5% of the total assessed value of taxable property, determined as provided in 15-8-111, within the county, as ascertained by the last assessment for state and county taxes.
- (2) Except as provided in 7-7-2402 and 7-21-3413, a county may not incur indebtedness or liability for any single purpose to an amount exceeding \$500,000 without the approval of a majority of the electors of the county voting at an election as provided by law.
- (3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6."

Section 26. Section 7-11-1102, MCA, is amended to read:

- **"7-11-1102. Services that may be provided.** (1) A multijurisdictional service district may provide only those services that are authorized to be provided by local governments.
 - (2) The services that a multijurisdictional service district may provide are:
- (a) recreation programs other than park and recreation programs in a county park district established under Title 7, chapter 16, part 24 [sections 1 through 20];
 - (b) road, street, and highway maintenance;
 - (c) libraries;
 - (d) jails;
 - (e) dog control programs;
 - (f) ambulance service;
 - (g) dispatch service;
- (h) protection of human health and the environment, including scenic concerns and recreational activities for areas requiring or involving environmental reclamation:
 - (i) health services and health department functions; and
- (j) maintenance or provision of any public infrastructure facility, project, or service."

Section 27. Section 7-11-1112, MCA, is amended to read:

- **"7-11-1112. Financing.** (1) Subject to 15-10-420, local governments organizing a multijurisdictional service district are authorized to levy property taxes in an amount not to exceed that authorized for the district in 7-11-1106 accordance with [section 5] and to appropriate funds derived from other than general tax revenues revenue for the operation of the district. Subject to 15-10-420, property taxes levied for a library established under this part as a multijurisdictional service must be added to taxes levied under 22-1-304.
- (2) A property tax levied for the purpose of financing the district must may, for all agricultural property having an area greater than 10 acres, be levied only on the principal residential dwelling, if any, on the property."

Section 28. Section 7-13-2511, MCA, is amended to read:

"7-13-2511. Prohibition on operation of cable TV systems. A television district organized under [sections 1 through 20] or the former provision of this part may not perform any acts or take any steps to construct or operate community antenna systems, commonly known and referred to as cable TV systems."

Section 29. Section 7-13-2512, MCA, is amended to read:

- **"7-13-2512. Authorization for FM translator.** (1) A television district may construct and operate a broadcast FM translator facility (88 to 108 megahertz) as provided in this section.
- (2) (a) A request to provide FM translator services may be initiated by a petition signed by at least 51% of the registered electors who are residents of the television district and presented to the board of county commissioners which that initially established the district. The petition, its filing, and its processing, and the public hearing are governed by 7-13-2503, 7-13-2504, and 7-13-2505 [sections 3, 5, and 6].

(b) Upon receiving a certified petition, the board of county commissioners shall give notice and hold a hearing as provided in 7-13-2506 and 7-13-2507. After the hearing, the board of county commissioners shall approve or deny the petition by resolution. If the county commissioners approve the decision is to approve the petition, the resolution shall must authorize the board of trustees of the district to provide the requested services and shall must describe the proposed system, including the type of construction, proposed location, and estimated costs."

Section 30. Section 7-14-2138, MCA, is amended to read:

- **"7-14-2138. Prosecution by county attorney.** (1) The county attorney, upon complaint of the road supervisor, county surveyor, or any other person, shall prosecute all actions provided in *Title 7, chapter 14*, parts 21 through *26 and* 28, in the name of the state of Montana.
- (2) All penalties, except those paid to a justice's court, shall must be paid into the general fund of the county."

Section 31. Section 7-16-2105, MCA, is amended to read:

- "7-16-2105. Acquisition of land by county for public recreational or cultural purposes. (1) A county may acquire, by purchase, grant, deed, gift, devise, condemnation pursuant to Title 70, chapter 30, or otherwise, lands suitable for public camping, public recreational purposes, civic centers, youth centers, museums, recreational centers, and any combination of the enumerated uses. A county may lease the land tracts, each of which must be situated so that it offers ready access to a public highway.
- (2) This section may not be construed as amending or repealing 7-16-2201 through 7-16-2203."

Section 32. Section 7-16-2109, MCA, is amended to read:

- "7-16-2109. Single tax assessment for county fair activities, county parks, and certain cultural, social, and recreational facilities restriction. (1) Subject to 15-10-420 and except as provided in subsection (2) of this section, the county commissioners of a county who have levied taxes pursuant to both 7-16-2102 and 7-21-3410 may combine the two taxes that levy with any fees assessed in accordance with [section 15] into a single tax assessment for the purpose of maintaining, operating, and equipping county fair activities, county parks, cultural facilities, and any county-owned civic center, youth center, recreation center, recreational complex, or any combination of purposes, activities, and facilities as determined by the county commissioners.
- (2) (a) The board of county commissioners shall submit the question of imposing or continuing the imposition of the single tax assessment provided for in subsection (1) to the electors of the county at the next general election if a petition requesting a vote on the single tax assessment, signed by at least 15% of the resident taxpayers of the county, is filed with the county clerk and recorder at least 90 days prior to the date of the general election.
 - (b) The question must be submitted as provided in 15-10-425.
- (c) The board of county commissioners shall levy the tax collect the assessment if the imposition or continued imposition of the single tax assessment is approved by a majority of the electors voting on the question."

Section 33. Section 7-21-3411, MCA, is amended to read:

"7-21-3411. Restriction on use of appropriation or tax money. No portion *An amount* of the appropriation or tax levy provided for in 7-21-3410 shall or assessment for a county fair district or a multiple county fair district may not be expended for horseracing."

Section 34. Section 7-22-2512, MCA, is amended to read:

"7-22-2512. Financing of vertebrate pest management program — tax. (1) A governing body may:

- (a) appropriate from the county general fund an amount to fund vertebrate pest management and transfer it to the county vertebrate pest management fund; and
- (b) subject to 15-10-420, levy a vertebrate pest management tax on the taxable valuation of all agricultural, horticultural, grazing, and timber lands and their improvements. Land within a rodent control district may not be taxed in any given year under both 7-22-2222 [section 15] and this section for the control of rodents as defined in 7-22-2207. Land within a rodent control district may be taxed under this section only in a dollar amount that is proportional to the part of the vertebrate pest program's projected fiscal year budget that is allocated to the management and suppression of vertebrate pests other than rodents.
- (2) The tax provided for in subsection (1) must be collected as other county taxes and credited to the county vertebrate pest management fund."

Section 35. Section 15-6-201, MCA, is amended to read:

"15-6-201. Governmental, charitable, and educational categories — exempt property. (1) The following categories of property are exempt from taxation:

- (a) except as provided in 15-24-1203, the property of:
- (i) the United States, except:
- (A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or
 - (B) as provided in 15-24-1103;
 - (ii) the state, counties, cities, towns, and school districts;
- (iii) irrigation districts organized under the laws of Montana and not operated for gain or profit;
 - (iv) municipal corporations;
 - (v) public libraries; and
- (vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33; and
 - (vii) special districts created pursuant to [sections 1 through 20];
- (b) buildings and furnishings in the buildings that are owned by a church and used for actual religious worship or for residences of the clergy, not to exceed one residence for each member of the clergy, together with the land that the buildings occupy and adjacent land reasonably necessary for convenient use of the buildings, which must be identified in the application, and all land and improvements used for educational or youth recreational activities if the facilities are generally available for use by the general public but may not exceed 15 acres for a church or 1 acre for a clergy residence after subtracting any area required by zoning, building codes, or subdivision requirements;

- (c) property owned and used exclusively for agricultural and horticultural societies not operated for gain or profit;
- (d) property, not to exceed 80 acres, which must be legally described in the application for the exemption, used exclusively for educational purposes, including dormitories and food service buildings for the use of students in attendance and other structures necessary for the operation and maintenance of an educational institution that:
 - (i) is not operated for gain or profit;
 - (ii) has an attendance policy; and
 - (iii) has a definable curriculum with systematic instruction;
- (e) property used exclusively for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.
 - (f) property that is:
- (i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;
- (ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and
 - (iii) not maintained and not operated for gain or profit;
- (g) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;
- (h) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;
- (i) public museums, art galleries, zoos, and observatories that are not operated for gain or profit;
- (j) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;
- (k) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;
- (l) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and
- (ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit; and
- (m) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international

sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(m), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

- (2) (a) For the purposes of subsection (1)(b), the term "clergy" means, as recognized under the federal Internal Revenue Code:
 - (i) an ordained minister, priest, or rabbi;
- (ii) a commissioned or licensed minister of a church or church denomination that ordains ministers if the person has the authority to perform substantially all the religious duties of the church or denomination;
 - (iii) a member of a religious order who has taken a vow of poverty; or
 - (iv) a Christian Science practitioner.
 - (b) For the purposes of subsection (1)(g):
- (i) the term "institutions of purely public charity" includes any organization that meets the following requirements:
- (A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.
- (B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.
- (ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.
- (iii) up to 15 acres of property owned by a purely public charity is exempt at the time of its purchase even if the property must be improved before it can directly be used for its intended charitable purpose. If the property is not directly used for the charitable purpose within 8 years of receiving an exemption under this section or if the property is sold or transferred before it entered direct charitable use, the exemption is revoked and the property is taxable. In addition to taxes due for the first year that the property becomes taxable, the owner of the property shall pay an amount equal to the amount of the tax due that year times the number of years that the property was tax-exempt under this section. The amount due is a lien upon the property and when collected must be distributed by the treasurer to funds and accounts in the same ratio as property tax collected on the property is distributed. At the time the exemption is granted, the department shall file a notice with the clerk and recorder in the county in which the property is located. The notice must indicate that an exemption pursuant to this section has been granted. The notice must describe the penalty for default under this section and must specify that a default under this section will create a lien on the property by operation of law. The notice must be on a form prescribed by the department.

- (iv) not more than 160 acres may be exempted by a purely public charity under any exemption originally applied for after December 31, 2004. An application for exemption under this section must contain a legal description of the property for which the exemption is requested.
- (c) For the purposes of subsection (1)(i), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property owned by the public museum, art gallery, zoo, or observatory that is reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:
- (i) actually used by the governmental entity or nonprofit organization as a part of its public display;
 - (ii) held for future display; or
 - (iii) used to house or store a public display."

Section 36. Section 20-15-403, MCA, is amended to read:

- "20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-401, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 40-6-237, 49-3-101, 49-3-102, 52-2-617, 53-20-304, 82-10-201 through 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.
- (2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

Section 37. Section 53-30-503, MCA, is amended to read:

- **"53-30-503. Definitions.** As used in this part, the following definitions apply:
- (1) "Corporation" means an entity organized and existing pursuant to Title 35, chapter 1 or 2, and approved or designated by a local governmental entity.
 - (2) "Department" means the department of corrections.
- (3) "Interlocal cooperation commission" means a commission established in accordance with Title 7, chapter 11, part 2.
 - (4) "Local governmental entity" means:
 - (a) a local governmental unit;
 - (b) a multijurisdictional service district; or
 - (c) an interlocal cooperation commission.

- (5) "Multijurisdictional service district" means a district established in accordance with Title 7, chapter 11, part 11 [sections 1 through 20].
- (6) "Regional correctional facility" means a facility for the housing of persons charged with or convicted of a criminal offense that is a joint detention center and correctional facility and that is designed, constructed, or operated under this part by a local governmental entity, a corporation, the department, or any combination of a local governmental entity, a corporation, and the department."

Section 38. Section 70-30-102, MCA, is amended to read:

- **"70-30-102. Public uses enumerated.** Subject to the provisions of this chapter, the right of eminent domain may be exercised for the following public uses:
 - (1) all public uses authorized by the government of the United States;
- (2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;
- (3) public buildings and grounds for the use of any county, city, town, or school district;
- (4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town;
- (5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen, or straighten stream channels;
- (6) water and water supply systems as provided in Title 7, chapter 13, part 44;
- (7) roads, streets, alleys, controlled-access facilities, and other publicly owned buildings and facilities for the benefit of a county, city, or town or the inhabitants of a county, city, or town;
 - (8) acquisition of road-building material as provided in 7-14-2123;
 - (9) stock lanes as provided in 7-14-2621;
 - (10) parking areas as provided in 7-14-4501 and 7-14-4622;
- (11) airport purposes as provided in 7-14-4801, 67-2-301, 67-7-210, and Title 67, chapters 10 and 11;
- (12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43, except that private property may be acquired for urban renewal through eminent domain only if the property is determined to be a blighted area, as defined in 7-15-4206(2)(a), (2)(h), (2)(k), or (2)(n), and may not be acquired for urban renewal through eminent domain if the purpose of the project is to increase government tax revenue;
 - (13) housing authority purposes as provided in Title 7, chapter 15, part 44;
 - (14) county recreational and cultural purposes as provided in 7-16-2105;
 - (15) city or town athletic fields and civic stadiums as provided in 7-16-4106;
- (16) county cemetery purposes as provided in *pursuant to* 7-35-2201 [section 12], cemetery association purposes as provided in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;
- (17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);
 - (18) public assistance purposes as provided in 53-2-201;
 - (19) highway purposes as provided in 60-4-103 and 60-4-104;

- (20) common carrier pipelines as provided in 69-13-104;
- (21) water supply, water transportation, and water treatment systems as provided in 75-6-313;
- (22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided in 75-10-720;
- (23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;
- (24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;
 - (25) water conservation and flood control projects as provided in 76-5-1108;
 - (26) acquisition of natural areas as provided in 76-12-108;
- (27) acquisition of water rights for the natural flow of water as provided in 85-1-204:
- (28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;
 - (29) conservancy district purposes as provided in 85-9-410;
- (30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and railroads;
 - (31) canals, ditches, flumes, aqueducts, and pipes for:
 - (a) supplying mines, mills, and smelters for the reduction of ores;
 - (b) supplying farming neighborhoods with water and drainage;
 - (c) reclaiming lands; and
 - (d) floating logs and lumber on streams that are not navigable;
- (32) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.
- (33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;
- (34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores;
- (35) an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However, the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.
 - (36) private roads leading from highways to residences or farms;
- (37) telephone or electrical energy lines, except that local government entities as defined in 2-7-501, municipal utilities, or competitive electricity suppliers may not use this chapter to acquire existing telephone or electrical energy lines and appurtenant facilities owned by a public utility or cooperative for the purpose of transmitting or distributing electricity or providing telecommunications services;
 - (38) telegraph lines;
 - (39) sewerage of any:

- (a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or unincorporated;
 - (b) settlement consisting of not less than 10 families; or
 - (c) public buildings belonging to the state or to any college or university;
 - (40) tramway lines;
 - (41) logging railways;
- (42) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However, the grounds of state institutions may not be used for this purpose.
 - (43) underground reservoirs suitable for storage of natural gas;
- (44) projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath or upon the surface of property where the title to the surface vests in others. However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose.
- (45) projects to restore and reclaim lands that were strip mined or underground mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse effects of strip or underground mining on those lands."

Section 39. Repealer. Sections 7-11-1101, 7-11-1105, 7-11-1106, 7-11-1107, 7-11-1111, 7-12-4001, 7-13-201, 7-13-202, 7-13-203, 7-13-204, 7-13-205, 7-13-206, 7-13-207, 7-13-208, 7-13-209, 7-13-210, 7-13-211, 7-13-212, 7-13-305, 7-13-306, 7-13-307, 7-13-308, 7-13-309, 7-13-310, 7-13-311, 7-13-2501, 7-13-2502, 7-13-2503, 7-13-2504, 7-13-2505, 7-13-2506, 7-13-2507, 7-13-2508, 7-13-2509, 7-13-2510, 7-13-2521, 7-13-2527, 7-13-2528, 7-13-2529, 7-13-2541, $7-13-2542,\ 7-14-2701,\ 7-14-2702,\ 7-14-2703,\ 7-14-2704,\ 7-14-2705,\ 7-14-2706,$ 7-14-2721, 7-14-2731, 7-14-2732, 7-14-2733, 7-14-2734, 7-14-2735, 7-14-2736, 7-14-2737, 7-14-2738, 7-14-2739, 7-14-2740, 7-14-2741, 7-14-2742, 7-14-2743, 7-14-2744, 7-14-2745, 7-14-2746, 7-14-2751, 7-14-2752, 7-14-2753, 7-14-2754, $7-14-2755,\ 7-14-2756,\ 7-14-2757,\ 7-14-2758,\ 7-14-2759,\ 7-14-2760,\ 7-14-2761,$ $\begin{array}{c} 7\text{-}14\text{-}2762, \ 7\text{-}14\text{-}2763, \ 7\text{-}14\text{-}2901, \ 7\text{-}14\text{-}2902, \ 7\text{-}14\text{-}2903, \ 7\text{-}14\text{-}2907, \ 7\text{-}14\text{-}2908, \ 7\text{-}16\text{-}2201, \ 7\text{-}16\text{-}2202, \ 7\text{-}16\text{-}2203, \ 7\text{-}16\text{-}2205, \ 7\text{-}16\text{-}2211, \ 7\text{-}16\text{-}2212, \ 7\text{-}16\text{-}2213, \ 7\text{-}16\text{-}2212, \ 7\text{-}16\text{-}2212, \ 7\text{-}16\text{-}2213, \ 7\text{-}16\text{-}2212, \ 7\text{-}1$ 7-16-2214, 7-16-2215, 7-16-2216, 7-16-2217, 7-16-2218, 7-16-2219, 7-16-2401, 7-16-2402, 7-16-2403, 7-16-2411, 7-16-2412, 7-16-2413, 7-16-2421, 7-16-2422, 7-16-2423, 7-16-2431, 7-16-2433, 7-16-2441, 7-16-2442, 7-16-2443, 7-21-3401, 7-21-3406, 7-21-3407, 7-21-3408, 7-21-3409, 7-21-3410, 7-21-3412, 7-21-3413, $7-21-3421,\ 7-21-3422,\ 7-21-3423,\ 7-21-3424,\ 7-21-3425,\ 7-21-3426,\ 7-21-3427,$ 7-21-3457, 7-21-3458, 7-22-2207, 7-22-2208, 7-22-2209, 7-22-2210, 7-22-2211, 7-22-2212, 7-22-2213, 7-22-2214, 7-22-2215, 7-22-2216, 7-22-2221, 7-22-2222, 7-22-2223, 7-22-2224, 7-22-2225, 7-22-2226, 7-22-2231, 7-22-2232, 7-22-2233, $7-22-2401,\ 7-22-2402,\ 7-22-2403,\ 7-22-2405,\ 7-22-2408,\ 7-22-2409,\ 7-22-2410,$ 7-22-2411, 7-22-2415, 7-22-2416, 7-22-2417, 7-22-2418, 7-22-2419, 7-22-2420, 7-22-2431, 7-22-2432, 7-22-2433, 7-22-2434, 7-22-2441, 7-22-2442, 7-22-2443, $\begin{array}{l} 7\text{-}22\text{-}2444,\ 7\text{-}22\text{-}2445,\ 7\text{-}22\text{-}2446,\ 7\text{-}22\text{-}2447,\ 7\text{-}22\text{-}2448,\ 7\text{-}35\text{-}101,\ 7\text{-}35\text{-}102,\ 7\text{-}35\text{-}2101,\ 7\text{-}35\text{-}2102,\ 7\text{-}35\text{-}2103,\ 7\text{-}35\text{-}2104,\ 7\text{-}35\text{-}2105,\ 7\text{-}35\text{-}2106,\ 7\text{-}35\text{-}2107,\ 7\text{-}35\text{-}2108,\ 7\text{-}35\text{-}2109,\ 7\text{-}35\text{-}2110,\ 7\text{-}35\text{-}2111,\ 7\text{-}35\text{-}2112,\ 7\text{-}35\text{-}2112,\ 7\text{-}35\text{-}2113,\ 7\text{-}35\text{-}2114,\ 7\text{-}35\text{-}2116,\ 7\text{-}35\text{-}2121,\ 7\text{-}35\text{-}2122,\ 7\text{-}35\text{-}2123,\ 7\text{-}35\text{-}2124,\ 7\text{-}35\text{-}2125,\ 7\text{-}35\text{-}2201,\ 7\text{-}35\text{-}2202,\ 7\text{-}35\text{-}4101,\ 7\text{-}35\text{-}4103,\ 7\text{-}35\text{-}4105,\ 7\text{-}35\text{-}4106,\ 7\text{-}35\text{-}4107,\ 7\text{-}35\text{-}4108,\ and\ 7\text{-}35\text{-}4109,\ MCA,\ are\ repealed.}\end{array}$

Section 40. Codification instruction. [Sections 1 through 20] are intended to be codified as an integral part of Title 7, and the provisions of Title 7 apply to [sections 1 through 20].

Section 41. Codification instruction. [Section 21] is intended to be codified as an integral part of Title 22, chapter 1, part 7, and the provisions of Title 22, chapter 1, part 7, apply to [section 21].

Section 42. Saving clause. [Sections 1 through 20] do not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before July 1, 2009.

Section 43. Transition. (1) Subject to subsection (2), a special district in existence on [the effective date of this act] must comply with the provisions of [sections 1 through 20] upon alteration of its boundaries or a change in its amount or method of assessment. If dissolution is proposed for a special district in existence on [the effective date of this act], the proposal is subject to the provisions of [section 20].

(2) A special district in existence on [the effective date of this act] is required to comply with the provisions of [section 10] only upon alteration of its boundaries.

Section 44. Effective date. [This act] is effective July 1, 2009.

Approved April 17, 2009

CHAPTER NO. 287

[SB 58]

AN ACT GENERALLY REVISING THE LAWS RELATING TO LOCAL GOVERNMENTS; ALLOWING CONTRACTING WITH PRIVATE INSTITUTIONS FOR THE SALE OF BONDS RELATED TO RURAL IMPROVEMENT DISTRICTS AND SPECIAL IMPROVEMENT DISTRICTS; AMENDING SECTIONS 7-12-2172 AND 7-12-4204, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2172, MCA, is amended to read:

"7-12-2172. Procedure to issue bonds and warrants. (1) *Subject to subsection (2), the* The board of county commissioners shall sell bonds or warrants issued under the provisions of 7-12-2169 and 7-12-2171 through 7-12-2174, in an amount sufficient to pay that part of the total cost and expense of the improvements which that is to be assessed against the benefited property within the district, to the highest and best bidder for cash, at a price, including interest to date of delivery, not less than that prescribed by the board in the resolution calling for the sale of the bonds or warrants. The board may fix the minimum price for the bonds or warrants in an amount less than the face value of the bonds or warrants if it determines that the sale is in the best interests of the district and the county.

- (2) (a) Subject to subsection (2)(b), the The bonds or warrants may be sold at a private negotiated sale to the United States or the state of Montana, or to an agency, instrumentality, corporation, or department thereof of the state.
- (b) Bonds in amounts up to \$1 million may be sold through private negotiated sale to a financial institution referred to in 32-1-102 that is authorized to conduct business in the state of Montana.
- (3) In all other cases, the provisions of 7-7-4251, 7-7-4252, and 7-7-4254 which that relate to the notice of sale, publication of notice, and manner and method of selling bonds by cities and towns, insofar as they are applicable and not in conflict with the provisions of this section and 7-12-2173 and this section, shall apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling bonds or warrants."

Section 2. Section 7-12-4204, MCA, is amended to read:

- **"7-12-4204.** Procedure to issue bonds and warrants. (1) Subject to subsection (2), the The city or town council shall sell bonds or warrants issued under the provisions of 7-12-4201, in an amount sufficient to pay that part of the total cost and expense of the improvements that is to be assessed against benefited property within the district, to the highest and best bidder for cash at a price, including interest to date of delivery, not less than that prescribed by the city council in the resolution calling for the sale of the bonds or warrants. The city council may fix the minimum price for the bonds or warrants in an amount less than face value if it determines that the sale is in the best interests of the district and the city.
- (2) (a) Subject to subsection (2)(b), the The bonds or warrants may be sold at a private negotiated sale to the United States or the state of Montana or to an agency, instrumentality, corporation, or department of the state.
- (b) Bonds in amounts up to \$1 million may be sold through private negotiated sale to a financial institution referred to in 32-1-102 that is authorized to conduct business in the state of Montana.
- (3) In all other cases, the provisions of 7-7-4251, 7-7-4252, and 7-7-4254 with regard to the notice of sale, publication of notice, and manner and method of selling bonds by cities and towns, insofar as the same are applicable and not in conflict with the provisions of this section and 7-12-4205 and this section, apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling the bonds or warrants."

Section 3. Effective date. [This act] is effective July 1, 2009.

Approved April 17, 2009

CHAPTER NO. 288

[SB 62]

AN ACT CLARIFYING THE FUNDING FOR THE ENVIRONMENTAL CONTINGENCY ACCOUNT; AMENDING SECTION 15-38-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-38-202, MCA, is amended to read:

"15-38-202. Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund must be invested at the discretion of the board of

investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches \$100 million. After the fund balance reaches \$100 million, all net earnings, excluding unrealized gains and losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than \$100 million

- (2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:
- (i) \$3.5 million to be deposited in the natural resources projects state special revenue account, established in 15-38-302, for the purpose of making grants;
- (ii) \$300,000 to be deposited in the ground water assessment account established in 85-2-905;
- (iii) \$500,000 to the department of fish, wildlife, and parks for the purposes of 87-1-283. The future fisheries review panel shall approve and fund qualified mineral reclamation projects before other types of qualified projects.
- (iv) \$175,000 to be deposited in the environmental contingency account established in 75-1-1101.
- (b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:
- (i) an amount not to exceed \$50,000 to be deposited in the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and
- (ii) \$500,000 to be deposited in the water storage state special revenue account created by 85-1-631-; and
- (iii) \$175,000 to be deposited in the environmental contingency account established in 75-1-1101.
 - (c) The remainder of the interest income is allocated as follows:
- (i) Sixty-five percent of the interest income of the resource indemnity trust fund must be allocated to the natural resources operations state special revenue account established in 15-38-301.
- (ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.
- (iii) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.
- (3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

Section 2. Effective date. [This act] is effective on passage and approval. Approved April 17, 2009

CHAPTER NO. 289

[SB 113]

AN ACT ESTABLISHING A PILOT PROGRAM FOR MECHANIZED EQUIPMENT FUELS REDUCTION ON STATE LANDS WITHIN THE WILDLAND-URBAN INTERFACE AND FOR FIRE SUPPRESSION PURPOSES; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO REPORT TO THE LEGISLATURE; PROVIDING RULEMAKING AUTHORITY; CREATING A MECHANIZED EQUIPMENT FUELS REDUCTION PILOT PROGRAM ACCOUNT; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Authorization of pilot program for mechanized fuels reduction and fire suppression — reporting requirement — rulemaking. (1) The department of natural resources and conservation shall

establish and implement a private contracting mechanized equipment fuels reduction pilot program on state land within the wildland-urban interface as defined in 76-13-102.

- (2) The purpose of the pilot program is to evaluate the feasibility of using privately contracted mechanized equipment for fuel reduction and fire suppression purposes.
 - (3) The department shall:
- (a) design the private contracting mechanized equipment fuels reduction pilot program to:
- (i) cost-effectively reduce fuel loads on state land within the wildland-urban interface;
- (ii) improve the overall health, productivity, and long-term revenue potential for the timber stand;
- (iii) limit visual impacts, minimize soil disturbance, and promote habitat improvement in a manner that conforms with best forestry practices;
 - (iv) be consistent with the state forest land management plan; and
 - (v) comply with all applicable state laws and rules; and
- (b) provide a report to the 62nd legislature as provided in 5-11-210, evaluating the effectiveness of the pilot program.
 - (4) The department may adopt rules to implement this section.
- (5) (a) Unless included in a specific general fund appropriation from the legislature, general fund money may not be used for the pilot program for mechanized equipment fuels reduction and fire suppression provided for in this section. This restriction does not preclude the use of a specific federal appropriation, transfer, gift, donation, grant, legacy, bequest, or devise made for the purposes of this section.
- (b) Money provided pursuant to subsection (5)(a) must be deposited in the appropriate mechanized equipment fuels reduction pilot program account established in [section 2].
- Section 2. Mechanized equipment fuels reduction pilot program accounts. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the mechanized equipment fuels reduction pilot program account.

- (2) There must be deposited in the account:
- (a) money received from legislative allocations;
- (b) a transfer of money from a state or local agency for the purposes of [section 1]; and
- (c) a gift, donation, grant, legacy, bequest, or devise made for the purposes of [section 1].
- (3) There is an account in the federal special revenue fund established by 17-2-102 to be known as the mechanized equipment fuels reduction pilot program account. There must be deposited in the account money received from the federal government for the purpose of administering [section 1].
- (4) Funds in either account created in this section may be used by the department of natural resources and conservation only to establish, administer, and implement the mechanized equipment fuels reduction pilot program provided for in [section 1].
- **Section 3. Coordination instruction.** If both House Bill No. 140 and [this act] are passed and approved, then the reference in [this act] to "mechanized equipment fuels reduction pilot program account" in [section 1(5)(b)] must be changed to "forest health account".
- **Section 4. Coordination instruction.** If both House Bill No. 140 and [this act] are passed and approved, then [section 2] of House Bill No. 140 and [section 2 of this act] are void and [section 2] must read as follows:

<u>NEW SECTION.</u> Section 2. Forest health accounts. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the forest health account. There must be deposited in the account:

- (a) money received from legislative allocations;
- (b) a transfer of money from a state or local agency for the purposes of [section 1] or 77-5-216; and
- (c) a gift, donation, grant, legacy, bequest, or devise made for the purposes of [section 1] or 77-5-216.
- (2) There is an account in the federal special revenue fund established by 17-2-102 to be known as the forest health account. There must be deposited in the account money received from the federal government for the purpose of administering [section 1] or 77-5-216.
- (3) Funds in either account created in this section must be used by the department of natural resources and conservation for the purposes of [section 1] or 77-5-216.

Section 5. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 76, chapter 13, and the provisions of Title 76, chapter 13, apply to [sections 1 and 2].

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Termination. [This act] terminates December 31, 2012.

Approved April 17, 2009

CHAPTER NO. 290

[SB 126]

AN ACT PROVIDING FOR A PERMANENT TRANSPORTATION PERMIT FOR RODEO BULLS; ESTABLISHING CONDITIONS FOR ISSUANCE OF THE PERMIT; PROVIDING THAT THE PERMIT IS VALID FOR THE LIFE OF THE BULL OR UNTIL THE BULL CHANGES OWNERSHIP; REQUIRING RECOGNITION BY THE STATE OF VALID PERMANENT TRANSPORTATION PERMITS ISSUED FOR RODEO BULLS IN OTHER JURISDICTIONS; AMENDING SECTIONS 81-3-203 AND 81-3-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-3-203, MCA, is amended to read:

- "81-3-203. Duties of state stock inspectors and deputy stock inspectors. (1) State stock inspectors and deputy state stock inspectors, upon the application of the owner or the duly authorized agent of the owner of livestock, shall inspect the livestock which that are is intended for sale, removal, shipment, or slaughter at a licensed slaughter plant and issue a certificate of inspection therefor for the livestock if it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to the possession thereof possess the livestock.
- (2) The inspection shall must include an examination of the livestock and all marks and brands thereon on the livestock to identify ownership of the livestock. The certificate of inspection shall must be made in triplicate and shall must specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock or of the applicant for inspection and the purchaser or transferee, if applicable, the class of the animal, the marks and brands, if any, upon on the animal, and any other information upon on the form of certificate as that the department may from time to time require. One copy of the certificate shall must be retained by the inspector, one copy shall must be furnished by the inspector to the owner or shipper of the livestock, and one copy shall must be filed by the inspector with the department within 5 days.
- (3) If it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to the possession thereof possess the livestock, the state stock inspectors or deputy state stock inspectors, upon application of an owner or his the owner's agent of the livestock to be consigned and delivered directly to a licensed livestock market or licensed livestock slaughterhouse located in another county of the state or delivered directly to a shipping point duly approved by the department where a livestock inspector is available for inspection in an adjoining county, shall issue to the person a separate market consignment permit or transportation permit for each owner when the owner or owners or their duly authorized agents sign the permit certifying the brands, description, and destination of the livestock. The market consignment permit or transportation permit shall must be made in triplicate, shall must specify the date and time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock and the name and address of the person actually transporting the livestock if different than from the owner, the kind of livestock, the marks and brands, if any, upon on the livestock, a description of the vehicle or vehicles to be used to transport the livestock, to include including the license number of the vehicles, and any other information upon on the form of permit as that the department

may from time to time require. Any permit so issued shall be is good for shipment within 36 hours from date and time of issue; however However, permits not used within this time limitation must be returned to the issuing officer to be canceled and to release the permittee from performance. One copy of the permit shall must be retained by the inspector, one copy shall must be filed by the inspector with the department within 5 days of the date of issue, and one copy shall must be furnished by the inspector to the owner or shipper of the livestock, which. The owner's or shipper's copy of the permit shall must accompany the shipment and be delivered to the state stock inspector at the livestock market or shipping point where the livestock is are delivered.

- (4) Upon application of an owner or his the owner's agent, when it appears with reasonable certainty that the applicant is the owner of the livestock or has lawful right to the possession thereof possess the livestock, a state stock inspector shall issue a transportation permit which that will allow the movement of the livestock into an adjoining county to land owned or controlled by the owner or his the owner's agent for purposes of grazing. The transportation permit shall must state the breed, description, marks and brands, if any, head count, and description of land to and from which the livestock will be moved. The permit is valid as provided in 81-3-211(6)(d)(e). A state stock inspector may enter the premises where livestock so moved have been transported and inspect any livestock moved under the transportation permit or any livestock commingled therewith with the livestock.
- (5) Any person transporting strays or livestock not lawfully under his that person's control is guilty of a misdemeanor and is punishable as provided in 81-3-231."

Section 2. Section 81-3-211, MCA, is amended to read:

"81-3-211. Inspection of livestock before change of ownership or removal from county — transportation permits. (1) For the purposes of this section:

- (a) "Family business entity" means:
- $(i) \ a \ corporation \ whose \ stock \ is \ owned \ solely \ by \ members \ of \ the \ same \ family;$
- (ii) a partnership in which the partners are all members of the same family;
- (iii) an association whose members are all members of the same family; or
- (iv) any other entity owned solely by members of the same family.
- (b) "Members of the same family" means a group whose membership is determined by including an individual, the individual's spouse, and the individual's parents, children, grandchildren, and the spouses of each.
- (c) "Rodeo producer" means a person who produces or furnishes livestock that is are used for rodeo purposes.
- (2) Except as otherwise provided in this part, it is unlawful to remove or cause to be removed from a county in this state any livestock or to transfer ownership by sale or otherwise or for an intended purchaser or a purchaser's agent to take possession of any livestock subject to title passing upon meeting or satisfaction of any conditions, unless the livestock have been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate of the inspection has been issued in connection with and for the purpose of the transportation or removal or of the change of ownership as provided in this part. The inspection must be made in daylight. However, the change of ownership inspection requirements of this subsection do not apply when the change of ownership transaction is accomplished without the livestock changing

premises, involves part of a herd to which livestock have not been added other than by natural increase or after brand inspection, and is between:

- (a) members of the same family;
- (b) a member of one family and the same family's business entity; or
- (c) the same family's business entities.
- (3) (a) It is unlawful to sell or offer for sale at a livestock market any livestock originating within any county in this state in which a livestock market is maintained or transported under a market consignment permit until the livestock has have been inspected for marks and brands by a state stock inspector, as provided in this part.
- (b) It is unlawful to slaughter livestock at a licensed livestock slaughterhouse unless the livestock has have been inspected for marks or brands by a state or deputy state stock inspector.
- (4) It is unlawful to remove or cause to be removed any livestock from the premises of a livestock market in this state unless the livestock has have been released by a state stock inspector and a certificate of release for the livestock has been issued in connection with and for the purpose of the removal from the premises of the livestock market. The release obtained pursuant to this subsection will permit permits the movement of the released livestock directly to the destination shown on the certificate.
- (5) The person in charge of livestock being removed from a county in this state, when inspection is required by this section, when a change of ownership has occurred, or when moved under a market consignment permit or a market release certificate, must have in the person's possession the certificate of inspection, market consignment permit, transportation permit, or market release certificate and shall exhibit the certificate to any sheriff, deputy sheriff, constable, highway patrol officer, state stock inspector, or deputy state stock inspector upon request. Section 81-3-204 must be extended to livestock transported or sold under the permits.
 - (6) The following transportation permits may be issued:
- (a) If a saddle, work, or show horse is being transported from county to county in this state by the owner for the owner's personal use or business or if cattle are being transported from county to county in this state by their owner for show purposes and there is no change of ownership, the inspection certificate required by this section may be endorsed, as to the purpose and extent of transportation, by the inspector issuing the certificate in order to serve as a travel permit in this state for a period not to exceed 1 year for the horse or cattle described in the certificate. The permit becomes void upon any transfer of ownership or if the horse or cattle are to be removed from the state. If the permit is void, an inspection must be secured for removal and the endorsed certificate must be surrendered.
- (b) The owner of a saddle, work, or show horse may apply for a permanent transportation permit valid for both interstate and intrastate transportation of the horse until there is a change of ownership. To obtain a permit, a The horse must have either a registered brand that has been legally cleared or a lip tattoo or the owner is required to present proof of ownership to a state stock inspector or a specially qualified deputy stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector or a specially qualified deputy stock inspector, together with a permit fee established by the department, for each horse. The application

must contain a thorough physical description of the horse and list all brands and tattoos carried by the horse. Upon approval of the application by a state stock inspector, a permanent transportation permit must be issued by the department to the owner for each horse, and the permit is valid for the life of the horse. If there is a change of in ownership in of a horse, the permit automatically is void. The permit must accompany the horse for which it was issued at all times while the horse is in transit. This permit is in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a saddle, work, or show horse subsequently entering the state. A permit is automatically void upon a change of ownership.

- (c) When livestock owned by and bearing the registered brand of a bona fide rodeo producer are being transported from county to county in this state by the owner for rodeo purposes and there is no change of ownership, the inspection certificate required by this section may be endorsed, as to the purpose and extent of transportation, by the inspector issuing the certificate in order to serve as a travel permit in this state for the livestock described in the certificate. The certificate is effective for the calendar year for which it is issued. The certificate must be issued by a state stock inspector.
- (d) The owner of a bull bearing the registered brand of a bona fide rodeo producer may apply for a permanent transportation permit valid for both interstate and intrastate transportation of the bull until there is a change of ownership. The bull must have a registered brand that has been legally cleared and a legible number brand on the shoulder or hip used for individual identification, or the owner is required to present proof of ownership to a state stock inspector or a specially qualified deputy stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector or a specially qualified deputy stock inspector, together with a permit fee established by the department, for each bull. The application must contain a thorough physical description of the bull and list all brands and tattoos carried by the bull. Upon approval of the application by a state stock inspector, a permanent transportation permit must be issued by the department to the owner for each bull, and the permit is valid for the life of the bull. If there is a change in ownership of a bull, the permit automatically is void. The permit must accompany the bull for which it was issued at all times while the bull is in transit. This permit is in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a rodeo bull subsequently entering the state. A permit is automatically void upon a change of ownership.
- (d)(e) An owner of livestock or the owner's agent may be issued one transportation permit in a 12-month period allowing the movement of the livestock into an adjoining county and return when the livestock are being moved for grazing purposes and when they are being moved to and from land owned or controlled by the owner of the livestock or the owner's agent. The permit is valid for a period of 8 months from the date of issuance and must be issued by a state stock inspector. The permit may be issued only if the livestock are branded with the permittee's brand, which must be registered in Montana. The department shall establish a fee for the permit, to be paid to the state stock inspector at the time the permit is issued and remitted by the inspector to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department. This permit may be used in lieu of

the inspection and certificate required by this section for movement of livestock across a county line.

(7) Before any removal or change of ownership may take place, the seller of livestock shall required inspections and shall pay the required fees."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2009

CHAPTER NO. 291

[SB 148]

AN ACT GENERALLY REVISING AND CLARIFYING LAWS RELATED TO LOCAL GOVERNMENTS; RECOGNIZING ALTERNATIVE FORMS OF COUNTY GOVERNMENT; REVISING SPECIFIC DOLLAR AMOUNTS IN STATUTES; ELIMINATING ARCHAIC STATUTES; AMENDING SECTIONS 7-3-4465, 7-4-2101, 7-4-2102, 7-4-2104, 7-4-2105, 7-4-2108, 7-4-2111, 7-4-2312, 7-4-2503, 7-4-2504, 7-4-2525, 7-4-2715, 7-5-2129, 7-6-201, 7-6-4413, 7-8-2215, 7-14-2712, 7-21-2116, 7-21-2303, 7-21-2305, 7-21-2306, 7-21-2308, 7-21-2404, 7-21-2407, 7-21-2408, 7-21-2409, 7-21-2410, 7-21-2503, 7-21-2507, 7-21-3101, 7-21-3105, 7-21-3107, 7-21-3212, 7-33-2314, 81-4-505, AND 81-4-509, MCA; AND REPEALING SECTIONS 7-4-4202, 7-14-2713, 7-21-3202, 7-21-3213, 7-31-4102, AND 30-13-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-3-4465, MCA, is amended to read:

- **"7-3-4465. Police department.** (1) The chief of police has exclusive control of the stationing and transfer of all patrol officers and other officers and employees constituting the police force, under rules that the director of public safety may prescribe. The police force must be composed of a chief of police and officers, patrol officers, and other employees that the city manager may determine. In *the* case of a riot, in *the* event of an emergency, or at *the* time of elections or similar occasions, the director of public safety may appoint additional patrol officers and officers for temporary service who need not be in the classified service.
- (2) A person may not act as a special detective or special police officer for any purpose whatsoever except upon the written authority of the director of public safety. The written authority must may be exercised only under the direction and control of the chief of police and for a specified time.
- (3) Section 7-4-4202(1) and (4), parts 2 and 41 of *Title 7*, chapter 32, parts 2 and 41, and *Title 19*, chapters 9 and 19, of *Title 19* are in all respects applicable to and govern the police departments of all cities and towns under the commission-manager form of government provided for in this part."
 - Section 2. Section 7-4-2101, MCA, is amended to read:
- **"7-4-2101. Composition of board of county commissioners.** Each county may have a board of county commissioners consisting of three members or any other number provided for under any of the forms of government allowed under Title 7, chapter 3."

Section 3. Section 7-4-2102, MCA, is amended to read:

"7-4-2102. Division of county into commissioner districts. (1) In every *each* county of the state, following each federal decennial census, the board of county commissioners shall divide their respective counties into three *as many*

commissioner districts as there are county commissioners; and ensure that the districts are as compact and equal in population and area as possible. Such The apportionment may take place at any time for the purpose of equalizing in population and area such the commissioner districts. However, no a commissioner district shall may not at any time be changed to affect the term of office of any county commissioner who has been elected. No A change in the boundaries of any commissioner district shall must be made within 6 months next preceding a primary election.

- (2) The district judge or judges of the county shall review the action of the commissioners to determine whether or not such the action meets the requirements of this section.
- (3) Sections 7-4-2102 through 7-4-2104 shall not apply to counties adopting an optional or alternative form of government authorized by law."
 - Section 4. Section 7-4-2104, MCA, is amended to read:
- "7-4-2104. Commissioners to be elected by district. (1) At each general election, the member or members of the board of county commissioners to be elected must be selected from the residents and electors of the district or districts in which the vacancy occurs, but the election of the member or members of the board must be submitted to the entire electorate of the county *unless otherwise provided for under*:
- (a) a plan of government provided for in a county adopting an optional or alternative form of government; or
 - (b) a court order.
- (2) A person may not be elected as a member of a board of county commissioners unless the person has resided in the county and the district for at least 2 years preceding the general election."
 - Section 5. Section 7-4-2105, MCA, is amended to read:
- **"7-4-2105. Term of office.** (1) The term of office of county commissioners is 6 years *unless otherwise provided for under a plan of government provided for in a county adopting an optional or alternative form of government*. A county commissioner takes office at 12:01 a.m. on January 1 succeeding the date of the election at which the county commissioner was elected.
- (2) A county commissioner elected to take office shall take the oath of office on or before the last business day of December following the commissioner's election, except as provided for in 7-4-2106."
 - **Section 6.** Section 7-4-2108, MCA, is amended to read:
- "7-4-2108. Mileage allowance for county commissioners expenses. (1) In addition to the salary provided by 7-4-2107(1), each member of the board of county commissioners in counties of the first, second, third, and fourth class shall must receive a mileage allowance as provided in 2-18-503 for the distance necessarily traveled in going to and returning from the county seat and the commissioner's place of residence each day that the trip is actually made and while engaged in the performance of official duties.
- (2) Each member of the board in all other counties is entitled to a mileage allowance as provided in 2-18-503 for the distance necessarily traveled in going to and returning from the county seat and the commissioner's place of residence each day that the trip is actually made to perform official duties. Any A county commissioner whose place of residence is 50 miles or more from the county seat, as measured by the usual route of travel, and who elects to remain more than

one day in the county seat to attend sessions of the board or perform official duties is entitled to receive, in addition to mileage for one round trip between the commissioner's place of residence and the county seat, \$18 the rate for lodging established in Title 2, chapter 18, part 5, or the amount calculated in this section for mileage, whichever is less, per day as expenses for each day's attendance on sessions of the board while engaged in the performance of official duties.

- (3) All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.
- (4) When other than commercial, nonreceiptable lodging facilities are utilized by a county commissioner, the amount of \$7 rate for noncommercial, nonreceiptable lodging established in Title 2, chapter 18, part 5, is authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in this section. However, when overnight accommodations are provided at the expense of any government entity, reimbursement may not be claimed for lodging.
- (5) This section does not apply to counties that have adopted a charter form of government."

Section 7. Section 7-4-2111, MCA, is amended to read:

"7-4-2111. Indemnity insurance for county officers. The board of county commissioners may pay a proper charge to any insurance company authorized to do business in this state *or to a self-insurance pool insuring counties as authorized by 2-9-211* for effecting insurance providing indemnity for or protection to any county officer against liability for the loss, without fault, connivance, or neglect on the officer's part, of money, securities, or other property for which the officer is accountable to the county."

Section 8. Section 7-4-2312, MCA, is amended to read:

- "7-4-2312. Salary and bond of officer following consolidation. (1) (a) When two or more offices are consolidated under a single officer, the officer shall must receive a salary determined by the board or boards of county commissioners. However, the salary may not be more than 20% higher than the highest salary provided by law to be paid to any officer whose duties the officer is required to perform by reason of the consolidations.
- (b) The board or boards shall, in June of each fourth year conjunction with setting elected officials' salaries as provided in 7-4-2503, annually adopt a resolution fixing the percentage adjustment of the salary of the officer holding the consolidated office for the term beginning with the first Monday in January immediately following the adoption of the resolution.
- (2) The officer shall give a bond in an amount equal to the highest bond required by law of any officer whose duties the officer is required to perform by reason of the consolidation of offices."

Section 9. Section 7-4-2503, MCA, is amended to read:

"7-4-2503. Salary schedule for certain county officers — county compensation board. (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, justice of the peace, county coroner, and county auditor in all counties where in which the office is authorized must be established by the county governing body based upon the recommendations of the county compensation board provided for in subsection (4).

- (b) Except as provided in subsection (2), the annual salary established pursuant to subsection (1)(a) must be uniform for all county officers referred to in subsection (1)(a).
- (2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of \$400 a year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to \$2,000 a year.
- (b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of \$2,000 a year.
- (c) The county sheriff must receive a longevity payment amounting to 1% of the salary determined under subsection (1) for each year of service with the sheriff's office, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.
- (d) If the clerk and recorder is also the county election administrator, the clerk and recorder may receive, in addition to the base salary provided in subsection (1)(a), up to \$2,000 a year. The additional salary provided for in this subsection (2)(d) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.
- (e) The county treasurer may receive, in addition to the base salary provided in subsection (1)(a), up to \$2,000 a year. The additional salary provided for in this subsection (2)(e) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.
- (f) The county coroner may be a part-time position, and the salary may be set accordingly.
- (3) (a) Subject to subsection (3)(b), the salary for the county attorney must be set as provided in subsection (4).
- (b) If the uniform base salary set for county officials pursuant to subsection (1) is increased, then the county attorney is entitled to at least the same increase unless the increase would cause the county attorney's salary to exceed the salary of a district court judge.
- (c) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of \$1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of \$1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of additional service up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of \$500.
- (ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase.
- (4) (a) There is a county compensation board consisting of the county commissioners, three of the county officials described in subsection (1) appointed by the board of county commissioners, the county attorney, and two to

four resident taxpayers appointed initially by the board of county commissioners to staggered terms of 3 years, with the initial appointments of one or two taxpayer members for a 2-year term and one or two taxpayer members for a 3-year term. The county compensation board shall hold hearings annually for the purpose of reviewing the compensation paid to county officers. The county compensation board may consider the compensation paid to comparable officials in other Montana counties, other states, state government, federal government, and private enterprise.

- (b) The county compensation board shall prepare a compensation schedule for the elected county officials, including the county attorney, for the succeeding fiscal year. The schedule must take into consideration county variations, including population, the number of residents living in unincorporated areas, assessed valuation, motor vehicle registrations, building permits, and other factors considered necessary to reflect the variations in the workloads and responsibilities of county officials as well as the tax resources of the county.
- (c) A recommended compensation schedule requires a majority vote of the county compensation board, and at least two county commissioners must be included in the majority. A recommended compensation schedule may not reduce the salary of a county officer that was in effect on May 1, 2001.
- (d) The provisions of this subsection (4) do not apply to a county that has adopted a charter form of government or to a charter, consolidated city-county government."

Section 10. Section 7-4-2504, MCA, is amended to read:

"7-4-2504. Salaries to be fixed by resolution — cost-of-living increments. The county governing body shall by resolution on or before August 1 of each year adjust and uniformly fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, clerk of district court, county auditor (if there is one), justice of the peace, *county coroner*, and county surveyor (if the surveyor receives a salary) by adding to the annual salary provided for in 7-4-2503(1) a cost-of-living increment based upon the schedule developed and approved by the county compensation board provided for in 7-4-2503(4)."

Section 11. Section 7-4-2525, MCA, is amended to read:

- **"7-4-2525. Fees of sheriff to be fixed by resolution.** (1) The county governing body may annually, by resolution *pursuant to 7-6-4013*, fix the fees of the sheriff for services provided in 7-32-2141 *and for other services*.
- (2) Fees set under subsection (1) for services provided under 7-32-2141 must be based upon the prevailing rate charged by private process servers in the county for similar services.
- (3) Fees collected under this section must be paid and credited as provided in 7-32-2141."

Section 12. Section 7-4-2715, MCA, is amended to read:

- "7-4-2715. Records and reports. The county attorney shall:
- (1) keep a register of all official business, in which must be entered a note of every action, whether criminal or civil, prosecuted officially and of the proceedings in the action;
- (2)(1) deliver receipts for money or property received in an official capacity and file duplicates of the receipts with the county treasurer;

(3)(2) on the first Monday of January, April, July, and October in each year file with the county clerk an account, verified by oath, of all money received by the county attorney in an official capacity during the preceding 3 months and at the same time pay it over to the county treasurer."

Section 13. Section 7-5-2129, MCA, is amended to read:

- "7-5-2129. Certain records to be kept by board. The board of county commissioners must shall cause to be kept:
- (1) a "Minute Book" in which must be recorded all orders and decisions made by them and the daily proceedings had at all regular and special meetings;
- (2) a "Road Book" containing all proceedings and adjudications relating to the establishment, maintenance, change, and discontinuance of roads and road districts or relating to road supervisors and their reports and accounts:
- (3) a "Franchise Book" containing all franchises granted by them, for what purpose, the length of time and to whom granted, and the amount of bond and license tax required;
- (4) a "Warrant Book" in which must be entered, in the order of drawing, all warrants drawn on the treasury, with their number and reference to the order on the minute book and with the date, amount, on what account, and name of payee."

Section 14. Section 7-6-201, MCA, is amended to read:

- **"7-6-201. Deposit of public funds in financial institutions.** (1) Except as provided in 7-6-202, 7-6-206, or 7-6-2701, it shall be *is* the duty of all county and city treasurers and town clerks to deposit all public money in their possession and under their control *only* in any solvent banks, building and loan associations, savings and loan associations, or credit unions located in the county, city, or town of which such treasurer is an officer, subject to national supervision or state examination as the local governing body may designate, and no other
- (2) Said *The* local governing body is hereby authorized to may deposit such public money not necessary for immediate use by such the county, city, or town in a savings or time deposit with any bank, building and loan association, savings and loan association, or credit union authorized above in subsection (1) or in a repurchase agreement as authorized in 7-6-213.
- (3) The treasurer or town clerk shall take from such the bank, building and loan association, savings and loan association, or credit union such security as that the local governing body may prescribe, approve, and deem consider fully sufficient and necessary to insure ensure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits.
- (4) All such deposits shall must be subject to withdrawal by the treasurer or town clerk in such amounts as that may be necessary from time to time. No A deposit of funds shall may not be made or permitted to remain in any bank, building and loan association, savings and loan association, or credit union until the security for such deposits shall have the deposit has been first approved by the local governing body and delivered to the treasurer or town clerk."

Section 15. Section 7-6-4413, MCA, is amended to read:

"7-6-4413. Collection of taxes. (1) Except in the case of cities of the first, second, and third classes that provide by ordinance for the city treasurer to collect the taxes from the corrected property tax record, the county treasurer of

each county shall collect the tax levied by all cities and towns in the respective county.

(2) The county treasurer shall collect the city or town taxes, including unpaid road poll taxes, at the same time as the state and county taxes and with the same penalties and interest in case of delinquency."

Section 16. Section 7-8-2215, MCA, is amended to read:

- "7-8-2215. Procedure to challenge appraised value. (1) Any A taxpayer who may believe that such the appraised value under 7-8-2214 is less than the actual value of the property may, at any time before the day fixed for the sale of such the property, file with the board of county commissioners written objections to such the appraised value.
- (2) When any such an objection is filed, it vacates the sale and the board must shall at once apply to the judge of the district court to have such the property reappraised.
- (3) (a) Upon such application, the district judge shall appoint for purpose of reappraisal three disinterested persons or a disinterested certified real estate appraiser. Such appraisers Each appraiser, when appointed by the district judge and after filing their the appraisal report with the county clerk and recorder, shall must be allowed \$5 per day for each day necessarily employed in making such appraisal and their necessary and actual expenses as determined by the judge.
- (b) The appraisal of the persons appointed under subsection (3)(a) must be made and filed with the county clerk and recorder. The new appraisal or reappraisal shall must be used in the next sale of such the property."

Section 17. Section 7-14-2712, MCA, is amended to read:

- "7-14-2712. Inspector of works compensation. (1) The committee and road superintendent together shall appoint a suitable and competent person other than the committee or the superintendent to act as an inspector of the work. The inspector must be present at the location of the work at all times during its progress and shall inspect the performance of the work. The inspector shall report to and be under the supervision of the superintendent.
- (2) The inspector must be paid at the rate of \$5 a day for the time actually engaged as inspector."

Section 18. Section 7-21-2116, MCA, is amended to read:

- **"7-21-2116. Enforcement of licensing requirements.** (1) The county treasurer must direct *shall bring* suit in the name of the state of Montana as plaintiff to be brought for the recovery of the license tax *or fee authorized by this part*, against any person required to take out a license who fails, neglects, or refuses to take out such the license or who carries on or attempts to carry on business without such the license. In such case, either Either the county treasurer or the county attorney must *shall* make the necessary affidavit for the writ of attachment, and such the writ of attachment may issue be issued without any bonds being given on behalf of the plaintiff.
- (2) In case of a recovery by the plaintiff, \$15 damages must be added to the judgment and costs to be collected from the defendant."

Section 19. Section 7-21-2303, MCA, is amended to read:

"7-21-2303. License required to do business as itinerant vendor — fee. For the purpose of defraying the expenses of regulation under this part, every *an* itinerant vendor desiring to do business in any county of this state

shall, before commencing business, pay to the county treasurer of the county the sum of \$15 \$25 for a license to conduct the itinerant business for a period of 90 days from the date the license is issued."

Section 20. Section 7-21-2305, MCA, is amended to read:

- **"7-21-2305. Application for itinerant vendor license.** (1) An itinerant vendor desiring to do business in any county of this state shall, before commencing business, file with the county treasurer of the county, on a form to be provided by the treasurer, an application in writing, subscribed and sworn to by the applicant before an officer in this state authorized to take oaths.
 - (2) The application must set forth:
 - (a) the name of the applicant;
 - (b) the applicant's place of permanent residence;
 - (c) the applicant's local headquarters, if any;
 - (d) the time of the applicant's arrival in the county;
 - (e) the county from which the last license, if any, was received;
 - (f) whether the applicant is acting as principal, agent, or employee;
- (g) if acting as agent or employee, the name and place of business of the principal or employer;
- (h) a brief descriptive list of articles to be offered for sale or services to be performed *along with a statement of total value of anticipated sales*; and
- (i) whether payments or deposits of money are collected when orders are taken or in advance of final delivery.
- (3) If the applicant is acting as an agent, the principal's acknowledgment of the agency must accompany the application as part of the application.
- (4) At the time of filing the application, the itinerant vendor shall accompany the application with the sum specified in 7-21-2303 as a license fee."

Section 21. Section 7-21-2306, MCA, is amended to read:

- **"7-21-2306.** Bond required if deposit taken on orders for future delivery. (1) An application made by an itinerant vendor taking orders for future delivery and collecting advance payments, deposits, or guarantees on the orders under the terms of 7-21-2301 through 7-21-2305 must be accompanied by a bond in the sum of \$250 equal to 125% of the value stated in the vendor's application, as provided in 7-21-2305, and must be payable to the county treasurer.
- (2) (a) The bond must be executed by a surety company licensed to do business in this state or by two responsible freeholders residing in the county and whose names appear upon the assessment roll of the county.
- (b) In lieu of a bond meeting the requirements of subsection (2)(a), the application may be accompanied by a cash bond, *irrevocable letter of credit, or other acceptable form of security* of *an* equal amount.
- (3) The bond *or security* must be approved by the county treasurer and conditioned upon making of final delivery of the goods ordered or the services to be rendered in accordance with the terms of the order or, failing delivery, that the money advanced by the customers will be refunded.
- (4) The bond *or security* must remain in full force and effect for a period of 6 months after the expiration of a license and must be held to ensure only business

transacted under the authority of the license issued pursuant to the application that the bond accompanied."

Section 22. Section 7-21-2308, MCA, is amended to read:

- **"7-21-2308. Processing of application**—issuance of license. (1) Upon filing of the application prescribed in 7-21-2305 or the filing of the application and the bond *or security* prescribed in 7-21-2306, in proper form, and upon the payment to the county treasurer of the sum required by 7-21-2303, the county treasurer shall issue and deliver to the applicant a license to carry on the business described in the application in the county in which the license is issued for a period of 90 days from the date of the license.
- (2) The county treasurer shall endorse upon each application the date of issuance of the license and shall immediately file the application with the county clerk and recorder of that county. The county clerk and recorder shall file the application in the clerk's office and keep an appropriate index of the applications that shows the date filed, the name of the applicant, and an appropriate reference to the file number by which the application may be found."

Section 23. Section 7-21-2404, MCA, is amended to read:

"7-21-2404. License required to do business as transient retail merchant — fee. The amount to be paid for the license to conduct the business of a For the purpose of defraying the expenses of regulation under this part, a transient retail merchant desiring to do business in any county of this state shall, be before commencing business, pay in advance the sum of \$5 \$25 for each week or fraction thereof of a week, to be paid in advance to the county treasurer of the county in which such the business is conducted."

Section 24. Section 7-21-2407, MCA, is amended to read:

- **"7-21-2407. Bond** *or security* in lieu of license fee. (1) In lieu of the license fee prescribed in 7-21-2404, every transient retail merchant who files with the application required in 7-21-2406 an affidavit indicating bona fide intention to become a permanent merchant and continue in business for a period longer than 1 year shall, upon filing and approval of the bond *or security* provided for in this section, receive from the county treasurer a license permitting the conduct of such the business for a period of 1 year.
- (2) Such The bond shall must be a surety bond in the sum of \$1,000 to said the county treasurer.
- (3) (a) The bond shall *must* be executed by a surety company licensed to do business in this state or by two responsible freeholders residing in the county and whose names appear upon the assessment roll of said county.
- (b) In lieu of a bond meeting the requirements of subsection (3)(a), the bond or security may be a cash bond, *irrevocable letter of credit*, or other acceptable form of security of an equal amount.
- (4) The bond shall or security must be approved by said the county treasurer and conditioned upon the performance of the intention to become a permanent merchant and continue in business for a period longer than 1 year and to insure ensure the payment of license fees for the period such the business is actually conducted if the business is not in fact a bona fide permanent business. The bond shall or security must be further conditioned upon the delivery of goods ordered or sold in accordance with the terms of such the order or sale.
- (5) Such *The* bond shall or security must remain in full force and effect for a period of 6 months after the expiration of the 1-year period."

Section 25. Section 7-21-2408, MCA, is amended to read:

"7-21-2408. Right of aggrieved purchaser. A person aggrieved by any action or misrepresentation of a transient retail merchant has a right of action on the bond *or security* provided for in 7-21-2407 for the recovery of money advanced or damages and costs."

Section 26. Section 7-21-2409, MCA, is amended to read:

- "7-21-2409. Processing of application issuance of license. (1) (a) Upon filing of the application prescribed in 7-21-2406 and the payment of the fee prescribed in 7-21-2404, the county treasurer shall issue and deliver to the applicant, in the county, a license to carry on the business described in the application in the county in which the license is issued for the period for which the license is requested.
- (b) Upon filing of the application prescribed in 7-21-2406 and the bond or security prescribed in 7-21-2407, the county treasurer shall issue and deliver to the applicant a license to carry on the business described in the application in the county in which the license is issued for a period of 1 year from the date of the license
- (2) The county treasurer shall endorse upon each application the date of issuance of the license and the duration of the license and shall immediately file the application with the county clerk and recorder of the county. The county clerk and recorder shall file the application in the clerk's office and keep an appropriate index of the applications that shows the date filed, the name of the applicant, and an appropriate reference to the file number by which the application may be found."

Section 27. Section 7-21-2410, MCA, is amended to read:

- **"7-21-2410.** License to be displayed in place of business. (1) A transient retail merchant doing business under the provisions of this part shall at all times keep the license conspicuously posted in the place of business.
- (2) A transient retail merchant who fails to post and keep posted the license as provided in subsection (1) is guilty of a misdemeanor and *upon conviction* shall be fined not less than \$10 \$100 or more than \$25 \$500 for each offense."

Section 28. Section 7-21-2503, MCA, is amended to read:

"7-21-2503. License required to do business as huckster — fee. Every A huckster desiring to do business in any county of this state $\frac{\text{must}}{\text{shall}}$, before commencing such business, pay to the county treasurer of such the county the sum of \$15 \$25 for a license to conduct such the business for a period of 6 months from the date such the license is issued."

Section 29. Section 7-21-2507, MCA, is amended to read:

- **"7-21-2507. License to be displayed upon demand.** (1) A huckster doing business under the provisions of this part shall, upon demand of any interested person, exhibit the huckster's license and permit the the license to be read at that time by the person making the demand.
- (2) A huckster who refuses or fails to exhibit the license as provided in subsection (1) is guilty of a misdemeanor and *upon conviction* shall be fined not less than $\$10 \ \100 or more than $\$25 \ \500 ."

Section 30. Section 7-21-3101, MCA, is amended to read:

"7-21-3101. Establishment of public scales. When petitioned by 25 or more residents and freeholders resident landowners of the county, the board of county commissioners of any county is hereby authorized in its discretion to may

establish and locate public scales at any suitable location selected by the county commissioners within the county."

Section 31. Section 7-21-3105, MCA, is amended to read:

"7-21-3105. Bond of public weigher. A public weigher appointed pursuant to 7-21-3104 *who is not a county employee* shall give a bond to the county in the sum of \$500, conditioned for the safekeeping of the public scales and for the faithful and impartial discharge of the duties incident to the weigher's trust in office."

Section 32. Section 7-21-3107, MCA, is amended to read:

- "7-21-3107. Fee for weighing. (1) A public weigher who is not a county employee may not receive more than 10 cents \$10 for each receipt issued.
- (2) A county that operates a public scale, after a public hearing and after providing notice of the hearing under 7-1-2121, may adopt a fee schedule for weighing."

Section 33. Section 7-21-3212, MCA, is amended to read:

- **"7-21-3212. Compensation of stock inspector.** (1) Whenever a stock inspector is employed, the inspector's compensation must be at a rate not to exceed the sum of \$7.50 a day commensurate with the rate paid to an entry level deputy sheriff of the county, and including necessary expenses for the time actually engaged in the work, and the inspector must be paid by a warrant on the general fund of the county.
- (2) Whenever a stock inspector is employed in the investigation of a crime and a reward has been offered under 7-32-2301 for the apprehension and conviction of the party or parties guilty of the crime, the inspector is not entitled to any part of the reward."

Section 34. Section 7-33-2314, MCA, is amended to read:

- "7-33-2314. Certain exemptions Military exemption for firefighters. The officers and members of regularly organized unpaid fire companies and exempt firefighters are entitled to the following privileges and exemptions:
- (1) exemption from payment of poll tax, road tax, and head tax of every description;
- (2) exemption from military duty except in case of war, invasion, or insurrection."

Section 35. Section 81-4-505, MCA, is amended to read:

- "81-4-505. Roundup foreman supervisor duties bond. (1) All roundups shall must be under the control and supervision of the board of county commissioners of the county in which the same shall be roundup is held. Roundup districts shall must be numbered in the order of their creation. Each roundup shall must be conducted by some a person designated or employed by the board of county commissioners, whose official designation shall must be "roundup foreman supervisor, roundup district, County, state of Montana".
- (2) Such person The roundup supervisor shall maintain his headquarters at the place designated by the board of county commissioners in its order as the headquarters of such the roundup. Such The roundup foreman shall have supervisor has the power to administer oaths and affirmations in all matters coming within the scope of his official duties.

(3) The If the roundup supervisor is not employed by the board of county commissioners, the board of county commissioners shall require from such the roundup foreman supervisor an official bond, in an amount not less than \$2,500 and not to exceed \$5,000, which bond shall that must be conditioned as official bonds of county officers and shall be is subject to all provisions of law applicable to such county officer bonds."

Section 36. Section 81-4-509, MCA, is amended to read:

"81-4-509. Proof of ownership — payment of taxes and penalties – decision of commissioners on claim. Any A person claiming any an abandoned horse or horses as provided in 81-4-508 shall, within 5 days after serving the notice provided for in 81-4-508, or within such a further time as that the board of county commissioners shall allow allows, upon good cause shown, submit to such the board proof of his ownership and shall deposit with said the board the amount of any unpaid taxes and penalties which that may be assessed against such the horse or horses, together with the sum of \$5 a \$100 roundup fee. The board shall decide all such cases in preference to all other matters coming before it and at the earliest possible moment. If the claim shall be is allowed, the roundup foreman supervisor in charge of such the roundup shall must immediately be notified of such the decision and he the supervisor shall forthwith deliver such the horse or horses as to which ownership shall be so proved to the owner upon payment of any amount due from such the owner for the estimated cost of keeping and feeding such the horse or horses as aforesaid. The deposit made by such the owner of taxes, penalties, and the roundup fee shall must be delivered by the board to the county treasurer. If such the board shall deny denies the claim of ownership, it shall forthwith notify the person in charge of such the roundup of its decision and such the horse or horses as to which such the claim shall be is denied shall must be offered for sale at the earliest convenient session of the sales being held under such the roundup, and if. If the horses are not sold, the same shall they must be destroyed or otherwise disposed of as though no claim had been presented."

Section 37. Repealer. Sections 7-4-4202, 7-14-2713, 7-21-3202, 7-21-3213, 7-31-4102, and 30-13-112, MCA, are repealed.

Approved April 17, 2009

CHAPTER NO. 292

[SB 156]

AN ACT CHANGING THE BEGINNING AND ENDING DATES THAT A CANDIDATE MAY FILE FOR CERTAIN ELECTIONS; CLARIFYING PROVISIONS FOR SPECIAL ELECTIONS CALLED TO FILL A VACANCY IN CONGRESSIONAL OFFICES; AND AMENDING SECTIONS 13-10-201, 13-10-208, 13-10-325, 13-10-326, 13-10-405, 13-10-503, 13-10-601, 13-12-201, 13-14-112, 13-14-113, 13-25-203, 13-25-205, 13-26-103, 13-35-107, AND 13-37-126, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-10-201, MCA, is amended to read:

"13-10-201. Declaration for nomination. (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of *Title 13*, chapter 14, shall file a declaration for nomination with the secretary of state or election administrator. A candidate may not file for more than one

public office. Each candidate for governor shall file a joint declaration for nomination with a candidate for lieutenant governor.

- (2) A declaration for nomination must be filed in the office of:
- (a) the secretary of state for placement of a name on the ballot for the presidential preference primary, a congressional office, a state or district office to be voted for in more than one county, a member of the legislature, or a judge of the district court;
- (b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.
- (3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. Unless filed electronically with the secretary of state, the declaration for nomination must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.
- (4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by the elector's party. For a partisan election, an elector may not file a declaration for more than one party's nomination.
- (5) (a) The declaration for nomination must be in the form and contain the information prescribed by the secretary of state.
- (b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person's place of residence. If a candidate for the legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.
- (c) The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.
- (6) (a) Declarations Except as provided in subsection (6)(b) and 13-10-211, a candidate's declaration for nomination must be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.
- (b) For an election held pursuant to 13-1-104(1)(a) or 13-1-107(1), a candidate's declaration for nomination must be filed no sooner than 145 days before the election in which the office first appears on the ballot and no later than 5 p.m., 85 days before the date of the primary election.
- (7) A declaration for nomination form may be sent by facsimile transmission if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state."

Section 2. Section 13-10-208, MCA, is amended to read:

- "13-10-208. Certificate of primary ballot preparing ballot. (1) Not more than $75\,85$ days and not less than $67\,75$ days before the date of the primary election, the secretary of state shall certify to the election administrators the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official records of the secretary of state's office in the manner provided in 13-10-209 and *Title 13*, chapter 12, part 2, of this title.
- (2) (a) Not Except as provided in subsection (2)(b), not more than 67 days and not less than 62 days before the date of the primary election, the election administrator shall certify the names and designations of candidates, except as

provided in 13-37-126, and any ballot issues as shown in the official record of the election administrator's office and must have the official ballots prepared in the manner provided in 13-10-209 and *Title 13*, chapter 12, part 2, of this title.

- (b) For a primary election conducted pursuant to 13-1-107(1) the election administrator shall, not more than 75 days and not less than 70 days before the date of the primary election, certify the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official record of the election administrator's office and must have the official ballots prepared in the manner provided in 13-10-209 and Title 13, chapter 12, part 2.
- (3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325."

Section 3. Section 13-10-325, MCA, is amended to read:

- **"13-10-325. Withdrawal from nomination.** (1) (a) A candidate for nomination or candidate for election to an office may withdraw from the election by sending a statement of withdrawal to the officer with whom his the candidate's declaration, petition, or acceptance of nomination was filed. The statement must contain all information necessary to identify the candidate and the office sought and the reason for withdrawal. It shall must be sworn or affirmed before an officer empowered to administer oaths.
- (b) A Except as provided in subsection (1)(c), a candidate may not withdraw later than 85 days before a general election or 75 days before a primary election.
- (c) A candidate may not withdraw later than 85 days before a general election conducted pursuant to 13-1-104(1)(a) or a primary election conducted pursuant to 13-1-107(1).
 - (2) Filing fees paid by the candidate may not be refunded."

Section 4. Section 13-10-326, MCA, is amended to read:

- **"13-10-326. Vacancy prior to primary election.** (1) Except as provided in subsection (2):
- (a) If if a candidate for nomination for a partisan office dies or withdraws 75 days or more before the primary election, the affected political party may appoint someone to replace the candidate by the procedure provided in 13-10-327; or
- (2)(b) If if a candidate for nomination for a partisan office dies less than 75 days before the primary *election*, the affected political party shall appoint a candidate after the primary *election* as provided in 13-10-327 if a candidate for that office for that party was not nominated at the primary election.
 - (2) For an election conducted pursuant to 13-1-104(1)(a) or 13-1-107(1):
- (a) if a candidate for nomination for a partisan office dies or withdraws 85 days or more before the primary election, the affected political party may appoint someone to replace the candidate by the procedure provided in 13-10-327; or
- (b) if a candidate for nomination for a partisan office dies less than 85 days before the primary election, the affected political party shall appoint a candidate after the primary election as provided in 13-10-327 if a candidate for that office for that party was not nominated at the primary election.

(3) This section does not allow a political party to appoint a candidate for an office if no candidate for nomination by that party filed for the office before the primary election."

Section 5. Section 13-10-405, MCA, is amended to read:

"13-10-405. Submission and verification of petition. Petitions of nomination for the presidential preference primary election and the affidavits of circulation required by 13-27-302 must be presented to the election administrator of the county in which the signatures are gathered at least 1 week before the primary election filing deadline prescribed in 13-10-201(6)(b). A filing fee is not required. The election administrator shall verify the signatures in the manner prescribed in 13-27-303 through 13-27-308 and must forward the petitions to the secretary of state."

Section 6. Section 13-10-503, MCA, is amended to read:

- "13-10-503. Filing deadlines. (1) A petition for nomination and the affidavits of circulation required by 13-27-302, accompanied by the required filing fee, must be filed with the same officer with whom other nominations for the office sought are filed. Petitions must be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306. If there are insufficient signatures on the petition, additional signatures may be submitted before the deadline for filing. If sufficient signatures are verified and certified pursuant to 13-10-502, the county election administrator shall file the petition for nomination with the same officer with whom other nominations for the office sought are filed.
- (2) Except as provided in 13-10-504, each petition for nomination, accompanied by the required filing fee, must be filed by the applicable deadline established in 13-10-201(6)(a) or (6)(b)."

Section 7. Section 13-10-601, MCA, is amended to read:

- "13-10-601. Parties eligible for primary election petitions by minor parties. (1) Each political party that had a candidate for a statewide office in either of the last two general elections who received a total vote that was 5% or more of the total votes cast for the most recent successful candidate for governor shall nominate its candidates for public office, except for presidential electors, by a primary election as provided in this chapter.
- (2) (a) A political party that does not qualify to hold a primary election under subsection (1) may qualify to nominate its candidates by primary election by presenting a petition, in a form prescribed by the secretary of state, requesting the primary election.
- (b) The petition must be signed by a number of registered voters equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election or 5,000 electors, whichever is less, which The number must include the registered voters in more than one-third of the legislative districts equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election in those districts or 150 electors in those districts, whichever is less.
- (c) At least 1 week before the filing deadline provided in subsection (2)(d), the petition and the affidavits of circulation required by 13-27-302 must be presented to the election administrator of the county in which the signatures were gathered to be verified under the procedures provided in 13-27-303 through 13-27-306.

(d) The election administrator shall forward the verified petition to the secretary of state at least 75 85 days before the date of the primary."

Section 8. Section 13-12-201, MCA, is amended to read:

- "13-12-201. Secretary of state to certify ballot. (1) Seventy-five days or more before an a federal general election, except as provided in 13-10-208, the secretary of state shall certify to the election administrators the name and party or other designation of each candidate entitled to appear on the ballot and the ballot issues as shown in the official records of the secretary of state's office, which must include the notification specified in 13-37-126.
- (2) The election administrator shall certify the name and party or other designation of each candidate entitled to appear on the ballot and the ballot issues as shown in the official records of the election administrator's office, which must include the notification specified in 13-37-126, and shall have the official ballots prepared.
- (3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325."

Section 9. Section 13-14-112, MCA, is amended to read:

- "13-14-112. Declarations for nomination fee *filing*. (1) Nonpartisan candidates shall file declarations for nomination as required by the primary election laws in a form prescribed by the secretary of state except as provided in 13-14-113. A candidate may not file for more than one public office.
- (2) Declarations may not indicate political affiliation. The candidate may not state in the declaration any principles or measures that the candidate advocates or any slogans.
- (3) Each individual filing a declaration shall pay the fee prescribed by law for the position office that the individual seeks.
 - (4) Declarations must be filed:
- (a) in the office of the secretary of state or the appropriate election administrator as provided in 13-10-201. Time of filing must be the same as; and
- (b) within the applicable filing period provided in 13-10-201(6)(a) or (6)(b) for the office that the individual seeks."

Section 10. Section 13-14-113, MCA, is amended to read:

- **"13-14-113. Filing for offices without salary or fees.** (1) Candidates for nonpartisan offices for which a salary or fees are not paid shall file with the appropriate official a petition for nomination containing the same information and the oath of the candidate required for a declaration of nomination in a form prescribed by the secretary of state.
- (2) The petition must contain the signatures of registered electors of the election district in which the office will be on the ballot. The number of signatures must be equal to 5% of the total vote cast for the successful candidate for that office at the last general election, but may not be less than five signatures.
- (3) The number of signatures necessary for a petition for nomination for an office not previously on the ballot or for which the election district boundaries have changed since the last general election must be determined by the secretary of state.

- (4) Petitions for nomination must be filed at the same time within the applicable filing period provided in 13-10-201(6)(a) or (6)(b) for other candidates and offices
 - (5) A candidate may not file for more than one public office."

Section 11. Section 13-25-203, MCA, is amended to read:

- "13-25-203. Vacancy in office of United States representative. (1) If a vacancy occurs in the office of United States representative, the governor shall immediately order an election to be held to fill the vacancy, except as provided in subsection (3).
- (2) The election to fill the unexpired term shall must be held no less than 75 85 or more than 90 100 days from the time date on which the vacancy occurs, except that if the vacancy occurs 150 days or less before a primary election or between the primary and general elections in odd-numbered years, the election shall must be held with the primary or general election.
- (3) If the vacancy occurs between the primary and general election in even-numbered years, the candidate elected to the office for the succeeding full term shall immediately take office to fill the unexpired term."
 - Section 12. Section 13-25-205, MCA, is amended to read:
- **"13-25-205.** Nominations for special election. (1) When a special election is ordered to fill a vacancy in the office of United States senator or United States representative, each political party shall choose a candidate according to the rules of the party. Nominations by parties shall must be made no later than 75 85 days before the date set for the election.
- (2) Nominating petitions may be filed by independent candidates for the office up to 5:00 p.m. of the 75th day before the election."
 - **Section 13.** Section 13-26-103, MCA, is amended to read:
- "13-26-103. Nomination of delegates. (1) Nominations for the office of delegate shall must be made:
 - (a) by petition signed by not less than 100 voters of the district.;
 - (2)(b) Nominations shall be without political designation but shall be; and
 - (c) as "in favor of" or "opposed to" ratification of the proposed amendment.
- (3)(2) Petitions and acceptances shall must be filed not less than 75 85 days prior to the election."
 - **Section 14.** Section 13-35-107, MCA, is amended to read:
- **"13-35-107. Voiding election.** (1) (a) If a court finds that the violation of any provision of this title by any person probably affected the outcome of any election, the result of that election may be held void and a special election held:
- (i) except as provided in subsection (1)(a)(ii), within 75 days of that the finding or
- (ii) if the election was held pursuant to 13-1-104(1)(a) or 13-1-107(1), within 85 days of the finding.
- (b) If the violation occurred during a primary election, the court may direct the selection of a new candidate according to the provisions of state law relating to the filling of vacancies on the general election ballot. Except as provided in subsection (2), an action to void an election shall must be commenced within 1 year of the date of the election in question.
- (2) An action to void a bond election shall must be commenced within 60 days of the date of the election in question."

Section 15. Section 13-37-126, MCA, is amended to read:

- **"13-37-126.** Names not to appear on ballot. (1) The name of a candidate may not appear on the official ballot for an election if the candidate or a treasurer for a candidate fails to file any statement or report as required by this chapter.
- (2) A vacancy on an official ballot under this section may be filled in the manner provided by law, but not by the name of the same candidate.
- (3) (a) In carrying out the mandate of this section, the commissioner shall, by a written statement, notify the secretary of state or the election administrator that a candidate or a candidate's treasurer has not complied with the provisions of this chapter, as described in subsection (1), and that a candidate's name should may not appear on the official ballot.
- (b) The commissioner shall provide this the notification: by the ballot certification deadline
- (i) within 8 calendar days after the close of the certification deadline provided in 13-10-208(1) for primary elections held pursuant to 13-1-107(1); or
- (ii) by the earliest date specified under 13-10-208(2) for the county election administrator to certify the ballot for primary elections held pursuant to 13-1-107(2) or (3); and
- (iii) by no later than 7 days before the ballot certification deadline provided in 13-12-201 for general elections."

Approved April 17, 2009

CHAPTER NO. 293

[SB 174]

AN ACT CREATING THE PROFESSIONAL CLASSIFICATION OF CLINICAL PHARMACIST PRACTITIONER; PROVIDING DEFINITIONS AND QUALIFICATIONS; REQUIRING THE BOARD OF PHARMACY AND THE BOARD OF MEDICAL EXAMINERS TO ESTABLISH REQUIREMENTS FOR CLINICAL PHARMACIST PRACTITIONERS; AND AMENDING SECTIONS 37-7-101 AND 37-7-201, MCA.

WHEREAS, the Medicare Payment Advisory Commission has recommended that the Centers for Medicare and Medicaid Services recognize pharmacists engaging in medication therapy management as practitioners under Medicare, thus permitting those professionals to bill the program independently for their patient care services; and

WHEREAS, the introduction of this federal legislation would require each state to define and articulate requirements necessary for a pharmacist to become clinically certified; and

WHEREAS, the Montana Pharmacy Association hopes to be proactive in having this state legislation ready in anticipation of the federal law; and

WHEREAS, advancing pharmacy practitioners within the state of Montana achieves better patient care and advances national goals for health care reform; and

WHEREAS, pharmacists have demonstrated a large role in producing favorable outcomes with medication therapy management because of their drug knowledge, clinical skills, and access to patients; and

WHEREAS, well-trained, credentialed pharmacists are needed to work with physicians in managing patients with chronic medical conditions requiring a large number of medications; and

WHEREAS, pharmacists play a critical role in health care access to patients, especially in rural Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-7-101, MCA, is amended to read:

- **"37-7-101. Definitions.** As used in parts 1 through 7 of this chapter, the following definitions apply:
- (1) (a) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.
- (b) The term does not include immunization by injection for children under 18 years of age.
 - (2) "Board" means the board of pharmacy provided for in 2-15-1733.
- (3) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.
- (4) "Clinical pharmacist practitioner" means a licensed pharmacist in good standing who meets the requirements specified in [section 2].
- (4)(5) "Collaborative pharmacy practice" means the practice of pharmacy by a pharmacist who has agreed to work in conjunction with one or more prescribers, on a voluntary basis and under protocol, and who may perform certain patient care functions under certain specified conditions or limitations authorized by the prescriber.
- (5)(6) "Collaborative pharmacy practice agreement" means a written and signed agreement between one or more pharmacists and one or more prescribers that provides for collaborative pharmacy practice for the purpose of drug therapy management of patients.
- (6)(7) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.
- (7)(8) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device based on:
 - (a) a practitioner's prescription drug order;
- (b) a professional practice relationship between a practitioner, pharmacist, and patient;
- (c) research, instruction, or chemical analysis, but not for sale or dispensing; or
- (d) the preparation of drugs or devices based on routine, regularly observed prescribing patterns.
- (8)(9) "Confidential patient information" means privileged information accessed by, maintained by, or transmitted to a pharmacist in patient records or that is communicated to the patient as part of patient counseling.
- (9)(10) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
 - (10)(11) "Device" has the same meaning as defined in 37-2-101.

(11)(12) "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for administration to or use by a patient.

(12)(13) "Distribute" means the delivery of a drug or device by means other than administering or dispensing.

(13)(14) "Drug" means a substance:

- (a) recognized as a drug in any official compendium or supplement;
- (b) intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;
- (c) other than food, intended to affect the structure or function of the body of humans or animals; and
- (d) intended for use as a component of a substance specified in subsection $\frac{(13)(a)}{(14)(a)}$, $\frac{(13)(b)}{(14)(b)}$, or $\frac{(13)(c)}{(14)(c)}$.
- (14)(15) "Drug utilization review" means an evaluation of a prescription drug order and patient records for duplication of therapy, interactions, proper utilization, and optimum therapeutic outcomes. The term includes but is not limited to the following evaluations:
 - (a) known allergies;
 - (b) rational therapy contraindications;
 - (c) reasonable dose and route administration;
 - (d) reasonable directions for use;
 - (e) drug-drug interactions;
 - (f) drug-food interactions;
 - (g) drug-disease interactions; and
 - (h) adverse drug reactions.

(15)(16) "Equivalent drug product" means a drug product that has the same established name, active ingredient or ingredients, strength or concentration, dosage form, and route of administration and meets the same standards as another drug product as determined by any official compendium or supplement. Equivalent drug products may differ in shape, scoring, configuration, packaging, excipients, and expiration time.

(16)(17) "Intern" means:

- (a) a person who is licensed by the state to engage in the practice of pharmacy while under the personal supervision of a preceptor and who is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist;
- (b) a graduate of an accredited college of pharmacy who is licensed by the state for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;
 - (c) a qualified applicant awaiting examination for licensure; or
 - (d) a person participating in a residency or fellowship program.
- (17)(18) (a) "Manufacturing" means the production, preparation, propogation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis.

- (b) Manufacturing includes:
- (i) any packaging or repackaging;
- (ii) labeling or relabeling;
- (iii) promoting or marketing; and
- (iv) preparing and promoting commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons.
- (18)(19) "Medicine" means a remedial agent that has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.
- (19)(20) "Patient counseling" means the communication by the pharmacist of information, as defined by the rules of the board, to the patient or caregiver in order to ensure the proper use of drugs or devices.
- (20)(21) "Person" includes an individual, partnership, corporation, association, or other legal entity.
- (21)(22) "Pharmaceutical care" means the provision of drug therapy and other patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of disease process.
- (22)(23) "Pharmacist" means a person licensed by the state to engage in the practice of pharmacy and who may affix to the person's name the term "R.Ph.".
- (23)(24) "Pharmacy" means an established location, either physical or electronic, registered by the board where drugs or devices are dispensed with pharmaceutical care or where pharmaceutical care is provided.
- (24)(25) "Pharmacy technician" means an individual who assists a pharmacist in the practice of pharmacy.
- (25)(26) "Poison" means a substance that, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or that destroys living tissue with which it comes in contact.

(26)(27) "Practice of pharmacy" means:

- (a) interpreting, evaluating, and implementing prescriber orders;
- (b) administering drugs and devices pursuant to a collaborative practice agreement and compounding, labeling, dispensing, and distributing drugs and devices, including patient counseling;
- (c) properly and safely procuring, storing, distributing, and disposing of drugs and devices and maintaining proper records;
 - (d) monitoring drug therapy and use;
- (e) initiating or modifying drug therapy in accordance with collaborative pharmacy practice agreements established and approved by health care facilities or voluntary agreements with prescribers;
- (f) participating in quality assurance and performance improvement activities;
- (g) providing information on drugs, dietary supplements, and devices to patients, the public, and other health care providers; and
- (h) participating in scientific or clinical research as an investigator or in collaboration with other investigators.
- (27)(28) "Practice telepharmacy" means to provide pharmaceutical care through the use of information technology to patients at a distance.

(28)(29) "Preceptor" means an individual who is registered by the board and participates in the instructional training of a pharmacy intern.

(29)(30) "Prescriber" has the same meaning as provided in 37-7-502.

(30)(31) "Prescription drug" means any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act, (21 U.S.C. 353).

(31)(32) "Prescription drug order" means an order from a prescriber for a drug or device that is communicated directly or indirectly by the prescriber to the furnisher by means of a signed order, by electronic transmission, in person, or by telephone. The order must include the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name, strength, and quantity of the drug, drugs, or device prescribed, the directions for use, and the date of its issue. These stipulations apply to written, oral, electronically transmitted, and telephoned prescriptions and orders derived from collaborative pharmacy practice.

(32)(33) "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician in the practice of pharmacy to perform tasks that:

- (a) do not require the exercise of the pharmacist's independent professional judgment; and
 - (b) are verified by the pharmacist.

(33)(34) "Wholesale" means a sale for the purpose of resale."

Section 2. Clinical pharmacist practitioner qualifications. (1) A clinical pharmacist practitioner is a licensed pharmacist in good standing who:

- (a) is certified by the board, in concurrence with the board of medical examiners, to provide drug therapy management, including initiating, modifying, or discontinuing therapies, identifying and managing drug-related problems, or ordering tests under the direction or supervision of a prescriber;
- (b) has additional education, experience, or certification as required by the board in concurrence with the board of medical examiners; and
 - (c) has in place a collaborative pharmacy practice agreement.
- (2) Only a pharmacist certified by the board may legally be identified as a clinical pharmacist practitioner.

Section 3. Section 37-7-201, MCA, is amended to read:

- "37-7-201. Organization powers and duties. (1) The board shall meet at least once a year to transact its business. The board shall annually elect from its members a president, vice president, and secretary.
- (2) The board shall regulate the practice of pharmacy in this state, including but not limited to:
 - (a) establishing minimum standards for:
 - (i) equipment necessary in and for a pharmacy;
- (ii) the purity and quality of drugs, devices, and other materials dispensed within the state through the practice of pharmacy, using an official compendium recognized by the board or current practical standards;
- (iii) specifications for the facilities, environment, supplies, technical equipment, personnel, and procedures for the storage, compounding, or dispensing of drugs and devices;

- (iv) monitoring drug therapy; and
- (v) maintaining the integrity and confidentiality of prescription information and other confidential patient information;
 - (b) requesting the department to inspect, at reasonable times:
- (i) places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured; and
- (ii) the appropriate records and the license of any person engaged in the practice of pharmacy for the purpose of determining whether any laws governing the legal distribution of drugs or devices or the practice of pharmacy are being violated. The board shall cooperate with all agencies charged with the enforcement of the laws of the United States, other states, or this state relating to drugs, devices, and the practice of pharmacy. It is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places and making an inspection.
 - (c) regulating:
- (i) the training, qualifications, employment, licensure, and practice of interns:
- (ii) the training, qualifications, employment, and registration of pharmacy technicians; and
- (iii) under therapeutic classification, the sale and labeling of drugs, devices, medicines, chemicals, and poisons;
 - (d) examining applicants and issuing and renewing licenses of:
- (i) applicants whom the board considers qualified under this chapter to practice pharmacy;
 - (ii) pharmacies and certain stores under this chapter;
 - (iii) wholesale drug distributors; and
 - (iv) persons engaged in the manufacture and distribution of drugs or devices;
- (e) in concurrence with the board of medical examiners, defining the additional education, experience, or certification required of a licensed pharmacist to become a certified clinical pharmacist practitioner;
 - (e)(f) issuing certificates of "certified pharmacy" under this chapter;
 - (f)(g) establishing and collecting license and registration fees;
- (g)(h) approving pharmacy practice initiatives that improve the quality of, or access to, pharmaceutical care but that fall outside the scope of this chapter. This subsection (2)(g)(2)(h) may not be construed to expand on the definition of the practice of pharmacy as defined in 37-7-101.
 - (h)(i) making rules for the conduct of its business;
- (i)(j) performing other duties and exercising other powers as this chapter requires;
- (j)(k) adopting and authorizing the department to publish rules for carrying out and enforcing parts 1 through 7 of this chapter, including but not limited to:
 - (i) requirements and qualifications for the transfer of board-issued licenses;
- (ii) minimum standards for pharmacy internship programs and qualifications for licensing pharmacy interns;
 - (iii) qualifications and procedures for registering pharmacy technicians; and

- (iv) requirements and procedures necessary to allow a pharmacy licensed in another jurisdiction to be registered to practice telepharmacy across state lines.
 - (3) The board may:
- (a) join professional organizations and associations organized exclusively to promote the improvement of standards of the practice of pharmacy for the protection of the health and welfare of the public and whose activities assist and facilitate the work of the board; and
- (b) establish standards of care for patients concerning health care services that a patient may expect with regard to pharmaceutical care."
- Section 4. Codification. [Section 2] is intended to be codified as an integral part of Title 37, chapter 7, and the provisions of Title 37, chapter 7, apply to [section 2].

Approved April 17, 2009

CHAPTER NO. 294

ISB 2021

AN ACT PROHIBITING THE FEEDING OF CERTAIN WILDLIFE; AMENDING SECTION 87-3-130, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-130, MCA, is amended to read:

- "87-3-130. Taking of wildlife to protect persons or livestock. (1) This chapter may not be construed to impose, by implication or otherwise, criminal liability for the taking of wildlife protected by this title if the wildlife is attacking, killing, or threatening to kill a person or livestock, except that, for purposes of protecting livestock, a person may not kill or attempt to kill a grizzly bear unless the grizzly bear is in the act of attacking or killing livestock. In addition, a person may kill or attempt to kill a wolf or mountain lion that is in the act of attacking or killing a domestic dog. A person who, under this subsection, takes wildlife protected by this title shall, within 72 hours, notify the department and surrender or arrange to surrender the wildlife to the department.
- A person may not provide supplemental feed attractants to game animals by:
- (a) purposely or knowingly attracting any ungulates, bears, or mountain lions with supplemental feed attractants;
- (b) after having received a previous warning, negligently failing to properly store supplemental feed attractants and allowing any ungulates, bears, or mountain lions access to the supplemental feed attractants; or
- (c) purposely or knowingly providing supplemental feed attractants in a manner that results in an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety.
- (3) A person who is engaged in the normal feeding of livestock, in a normal agricultural practice, in cultivation of a lawn or garden, or in the commercial processing of garbage is not subject to civil or criminal liability under this section.

- (4) A person who is engaged in the recreational feeding of birds is not subject to civil or criminal liability under this section unless, after having received a previous warning by the department, the person continues to feed birds in a manner that attracts ungulates or bears and that may contribute to the transmission of disease or constitute a threat to public safety.
- (4)(5) A person who violates subsection (2) is guilty of a misdemeanor and is subject to the penalty provided in 87-1-102(1). This section does not apply to supplemental feeding activities conducted by the department for disease control purposes.
 - (5)(6) As used in this section:
 - (a) "livestock" includes ostriches, rheas, and emus; and
- (b) "supplemental feed attractant" means any food, garbage, or other attractant for game animals. The term does not include growing plants or plants harvested for the feeding of livestock."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 17, 2009

CHAPTER NO. 295

[SB 280]

AN ACT REVISING THE EXEMPTION OF CERTAIN PERSONAL PROPERTY OF A RENTAL PROPERTY BUSINESS BY EXTENDING THE EXEMPTION TO THE PERSONAL PROPERTY RENTED ON A SEMIMONTHLY OR MONTHLY BASIS; AMENDING SECTION 15-6-219, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-219, MCA, is amended to read:

- "15-6-219. Personal and other property exemptions. The following categories of property are exempt from taxation:
 - (1) harness, saddlery, and other tack equipment;
- (2) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:
 - (a) construct, repair, and maintain improvements to real property; or
- (b) repair and maintain machinery, equipment, appliances, or other personal property;
- (3) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;
- (4) a bicycle, as defined in 61-8-102, used by the owner for personal transportation purposes;
- (5) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:
 - (a) the acquired cost of the personal property is less than \$15,000;
- (b) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one

customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

- (c) the lease of the personal property is generally on an hourly, daily, or weekly, semimonthly, or monthly basis;
- (6) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance; and
- (7) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105."

Section 2. Applicability. [This act] applies to tax years beginning after December 31, 2009.

Approved April 17, 2009

CHAPTER NO. 296

[SB 424]

AN ACT ESTABLISHING THE MERCURY-ADDED THERMOSTAT COLLECTION ACT; BANNING MERCURY-ADDED THERMOSTAT SALES AND INSTALLATION; REQUIRING COLLECTION AND RECYCLING OF MERCURY-ADDED THERMOSTATS; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, mercury that is released into the atmosphere can be transported long distances and deposited in aquatic ecosystems where it is methylated to methylmercury, the organic and most toxic form of mercury; and

WHEREAS, mercury-added thermostats represent the largest amount of mercury in ordinary household products; and $\,$

WHEREAS, a single mercury-added thermostat contains 3 to 5 grams of mercury; and

WHEREAS, according to the U.S. Environmental Protection Agency's 2002 estimates, each year about 6 to 8 tons of mercury from discarded thermostats end up in solid waste facilities and between 1 and 2 tons are released into the air; and

WHEREAS, according to a 2004 study by the U.S. Environmental Protection Agency, more than 10% of the estimated mercury reservoir still currently in use in the United States resides in mercury-added thermostats; and

WHEREAS, methylmercury bioaccumulates and biomagnifies in animals, including fish and humans; and

WHEREAS, according to the Montana Department of Public Health and Human Services, mercury has been found in fish in at least 28 water bodies in Montana, including Canyon Ferry Reservoir, Cooney Reservoir, Flathead Lake, Fort Peck Reservoir, Hebgen Lake, Lake Koocanusa, Seeley Lake, Swan Lake, Tongue River Reservoir, and Whitefish Lake; and

WHEREAS, methylmercury is a known neurotoxin to which the human fetus is very sensitive; and

WHEREAS, the federal Centers for Disease Control and Prevention estimate that between 300,000 and 630,000 infants are born in the United States each year with mercury levels that are associated, at later ages, with the loss of IQ; and

WHEREAS, new evidence indicates that methylmercury exposure may increase the risk of cardiovascular disease in humans, especially adult men; and

WHEREAS, decreases in local and regional sources of mercury emissions have been shown to lead to decreases in mercury levels in fish and wildlife; and

WHEREAS, in 1998, thermostat makers General Electric, Honeywell, and White-Rodgers established the Thermostat Recycling Corporation to implement a program for collecting used mercury-added thermostats under which thermostat wholesalers and contractors, as well as household hazardous waste facilities, volunteer to collect thermostats from heating, ventilating, and air-conditioning contractors and the general public.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 9] may be cited as the "Mercury-Added Thermostat Collection Act".

Section 2. Purpose. The purpose of [sections 1 through 9] is to facilitate the proper disposal of mercury-added thermostats.

Section 3. Definitions. As used in [sections 1 through 9], unless the context requires otherwise, the following definitions apply:

- (1) "Department" means the department of environmental quality provided for in 2-15-3501.
- (2) "Manufacturer" means a business concern that owns or owned the name brand of a mercury-added thermostat sold in this state.
- (3) (a) "Mercury-added thermostat" means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment in residential, commercial, industrial, or other buildings.
- (b) The term does not include a thermostat used to sense and control temperature as part of a manufacturing process.
- (4) "Out-of-service mercury-added thermostat" means a mercury-added thermostat that is removed from a building or facility and is intended to be discarded.
- (5) "Program" means a system for the collection, transportation, recycling, and disposal of out-of-service mercury-added thermostats that is financed, as well as managed or provided, by a manufacturer or collectively with other manufacturers.
- (6) "Qualified contractor" means a person engaged in the business of installation, service, or removal of heating, ventilation, and air-conditioning components who employs seven or more service technicians or installers or who is located in areas outside of urban areas as defined by the United States bureau of the census.
- (7) "Retailer" means a person who sells thermostats of any kind directly to a consumer through a selling or distribution mechanism, including but not limited to a sale using catalogs or the internet.
- (8) (a) "Thermostat" means a product or device that uses a switch to sense and control room temperature through communication with heating,

ventilating, or air-conditioning equipment in residential, commercial, industrial, and other buildings.

- (b) The term does not include a product or device used to sense and control temperature as part of a manufacturing process.
- (9) (a) "Wholesaler" means a person engaged in the distribution and wholesale selling of heating, ventilation, and air-conditioning components to contractors who install heating, ventilation, and air-conditioning components and whose total wholesale sales account for 80% or more of total sales. The term may include a retailer.
 - (b) The term does not include a manufacturer.
- Section 4. Prohibition on sale and installation of mercury-added thermostats list. (1) After January 1, 2010, a person may not sell, offer for sale, or install a mercury-added thermostat in Montana.
- (2) The department shall maintain a list on its website of manufacturers that are in compliance with [sections 1 through 9].
- Section 5. Manufacturer collection and recycling program requirements. (1) By January 1, 2010, a manufacturer shall establish and maintain a program for out-of-service mercury-added thermostats in compliance with [sections 1 through 9]. A manufacturer may establish a program individually or collectively with other manufacturers. A manufacturer or a group of manufacturers operating a program collectively may contract with a retailer for collection of out-of-service mercury-added thermostats.
- (2) A program for out-of-service mercury-added thermostats must meet the following requirements:
- (a) Out-of-service mercury-added thermostats collected by the program must be collected, handled, and recycled in compliance with [sections 1 through 9] and rules adopted pursuant to [section 9].
- (b) The program must provide collection bins for out-of-service mercury-added thermostat collection to wholesalers and qualified contractors at a nominal one-time administrative fee not to exceed \$40 to offset the cost of each collection bin for each collection location.
- (c) The program must make available authorized recycling bins for out-of-service mercury-added thermostats at a nominal one-time administrative fee not to exceed \$40 to offset the cost of each collection bin for each collection location to any local governmental entity that requests a bin for use at a household hazardous waste collection facility or event.
- (d) The program must either arrange for pickup of the collection bins provided pursuant to this section or pay for the costs of shipping the collection bins for proper handling and recycling in accordance with the program.
- (e) The program must develop educational and other outreach materials for contractors and homeowners and make those materials available at program collection locations. These materials may include, but are not limited to:
- (i) signage that is prominently displayed and easily visible to consumers and contractors:
- (ii) written materials and templates of materials for reproduction by retailers and wholesalers to be provided to the consumer at the time of purchase, delivery, or both purchase and delivery of a thermostat. The materials must include the proper management of out-of-service mercury-added thermostats and the locations of collection bins.

- (iii) advertising or other promotional materials, or both, that include references to the collection locations; and
- (iv) materials to be used in direct communications with the consumer and contractor at the time of purchase.
- (f) The program must provide nonfinancial incentives and education to contractors, service technicians, and homeowners to encourage the return of out-of-service mercury-added thermostats to established collection locations.
- (g) The program must encourage the purchase of thermostats that are programmable and increase energy efficiency as replacements for mercury-added thermostats.
- (3) The department may order a manufacturer or a group of manufacturers operating a program to revise the program to comply with this section.
- Section 6. Initial education and outreach requirements. From [the effective date of this act] through December 31, 2012, a manufacturer shall conduct initial education and outreach efforts, including but not limited to:
- (1) the establishment of a public internet website. Templates of educational materials must be posted on the website in a format that can be easily downloaded. A link to the website must be provided to the department.
- (2) methods used to engage other stakeholders, such as waste, demolition, heating, ventilation, and air-conditioning organizations, as well as appropriate state agencies and local governments, in securing support and participation in programs that encourage the proper management of out-of-service mercury-added thermostats;
- (3) strategies to work with utilities participating in programs involving the replacement of thermostats to encourage their participation in the collection and proper management of out-of-service mercury-added thermostats. These strategies may include the inclusion of an educational insert in utility bills.
- (4) contacting wholesalers and encouraging participation in educating customers on the proper management of out-of-service mercury-added thermostats; and
- (5) strategies used to encourage support and participation by retailers and other outlets in educating consumers on the proper management of out-of-service mercury-added thermostats.
- **Section 7. Annual report publication.** (1) By April 1, 2011, and by April 1 of each succeeding year, a manufacturer shall submit an annual report to the department covering the previous calendar year. The annual reports must provide the department with the following:
- (a) the number of out-of-service mercury-added thermostats collected by the program;
- (b) the estimated total amount of mercury contained in the thermostat components collected by the program;
 - (c) an evaluation of the effectiveness of the program;
- (d) collection goals that must ensure an increase in the number of mercury-added thermostats collected each year until 2016 or a time that the department determines that the number of in-service thermostats is steadily declining;
- (e) an accounting of the program administrative costs, including a copy of Internal Revenue Service Form 990 for a nonprofit organization's program. For

- a for-profit organization's program, the manufacturer or group of manufacturers operating a program shall submit independently audited financial statements detailing revenue and a full accounting of administrative costs incurred.
- (f) a description of outreach strategies used to increase participation and collection rates;
 - (g) examples of outreach and educational materials used by the program;
 - (h) names and locations of collection locations;
- (i) the number of out-of-service mercury-added thermostats collected at each collection location;
- (j) a description of how the collected out-of-service mercury-added thermostats were managed; and
 - (k) any proposed modifications the manufacturer may make to the program.
- (2) The department shall use the report to determine whether collection goals are being met. If collection goals are not met, the department shall require modifications to manufacturers' collection plans in an attempt to improve collection rates.
- (3) The manufacturer or group of manufacturers operating a program shall post the report to a public website.
- (4) The department shall post reports submitted pursuant to this section on the department website or may provide a link to the public website.
- (5) Based on diminished return of thermostats, the department may discontinue the requirement for the annual report pursuant to this section on finding that mercury-added thermostats no longer pose a threat to the environment and public health in Montana.
- **Section 8. Wholesaler collection sites.** (1) A wholesaler with a physical location in Montana shall act as a collection location for out-of-service mercury-added thermostats.
- (2) A wholesaler that distributes thermostats by mail to buyers in the state shall include with the sale of the thermostat a website address and a toll-free telephone number with instructions on obtaining a prepaid mail-in label that a consumer may use to send an out-of-service mercury-added thermostat to a collection location.
- (3) A wholesaler shall distribute to its customers the educational and outreach materials developed by a manufacturer pursuant to [section 5].
- **Section 9. Rulemaking authority.** The department shall adopt rules to implement the provisions of [sections 1 through 9].
- Section 10. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.
- **Section 11. Codification instruction.** [Sections 1 through 9] are intended to be codified as an integral part of Title 75, part 10, and the provisions of Title 75, part 10, apply to [sections 1 through 9].

Section 12. Effective date. [This act] is effective on passage and approval. Approved April 17, 2009

CHAPTER NO. 297

[HB 19]

AN ACT CLARIFYING STATE ELECTION LAWS TO PROVIDE FOR CONSISTENT TREATMENT AMONG POLLING PLACE, ABSENTEE, MAIL, AND PROVISIONAL BALLOT PROVISIONS: PROVIDING DEFINITIONS; CLARIFYING PUBLIC NOTICE REQUIREMENTS; CREATING MORE CONSISTENCY BETWEEN THE ADMINISTRATION OF SCHOOL ELECTIONS AND OTHER ELECTIONS BY REQUIRING TRAINING AND REVISING PAYMENT FOR SCHOOL ELECTION JUDGES; CLARIFYING HOW TO HANDLE TIE VOTES IN A SCHOOL TRUSTEE ELECTION; ELIMINATING OUTDATED PROVISIONS; AND AMENDING SECTIONS 13-1-101, 13-1-108, 13-1-113, 13-1-115, 13-2-110, 13-2-116, 13-2-220, 13-2-222, 13-2-301, 13-2-304, 13-2-402, 13-3-205, 13-3-206, 13-4-102, $13-4-106,\ 13-4-202,\ 13-4-203,\ 13-10-211,\ 13-13-204,\ 13-13-205,\ 13-13-212,$ 13-13-213, 13-13-214, 13-13-222, 13-13-241, 13-13-301, 13-15-107, 13-17-103, 13-17-203, 13-17-212, 13-19-102, 13-19-105, 13-19-106, 13-19-204, 13-19-205, 13-19-206, 13-19-207, 13-19-301, 13-19-303, 13-19-304, 13-19-305, 13-19-306, 13-19-307, 13-19-308, 13-19-310, 13-19-311, 13-19-312, 13-19-313, 13-19-314, 13-21-203, 13-21-210, 13-27-311, 13-37-226, 20-20-107, AND 20-20-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-1-101, MCA, is amended to read:

- "13-1-101. **Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:
- (1) "Active elector" means an elector who voted in the previous federal general election and whose name is on the active list whose name has not been placed on the inactive list due to failure to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.
- (2) "Active list" means a list of active electors maintained pursuant to 13-2-220.
- (3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.
- (4) "Application for voter registration" means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, submitted to the election administrator, and contains voter registration information subject to verification as provided by law.
- (5) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots.
 - (6) "Candidate" means:
- (a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;
- (b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

- (i) solicitation is made;
- (ii) contribution is received and retained; or
- (iii) expenditure is made; and or
- (c) an officeholder who is the subject of a recall election.
- (7) (a) "Contribution" means:
- (i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;
 - (ii) a transfer of funds between political committees;
- (iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.
 - (b) "Contribution" does not mean:
- (i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual;
- (ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;
- (iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; or
 - (iv) filing fees paid by the candidate.
- (8) "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.
- (9) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections not administered by the county, the term means the school district clerk.
 - (10) "Elector" means an individual qualified to vote under state law.
- (11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.
 - (b) "Expenditure" does not mean:
- (i) services, food, or lodging provided in a manner that they are not contributions under subsection (7);
- (ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;
- (iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or
- (iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.
- (12) "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

- (13) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).
- (14) "Inactive elector" means an individual who failed to vote in the preceding federal general election respond to confirmation notices and whose name was placed on an the inactive list pursuant to 13-2-220 or 13-19-313.
- (15) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.
 - (16) "Individual" means a human being.
- (17) (a) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question.
- (b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue.
- (18) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.
- (19) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing ballots to all active electors.
- (19)(20) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (6).
- (21) "Place of deposit" means a location designated by the election administrator pursuant to 13-19-307 for a mail ballot election conducted under Title 13, chapter 19.
- (20)(22) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:
- (a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or
- (b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or
 - (c) as an earmarked contribution.
- (23) "Polling place election" means an election primarily conducted at polling places rather than by mail under the provisions of Title 13, chapter 19.
- (21)(24) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit

of government, except school districts, having authority to hold an election for officers or on a ballot issue.

(22)(25) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

(23)(26) "Provisional ballot" means a ballot cast by an elector whose identity and or eligibility to vote have has not been verified as provided by law.

(24)(27) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose *identity or* eligibility has not yet been verified as provided by law.

(25)(28) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(26)(29) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(27)(30) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

(28)(31) "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

(29)(32) "Transfer form" means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector's registration when the elector's residence address has changed within the county.

(30)(33) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

- (34) "Voted ballot" means a ballot that is:
- (a) deposited in the ballot box at a polling place;
- (b) received at the election administrator's office; or
- (c) returned to a place of deposit.

(31)(35) "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ballot."

Section 2. Section 13-1-108, MCA, is amended to read:

"13-1-108. Notice of special elections. Notice of any special election must be broadcast or published at least three times in the 4 weeks immediately preceding the close of registration on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the jurisdiction where the election will be held, using the method the election administrator believes is best suited to reach the largest number of potential electors. The provisions of this section are fulfilled upon the third publication or broadcast of the notice."

Section 3. Section 13-1-113, MCA, is amended to read:

"13-1-113. Only one residence. There ean may be only one residence for the purposes of this title."

Section 4. Section 13-1-115, MCA, is amended to read:

"13-1-115. Privilege from arrest. Electors are privileged from arrest may not be arrested during their attendance at elections and in going to and from voting places in polling place elections and to and from places of deposit in mail ballot elections, except in cases of treason, felony, or breach of the peace."

Section 5. Section 13-2-110, MCA, is amended to read:

- "13-2-110. Application for voter registration sufficiency and verification of information identifiers assigned for voting purposes.

 (1) An individual may apply for voter registration in person or by mail by completing and signing an application for voter registration and providing the application to the election administrator in the county in which the elector resides.
- (2) An individual applying by mail shall send the application to the election administrator, postage paid, no later than 15 days after the date it is signed.
- (3) Each application for voter registration must be accepted and processed as provided in rules adopted under 13-2-109.
 - (4) Except as provided in subsection (5):
- (a) an applicant for voter registration shall provide the applicant's driver's license number; or
- (b) if the applicant does not have a driver's license, the applicant shall provide the last four digits of the applicant's social security number.
- (5) (a) If an applicant does not have a driver's license or social security number, the applicant shall provide as an alternative form of identification:
- (a) an applicant appearing in person before the election administrator shall provide:
- (i) a current and valid photo identification, including but not limited to a school district or postsecondary education photo identification or a tribal photo identification, with the individual's name; or
- (ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.
 - (b) an applicant applying by mail to register shall also enclose a copy of:
- (i) a current and valid photo identification, including but not limited to a school district or postsecondary education photo identification or a tribal photo identification, with the individual's name; or
- (ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.
 - (b) The alternative form of identification must be:
- (i) an original version presented to the election administrator if the applicant is applying in person; or
- (ii) a copy of any of the required documents, which must be enclosed with the application, if the applicant is applying by mail.
- (6) (a) If information provided on an application for voter registration is sufficient to be accepted and processed and is verified pursuant to rules adopted under 13-2-109, the election administrator shall register the elector as a legally registered elector.

- (b) If information provided on an application for voter registration was sufficient to be accepted but the applicant failed to provide the information required in subsection (4) or (5) or if the information provided was incorrect or insufficient to verify the individual's *identity or* eligibility to vote, the election administrator shall register the applicant as a provisionally registered elector.
- (7) Each applicant for voter registration must be notified of the elector's registration status pursuant to rules adopted under 13-2-109.
- (8) The secretary of state shall assign to each elector whose application was accepted a unique identification number for voting purposes and shall establish a statewide uniform method to allow the secretary of state and local election officials to distinguish legally registered electors from provisionally registered electors.
- (9) The provisions of this section may not be interpreted to conflict with voter registration accomplished under 13-2-221, 13-21-201, 13-21-203, and 61-5-107 and as provided for in federal law."
 - Section 6. Section 13-2-116, MCA, is amended to read:
- "13-2-116. Precinct register. (1) Before each election Except for mail ballot elections conducted under Title 13, chapter 19, the election administrator shall prepare from the certified statewide voter registration list a precinct register for each precinct in the county for use by the election judges. The register may be prepared no sooner than the Friday before each election and must contain an alphabetical list of the names, with addresses, of the legally registered electors and provisionally registered electors, a space for the signature of the elector, and other information as prescribed by the secretary of state.
- (2) If some of the electors in a precinct are not eligible to receive all ballots at an election because of a combination of the elections of more than one political subdivision, the election administrator shall distinguish the names of those eligible for each ballot by whatever method will be clear and efficient.
- (3) When several precincts have been combined at one polling place for an election, the election administrator may combine the electors from all precincts into one register or may provide separate registers for each precinct.
 - (4) Precinct registers need not be printed if the election will not be held."

Section 7. Section 13-2-220, MCA, is amended to read:

- "13-2-220. Maintenance of active and inactive voter registration lists for elections rules by secretary of state. (1) The rules adopted by the secretary of state under 13-2-108 must include the following procedures, which an election administrator shall follow in every odd-numbered year:
- (a) compare the entire list of registered electors against the national change of address files and provide appropriate confirmation notice to those individuals whose addresses have apparently changed;
- (b) mail a nonforwardable, first-class, "return if undeliverable—address correction requested" notice to all registered electors of each jurisdiction to confirm their addresses and provide the appropriate confirmation notice to those individuals who return the notices;
- (c) mail a targeted mailing to electors who failed to vote in the preceding federal general election by:

- (i) sending the list of nonvoters a nonforwardable notice, followed by the appropriate forwardable confirmation notice to those electors who appear to have moved from their addresses of record;
- (ii) comparing the list of nonvoters against the national change of address files, followed by the appropriate confirmation notices to those electors who appear to have moved from their addresses of record;
 - (iii) sending forwardable confirmation notices; or
 - (iv) making a door-to-door canvass.
- (2) Any notices returned to the election administrator after using the procedures provided in subsection (1) must be followed by an appropriate confirmation notice that is a forwardable, first-class, postage-paid, self-addressed, return notice. If the elector fails to respond within 30 days of the confirmation notice, the election administrator shall move the elector to the inactive list.
- (3) A procedure used by an election administrator pursuant to this section must be completed at least 90 days before a primary or general election for federal office.
- (4) An elector's registration may be reactivated pursuant to 13-2-222 or may be canceled pursuant to 13-2-402."

Section 8. Section 13-2-222, MCA, is amended to read:

- "13-2-222. Reactivation of elector. (1) The name of an elector must be moved by an election administrator from the inactive list to the active list of a county if an elector meets the requirements for registration provided in this chapter and:
- (a) appears at a polling place in order to vote, or votes by absentee ballot in any a polling place election or mail ballot election, or votes in a mail ballot election conducted under Title 13, chapter 19;
- (b) notifies the county election administrator in writing of the elector's current residence, which must be in that county; or
- (c) completes a reactivation form provided by the county election administrator that provides current address information in that county.
- (2) After an elector has complied with subsection (1)(a), (1)(b), or (1)(c), the county election administrator shall place the elector's name on the active voting list for that county.
- (3) An elector reactivated pursuant to subsection (1)(a) is a legally registered elector for purposes of the election in which the elector voted."

Section 9. Section 13-2-301, MCA, is amended to read:

- "13-2-301. Close of regular registration notice changes. (1) The election administrator shall:
 - (a) close regular registrations for 30 days before any election; and
- (b) broadcast publish a notice specifying the day regular registrations will close and the availability of the late registration option provided for in 13-2-304 on radio or television as provided in 2-3-105 through 2-3-107 or publish the notice in a newspaper of general circulation in the county at least three times in the 4 weeks preceding the close of registration or broadcast a notice on radio or television as provided in 2-3-105 through 2-3-107, using the method the election administrator believes is best suited to reach the largest number of potential

electors. The provisions of this subsection (1)(b) are fulfilled upon the third publication or broadcast of the notice.

- (2) Information to be included in the notice must be prescribed by the secretary of state.
- (3) An application for voter registration properly executed and postmarked on or before the day regular registration is closed must be accepted as a regular registration for 3 days after regular registration is closed under subsection (1)(a).
- (4) An individual who submits a completed registration form to the election administrator before the deadlines provided in this section is allowed to correct a mistake on the completed registration form until 5 p.m. on the 10th day following the close of regular registration, and the qualified elector is then eligible to vote in the election at the polling place for that elector's precinct.
- (5) Subject to the provisions of 13-2-304, an *An* elector who misses the deadlines provided for in this section may register to vote or change the elector's voter information and vote in the election, except as otherwise provided in 13-2-304"

Section 10. Section 13-2-304, MCA, is amended to read:

- "13-2-304. Late registration late changes nonapplicability for school elections. (1) Except as provided in subsections (2) and (3), the following provisions apply:
- (a) An elector may register or change the elector's voter registration information after the close of regular registration in 13-2-301 and vote in the election if the election administrator in the county where the elector resides receives and verifies the elector's voter registration information prior to the close of the polls on election day.
- (b) Late registration is closed from noon to 5 p.m. on the day before the election.
- (c) Except as provided in 13-2-514(2)(a), an elector who registers or changes the elector's voter information pursuant to this section may vote in the election only if the elector votes at the county election administrator's office obtains the ballot from and returns it to the location designated by the county election administrator.
- (2) If an elector has already been sent an absentee ballot for the election, the elector may change the elector's voter registration information only with respect to the next election.
- (3) The provisions of subsection (1) do not apply with respect to an elector's registration to vote in a school election held pursuant to Title 20."

Section 11. Section 13-2-402, MCA, is amended to read:

- "13-2-402. Reasons for cancellation. The election administrator shall cancel the registration of an elector if:
 - (1) the elector submits a written request for cancellation;
- (2) a certificate of the death of the elector is filed or if the elector is reported to the election administrator as deceased by the department of public health and human services in the department's reports submitted to the county under 50-15-409 or through a newspaper obituary;
 - (3) the elector is of unsound mind as established by a court;

- (4) the incarceration of the elector in a penal institution for a felony conviction is legally established;
- (5) a certified copy of a court order directing the cancellation is filed with the election administrator:
- (6) a notice is received from the secretary of state or from another county or state that the elector has registered in another county or state;
 - (7) the elector:
 - (a) fails to respond to certain confirmation mailings;
 - (b) is placed on the inactive list; and
 - (c) then fails to vote in two consecutive federal general elections; or
 - (8) the elector fails to meet any voter qualification that is listed in 13-1-111."

Section 12. Section 13-3-205, MCA, is amended to read:

- "13-3-205. Adoption of standards for polling place accessibility rulemaking authority. (1) The secretary of state, with advice from election administrators and individuals with disabilities and elderly individuals, shall establish standards for accessibility of polling places.
- (2) (a) Standards for polling places approved pursuant to subsection (1) prior to October 1, 2005, must be consistent with the standards for accessibility established by the American national standards institute and the uniform federal accessibility standards.
- (b) Standards for polling places approved *pursuant to subsection (1)* on or after October 1, 2005, must comply with the accessibility standards in the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq.
 - (3) The secretary of state:
 - (a) may adopt rules to implement the provisions of this part; and
 - (b) shall adopt rules to implement the exemption provisions of 13-3-212."

Section 13. Section 13-3-206, MCA, is amended to read:

- "13-3-206. Survey of polling places to determine accessibility procedures. (1) The election administrator in each county shall conduct an onsite survey of each polling place used in an election to determine whether it meets the standards for accessibility established under 13-3-205.
- (2) Each election administrator shall conduct the survey in a manner that represents the path of travel that an elector would reasonably be expected to take in order to reach the polling place on election day.
- (3) A polling place that has been surveyed pursuant to this section need not be surveyed again unless:
 - (a) the conditions of accessibility change; or
 - (b) the initial survey results are inaccurate."

Section 14. Section 13-4-102, MCA, is amended to read:

- **"13-4-102. Manner of choosing election judges.** (1) Subject to 13-4-107, election judges must be chosen from lists of qualified registered electors for each precinct in the county, submitted at least 45 days before the primary election in even-numbered years by the county central committees of the political parties eligible to nominate candidates in the primary.
- (2) The list of each party may contain more names than the number of election judges to be appointed. The names of those not appointed as election

judges must be given to the election administrator for use in making appointments to fill vacancies.

- (3) Each board of election judges must include judges representing all parties that have submitted lists as provided in subsection (1). No more than the number of election judges needed to obtain a simple majority may be appointed from the list of one political party in each precinct. If any of the political parties entitled to do so fail to submit a list, the governing body shall, insofar as to the extent possible, appoint judges so that all parties eligible to participate in the primary are represented on each board.
- (4) The election administrator shall make appointments to fill vacancies from the list provided for in subsection (2). If the list is insufficient or if one or more of the eligible political parties fails to submit a list, the election administrator may randomly select, either by manual drawing or by computer, sufficient qualified registered electors in the county select enough people meeting the qualifications of 13-4-107 to fill election judge vacancies in all precincts.
- (5) An elector chosen to potentially serve as an election judge must be notified of selection at least 30 days before the primary election in even-numbered years. Each elector who agrees to serve as an election judge shall attend a training class conducted under 13-4-203 and shall continue to serve as provided in 13-4-103."

Section 15. Section 13-4-106, MCA, is amended to read:

- **"13-4-106. Compensation of judges.** (1) Except as provided in subsection (2), election judges must be paid at least the prevailing state or federal minimum wage, whichever is greater, for the number of hours worked during an election plus the number of hours spent at the instruction session. Mileage may be paid to election judges for attending instruction sessions. Election judges are exempt from unemployment insurance coverage for services performed pursuant to this chapter if the remuneration received by the election judge is less than \$1,000 in the calendar year.
- (2) The chief election judge may be paid at a rate higher than the other election judges and may be reimbursed for the actual expenses of transporting election materials.
- (3) The election administrator shall certify the amount due each election judge to the county governing body as soon after an election as all records necessary for the certification are received."

Section 16. Section 13-4-202, MCA, is amended to read:

"13-4-202. Administration of oaths. Any election judge may administer and certify oaths required *from electors or election judges* during an election."

Section 17. Section 13-4-203, MCA, is amended to read:

- "13-4-203. Instruction of judges training materials. (1) Before each election, all election judges who do not possess a current certificate of instruction obtained pursuant to 13-1-203(3) must be instructed by the election administrator. In precincts where voting systems are used, instructions must cover both how to operate the voting system and how to manually process any paper ballots.
- (2) Chief *election* judges may be required to attend the training session before each election, as well as a special session that may be held for chief *election* judges only, even if they possess a current certificate of instruction.

- (3) Any individual willing to be appointed as an election judge may attend an instruction session by registering with the election administrator. However, the individual may not be paid for attendance unless the individual is appointed as an election judge.
- (4) Each election judge completing a training session under this section must be given a certificate of completion. An individual may not serve as an election judge without a valid certificate obtained under 13-1-203(3) or this section. However, this *requirement* does not apply to individuals filling vacancies in emergencies.
- (5) All certificates of completion expire 30 days election judges shall obtain a certificate of instruction or be recertified before the primary election in even-numbered years.
- (6) Notice of *the* place and time of instruction must be given by the election administrator to the presiding officers of the political parties in the county."

Section 18. Section 13-10-211, MCA, is amended to read:

- "13-10-211. Declaration of intent for write-in candidates. (1) Except as provided in subsection (7), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. When a county election administrator is conducting the election for a school district, the school district clerk or school district office that receives the declaration of intent shall notify the county election administrator of the filing. Except as provided in subsections (2) and (3), the declaration must be filed no later than 5 p.m. on the 10th day before the date established under 13-13-205 on which a ballot must be available for absentee voting for the election and must contain:
 - (a) (i) the candidate's first and last names;
- (ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;
- (iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and
- (iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;
 - (b) the candidate's mailing address;
- (c) a statement declaring the candidate's intention to be a write-in candidate;
 - (d) the title of the office sought;
 - (e) the date of the election;
 - (f) the date of the declaration; and
 - (g) the candidate's signature.
- (2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office that the write-in candidate is seeking dies or is charged with a felony offense.
- (3) A person seeking to become a write-in candidate in a mail ballot election or for a trustee position in a school board election shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

- (4) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.
- (5) A declaration of intent may be provided to the election administrator or secretary of state:
- (a) sent by facsimile transmission if a facsimile facility is available for use by the election administrator or by the secretary of state, receipt;
 - (b) delivered in person; or
 - (c) mailed to the election administrator or to the secretary of state by mail.
- (6) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the secretary of state or the election administrator.
 - (7) The requirements in subsection (1) do not apply if:
 - (a) an election is held;
 - (b) a person's name is written in on the ballot;
- (c) the person is qualified for and seeks election to the office for which the person's name was written in; and
- (d) no other candidate has filed a declaration or petition for nomination or a declaration of intent."
 - **Section 19.** Section 13-13-204, MCA, is amended to read:
- "13-13-204. Authority to vote in person printing error or ballot destroyed failure to receive ballot effect of absentee elector's death. (1) If an elector has voted by received an absentee ballot but the absentee ballot contains printing errors or omissions, except that the name of a candidate who has died since the printing of the ballot and that appears on the ballot does not constitute an error or omission, the elector may receive a corrected ballot and vote in person in any manner at the elector's polling place at the election administrator's office.
- (2) If an elector does not receive an absentee ballot or if the absentee ballot was destroyed, the elector may appear at the appropriate polling place on election day and vote in person after signing an affidavit, in the form prescribed by the secretary of state, swearing that the elector's ballot has not been received or was destroyed. The ballot must be handled as a provisional ballot under 13-15-107.
- (3) If an elector votes by absentee ballot and the ballot has been mailed or otherwise returned to the election administrator but the elector dies between the time of balloting and election day, the deceased elector's ballot must be counted."
 - Section 20. Section 13-13-205, MCA, is amended to read:
- **"13-13-205. When ballots to be available.** (1) The Except as provided in subsection (2), the election administrator shall ensure that ballots are printed available for voting at least:
- (a) 30 days prior to an election for those elections held in compliance with 13-1-107(1);
- (b) 20 days prior to an election for those elections held in compliance with 13-1-104(2) and (3) and 13-1-107(2); and

- (c) $45\ 30$ days prior to an election held in conjunction with a federal general election in compliance with 13-1-104(1).
- (2) A ballot may not be provided to an elector for absentee voting sooner than 30 days before an election, except that an absentee ballot requested pursuant to Title 13, chapter 21, may must be sent to the elector as soon as the ballot is printed or at least 45 days in advance of an election held in conjunction with a federal general election in compliance with 13-1-104(1)."

Section 21. Section 13-13-212, MCA, is amended to read:

- "13-13-212. Application for absentee ballot special provisions. (1) (a) Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a standardized form provided by rule by the secretary of state or by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.
- (b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.
- (2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.
- (b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.
- (c) A request under this subsection (2) must be received by the election administrator within the time period specified in 13-13-211(2).
- (3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.
- (4) (a) When applying for an absentee ballot under this section, an An elector may also at any time request to be mailed an absentee ballot, as soon as the ballot becomes available, for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application.
- (b) The election administrator shall mail an a forwardable address confirmation form in January and July of each year to each elector who has requested an absentee ballot for subsequent elections. The address confirmation form mailed in January is for elections to be held between February 1 following the mailing through July of the same year, and the address confirmation form mailed in July is for elections to be held between August 1 following the mailing through January of the succeeding year. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the

election administrator shall remove the elector from the register of electors who have requested an absentee ballot for each subsequent election.

(c) An elector who has been removed from the register may subsequently request to be mailed an absentee ballot for each subsequent election."

Section 22. Section 13-13-213, MCA, is amended to read:

- "13-13-213. Transmission of application to election administrator delivery of ballot. (1) All absentee ballot application forms must be addressed to the appropriate election official.
- (2) Except as provided in subsection (4) (5), the elector may mail the application directly to the election administrator or deliver the application in person to the election administrator. An agent designated pursuant to 13-1-116 or a third party may collect the elector's application and forward it to the election administrator.
- (3) (a) The election administrator shall compare the signature on the application with the applicant's signature on the registration card or the agent's signature on the agent designation form. If convinced that the individual making the application is the same as the one whose name appears on the registration card or the agent designation form, the election administrator shall deliver the ballot to the elector in person or as otherwise provided in 13-13-214, subject to 13-13-205.
- (b) If the election administrator is not convinced that the individual signing the application is the same person whose name appears on the registration card or agent designation form, the election administrator shall notify the elector or agent, either by mail or by the most expedient method available under rules adopted by the secretary of state, and inform the elector or agent that the elector or agent may verify the signature, after proof of identification, by mail or in person at the election administrator's office prior to 8 p.m. on election day.
- (4) If an election administrator cannot verify the signature, a ballot may not be provided to the elector.
- (4)(5) In lieu of the requirement provided in subsection (2), an elector who requests an absentee ballot pursuant to 13-13-212(2) may return the application to the special absentee election board. Upon receipt of the application, the special absentee election board shall examine the signatures on the application and a copy of the voting registration card or agent designation form to be provided by the election administrator. If the special absentee election board believes that the applicant is the same person as the one whose name appears on the registration card or agent designation form, the special absentee election board shall provide a ballot to the elector, subject to when the ballot is available pursuant to 13-13-205."

Section 23. Section 13-13-214, MCA, is amended to read:

- "13-13-214. Mailing absentee ballot to elector delivery to person other than elector. (1) (a) Except as provided in 13-13-213 and in subsection (1)(b) (1)(c) of this section, the election administrator shall, no sooner than authorized in 13-13-205, mail, postage prepaid, to each legally registered elector and provisionally registered elector from whom the election administrator has received a valid absentee ballot application under 13-13-211 and 13-13-212 whatever official ballots are necessary.
- (b) The election administrator shall mail the ballots in a manner that conforms to the deadlines established for ballot availability in 13-13-205.

- (b)(c) The election administrator may deliver a ballot in person to an individual other than the elector if:
- (i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state or pursuant to 13-1-116;
- (ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;
- (iii) the election administrator believes that the individual receiving the ballot is the designated person; and
- (iv) the designated person has not previously picked up ballots for four other electors.
 - (2) The election administrator shall enclose with the ballots:
- (a) a form prescribed by the secretary of state that allows the elector to request absentee ballots for each subsequent federal election only or for all subsequent elections, as provided for in 13-13-212(4);
 - (b) a secrecy envelope, free of any marks that would identify the voter; and
- (c) an envelope for the return of the ballots. The envelope must be self-addressed by the election administrator and an affirmation in the form prescribed by the secretary of state must be printed on the back of the envelope.
- (3) The election administrator shall ensure that the ballots provided to an absentee elector are marked as provided in 13-13-116 and remove the stubs from the ballots, attaching the stubs to the elector's absentee ballot application.
- (4) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.
- (5) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. The instructions must include information regarding use of the secrecy envelope and use of the return envelope. The election administrator shall include a voter information pamphlet with the instructions if:
 - (a) a statewide ballot issue appears on the ballot mailed to the elector; and
 - (b) the elector requests a voter information pamphlet."

Section 24. Section 13-13-222, MCA, is amended to read:

- "13-13-222. Marking ballot before election day. (1) As soon as the official ballots are available pursuant to 13-13-205, the election administrator shall permit an elector to apply for, receive, and mark an absentee ballot before election day by appearing in person at the office of the election administrator and marking the ballot in a voting station area designated by the election administrator.
 - (2) The provisions of this chapter apply to voting under this section.
- (3) If the ballot is marked before the election administrator, the election administrator shall deal with it as provided in 13-13-231.
- (4) The ballot is considered voted at the time it is received by the election administrator."

Section 25. Section 13-13-241, MCA, is amended to read:

- "13-13-241. Examination of absentee ballot return envelopes deposit of absentee and unvoted ballots. (1) (a) After an absentee ballot is received, an election administrator shall compare the signature of the elector or elector's agent on the absentee ballot request with the signature on the absentee ballot return envelope.
- (b) If the elector is legally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall handle the ballot as a regular ballot.
- (c) (i) If the elector is provisionally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall open the outer return envelope and determine whether the elector's voter identification and eligibility information, if enclosed pursuant to 13-13-201, is are sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.
- (ii) If the voter identification *and eligibility* information is *are* sufficient to legally register the elector, the ballot must be handled as a regular ballot.
- (iii) If voter identification *or eligibility* information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.
- (2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.
- (3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes.
- (4) If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector by mail or by the most expedient method available under rules adopted by the secretary of state that the elector's identification or eligibility information was insufficient and that the elector's ballot will be treated as a provisional ballot until the elector provides sufficient information, pursuant to rules adopted by the secretary of state. If the elector is notified by mail, the election administrator shall provide a self-addressed return envelope along with a description of the information necessary for the absentee elector to reclassify the provisional ballot as a regular ballot.
- (5) If the signature on the absentee ballot return envelope does not match the signature on the absentee ballot request form, the absentee ballot must be rejected. The election administrator, without opening the absentee ballot return envelope, shall mark across it the reason for rejection. Unopened rejected absentee ballot return envelopes must be handled in the same manner as provided for rejected ballots in 13-15-108(1) the election administrator shall notify the elector, either by first-class mail or the most expedient method available under rules adopted by the secretary of state, and inform the elector that the elector may verify the signature, after proof of identification, by mail or in person at the election administrator's office prior to 8 p.m. on election day.
- (6) The elector may verify the signature by affirming that the signature is in fact the elector's or by completing a new registration card containing the elector's current signature or by filing a new agent designation form.

- (7) If an elector notified pursuant to subsection (5) fails to verify the signature before 8 p.m. on election day, the ballot must be handled as a provisional ballot under 13-15-107
- (6)(8) After receiving an absentee ballot secrecy envelope, without opening the secrecy envelope, the election judges shall on election day place the secrecy envelope in the proper ballot box."

Section 26. Section 13-13-301, MCA, is amended to read:

- "13-13-301. Challenges. (1) An elector's right to vote may be challenged at any time by any registered elector by the challenger filling out and signing an affidavit stating the grounds of the challenge and providing any evidence supporting the challenge to the election administrator or, on election day, to an election judge.
 - (2) A challenge may be made on the grounds that the elector:
 - (a) is of unsound mind, as determined by a court;
 - (b) has voted before in that election;
- (c) has been convicted of a felony and is serving a sentence in a penal institution;
 - (d) is not registered as required by law;
 - (e) is not 18 years of age or older;
- (f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote; or
- (g) is a provisionally registered elector whose status has not been changed to a legally registered voter.
 - (3) When a challenge has been made under this section:
- (a) prior to the close of registration under 13-2-301, the election administrator shall question the challenger and the challenged elector and may question other persons to determine whether the challenge is sufficient or insufficient to cancel the elector's registration under 13-2-402; or
- (b) after the close of registration or on election day, the election administrator or, on election day, the election judge shall allow the challenged elector to cast a provisional paper ballot, which must be handled as provided in 13-15-107.
- (4) (a) In response to a challenge, the challenged elector may fill out and sign an affidavit to refute the challenge and swear that the elector is eligible to vote.
- (b) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector as soon as possible of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. *The notification must be made:*
- (i) within 5 days of the filing of the challenge if the election is more than 5 days away; or
 - (ii) on or before election day if the election is less than 5 days away.
- (c) The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided. If the challenge is made more than 5 days before an election, "as soon as possible", as used in this subsection (4)(b), means no later than 5 days after the challenge.

(5) The secretary of state shall adopt rules to implement the provisions of this section and shall provide standardized affidavit forms for challengers and challenged electors."

Section 27. Section 13-15-107, MCA, is amended to read:

- **"13-15-107.** Handling and counting provisional and challenged ballots. (1) To verify eligibility to vote, a provisionally registered elector who casts a provisional ballot has until 5 p.m. on the day after the election to provide valid identification *or eligibility* information either in person, by facsimile, by electronic mail means, or by mail postmarked no later than the day after the election.
- (2) (a) If a legally registered elector casts a provisional ballot because the elector failed to provide sufficient identification as required pursuant to 13-13-114(1)(a), the election administrator shall compare the elector's signature of the elector or the elector's agent designated pursuant to 13-1-116 on the affirmation required under 13-13-601 to the elector's signature on the elector's voter registration card or the agent's designation form.
- (b) If the signatures match, the election administrator shall handle the ballot as provided in subsection (6).
- (c) If the signatures do not match and the elector or the elector's agent fails to provide valid identification information by the deadline, the ballot must be rejected and handled as provided in 13-15-108.
- (3) A provisional ballot must be counted if the election administrator verifies the elector's *identity or* eligibility pursuant to rules adopted under 13-13-603. However, if the election administrator cannot verify the elector's *identity or* eligibility under the rules, the elector's provisional ballot must be rejected and handled as provided in 13-15-108. If the ballot is provisional because of a challenge and the challenge was made on the grounds that the elector is of unsound mind or serving a felony sentence in a penal institution, the elector's provisional ballot must be counted unless the challenger provides documentation by 5 p.m. on the day after the election that a court has established that the elector is of unsound mind or that the elector has been convicted and sentenced and is still serving a felony sentence in a penal institution.
- (4) The election administrator shall provide an elector who cast a provisional ballot but whose ballot was not counted with the reasons why the ballot was not counted.
- (5) A provisional ballot east by an elector whose voter information is verified before 5 p.m. on the day after the election must be removed from its provisional envelope, grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other *provisional* ballot if the elector's voter information is:
 - (a) verified before 5 p.m. on the day after the election; or
- (b) postmarked by 5 p.m. on the day after election day and received and verified by 3 p.m. on the sixth day after the election.
- (6) Provisional ballots that are not resolved by the end of election day may not be counted until after 3 p.m. on the sixth day after the election."

Section 28. Section 13-17-103, MCA, is amended to read:

"13-17-103. Required specifications for voting systems. (1) A voting system may not be approved under 13-17-101 unless the voting system:

- (a) allows an elector to vote in secrecy;
- (b) prevents an elector from voting for any candidate or on any ballot issue more than once:
- (c) prevents an elector from voting on any office or ballot issue for which the elector is not entitled to vote;
- (d) allows an elector to vote only for the candidates of the party selected by the elector in the primary election;
- (e) allows an elector to vote a split ticket in a general election if the elector desires;
- (f) allows each valid vote cast to be registered and recorded within the performance standards adopted pursuant to subsection (2);
 - (g) may be is protected from tampering for a fraudulent purpose;
- (h) prevents an individual from seeing or knowing the number of votes registered for any candidate or on any ballot issue during the progress of voting;
 - (i) allows write-in voting;
- (j) will, if purchased by a jurisdiction within the state, be provided with a guarantee that the training and technical assistance will be provided to election officials under the contract for purchase of the voting system;
 - (k) uses a paper ballot that allows votes to be manually counted; and
- (l) allows auditors to access and monitor any software program while it is running on the system to determine whether the software is running properly.
- (2) To implement the provisions of subsection (1)(f), the secretary of state shall adopt rules setting a benchmark performance standard that must be met in tests by each voting system prior to approval under 13-17-101. The standard must be based on commonly accepted industry standards for readily available technologies."

Section 29. Section 13-17-203, MCA, is amended to read:

- "13-17-203. Publication of information concerning voting systems. (1) Not more than 10 or less than 3 days before an election at which a voting system will be used, the election administrator shall publish broadcast on radio or television, as provided in 2-3-105 through 2-3-107, or publish in a newspaper of general circulation in the county:
- (1)(a) a diagram showing the voting system and ballot arrangement (in newspaper only);
- (2)(b) a statement of the locations where voting systems are on public exhibition; and
 - (3)(c) instructions on how to vote.
- (2) The election administrator shall select the method of notification that the election administrator believes is best suited to reach the largest number of potential electors."

Section 30. Section 13-17-212, MCA, is amended to read:

"13-17-212. Performance testing and certification of voting systems prior to election. (1) No more than 30 days prior to an election in which a voting system is used, the election administrator shall publicly test and certify that the system is performing properly.

- (2) The secretary of state shall ensure that at least 10% of all voting systems each type of voting system in the state have has been randomly tested and certified at least once every calendar year.
- (3) If any type of direct recording electronic voting system is approved pursuant to 13-17-101 after meeting the requirements of 13-17-103, provision must be made to ensure that, at a minimum, each system is tested and certified as follows:
 - (a) upon delivery;
 - (b) no more than 30 days prior to the election; and
 - (c) on election day.
- (4)(3) The provisions of this section must be implemented according to rules adopted by the secretary of state pursuant to 13-17-211."
 - **Section 31.** Section 13-19-102, MCA, is amended to read:
- "13-19-102. **Definitions.** As used in this chapter, the following definitions apply:
- (1) "Ballot" means the ballot or set of ballots that is to be returned by a specified election day.
- (1)(2) "Election day" is the date established by law on which a particular election would be held if that election were being conducted by means other than a mail ballot election.
- (2) "Mail ballot election" means any election conducted by mail pursuant to 13-19-104 and in compliance with the procedure specified in 13-19-106.
- (3) "Political subdivision" means a political subdivision of the state, including a school district.
- (4) "Return/verification envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:
- (a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and
 - (b) allow it to be used in the United States mail.
- (5) "Secrecy envelope" means an envelope used to contain the elector's ballot and that is designed to conceal the elector's vote *ballot* and to prevent that elector's ballot from being distinguished from the ballots of other electors."
 - Section 32. Section 13-19-105, MCA, is amended to read:
- "13-19-105. Role of secretary of state. In addition to other powers and duties conveyed by law, the secretary of state, with advice from election administrators, shall:
- (1) prescribe the form of materials to be used in the conduct of mail ballot elections;
- (2) review written plans for the conduct of mail ballot elections as provided in 13-19-205; and $\,$
 - (3) adopt rules consistent with this chapter to:
- (a) establish and maintain uniformity in the conduct of mail ballot elections; and
- (b) establish procedures for the conduct of mail ballot elections that, when implemented by the election administrator:

- (i) prevent fraud;
- (ii) ensure the accurate handling and canvassing of mail ballots; and
- (iii) ensure that the secrecy of voted ballots is maintained."

Section 33. Section 13-19-106. MCA, is amended to read:

- "13-19-106. General requirements for mail ballot election. A mail ballot election must be conducted substantially as follows:
- (1) Subject to 13-12-202, official mail ballots must be prepared and all other initial procedures followed as provided by law, except that mail ballots must be paper ballots and are not required to have stubs.
- (2) An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.
- (3) Each return/verification envelope must contain a form prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.
 - (4) The elector shall mark the ballot and place it in a secrecy envelope.
- (5) (a) The elector shall then place the secrecy envelope containing the elector's ballot in a return/verification envelope and shall return it by mailing mail it or delivering deliver it in person to a place of deposit designated by the election administrator so that it is received before a specified time on election day.
- (b) Except as provided in 13-21-206, the voted ballot must be received before 8 p.m. on election day.
- (6) Once returned, election *Election* officials shall first qualify the submitted voted ballot by examining the return/verification envelope to determine whether it is submitted by a qualified elector who has not previously voted in the election.
- (7) If the *voted* ballot qualifies and is otherwise valid, officials shall then open the return/verification envelope and remove the secrecy envelope, which is then voted by depositing it *must be deposited* unopened in an official ballot box.
- (8) After Except as provided in 13-19-312, after the close of polls voting on election day, voted ballots must be counted and canvassed as provided in *Title 13*, chapter 15."
 - **Section 34.** Section 13-19-204, MCA, is amended to read:
- **"13-19-204. Objection of political subdivision.** (1) A political subdivision may, by resolution of the governing body, object to the conduct of one of its elections under this chapter. The resolution must include a statement of the reasons for the objection.
- (2) If such a the resolution is filed with the election administrator no later than 55 days prior to election day, the election may not be conducted by mail under this chapter."
 - Section 35. Section 13-19-205, MCA, is amended to read:
- "13-19-205. Written plan for conduct of election amendments approval procedures. (1) The election administrator shall prepare a written plan, including a timetable, for the conduct of the election and shall submit it to the secretary of state in a manner that ensures that it is received at least 60 days prior to the date set for the election.

- (2) The written plan must include:
- (a) a timetable for the election; and
- (b) sample written instructions that will be sent to the electors. The instructions must include but are not limited to:
- (i) information on the estimated amount of postage required to return the ballot; and
- (ii) (A) the location of the places of deposit and the days and times when ballots may be returned to the places of deposit, if the information is available; or
- (B) if the information on location and hours of places of deposit is not available, a section that will allow the information to be added before the instructions are mailed to electors.
- (2)(3) The plan may be amended by the election administrator any time prior to the 35th day before election day by notifying the secretary of state in writing of any changes.
- (3)(4) Within 5 days of receiving the plan and as soon as possible after receiving any amendments, the secretary of state shall approve, disapprove, or recommend changes to the plan or amendments.
- (4)(5) When the written plan has been approved, the election administrator shall proceed to conduct the election according to the approved plan unless the election is canceled for any reason provided by law."
 - Section 36. Section 13-19-206, MCA, is amended to read:
- "13-19-206. Distributing materials to electors procedure. For each election conducted under this chapter, the election administrator shall:
- (1) mail a single packet to every qualified elector of the political subdivision conducting the election;
 - (2) ensure that each packet contains only one each of the following:
- (a) an official ballot, except that the election administrator may include separate ballots for each type of election being held encurrently on the specified election day;
 - (b) a secrecy envelope;
 - (c) a return/verification envelope; and
- (d) complete written instructions, as approved by the secretary of state pursuant to 13-19-205, for mail ballot voting and returning ballots procedures; and
 - (3) ensure that each packet is:
- (a) addressed to a single individual elector at the most current address available from the official registration records; and
- (b) deposited in the United States mail with sufficient $\frac{1}{2}$ postage for it to be delivered to the elector's address; and
- (4) mail the packet in a manner that conforms to postal regulations to require the return, not forwarding, of undelivered packets."
 - Section 37. Section 13-19-207, MCA, is amended to read:
- "13-19-207. When materials to be mailed. For (1) Except as provided in subsection (2), for any election conducted by mail, ballots must be mailed no sooner than the 25th day and no later than the 15th day before election day.

- (2) (a) All ballots mailed to electors on the active list must be mailed the same day.
- (b) At any time before noon on the day before election day, a ballot may be mailed or, upon request, provided in person at the election administrator's office to:
- (i) an elector on the inactive list after the elector reactivates the elector's registration as provided in 13-2-222; or
- (ii) an individual who registers under the late registration option provided for in 13-2-304.
- (c) An elector on the inactive list shall vote at the election administrator's office on election day if the elector reactivates the elector's registration after noon on the day before election day.
- (d) An elector who registers pursuant to 13-2-304 on election day or on the day before election day must receive the ballot and vote it at the election administrator's office."

Section 38. Section 13-19-301, MCA, is amended to read:

- **"13-19-301. Voting mail ballots.** (1) Upon receipt of his the mailed ballot, the elector may vote by:
 - (a) marking the ballot in the manner specified;
- (b) placing the marked ballot in the secrecy envelope, free of any identifying marks;
- (c) placing the secrecy envelope containing a single ballot in the return/verification envelope;
 - (d) executing the affidavit printed on the return/verification envelope; and
- (e) returning the return/verification envelope with the secrecy envelope containing the ballot enclosed, as provided in 13-19-306.
- (2) For the purpose of this chapter, an official ballot is voted when, after the requirements of 13-19-310 and 13-19-311 have been satisfied, the return/verification envelope has been opened by election officials and the secrecy envelope containing the ballot has been deposited in the official ballot box the marked ballot is received at a place of deposit."
 - Section 39. Section 13-19-303, MCA, is amended to read:
- "13-19-303. Voting by elector when absent from place of residence during conduct of election. (1) A qualified elector who will be absent from the county during the time the election is being conducted may:
- (a) vote in person in the election administrator's office as soon as ballots are available and until noon the day before the ballots are scheduled to be mailed; or
- (b) make a written request, signed by the applicant and addressed to the election administrator, that the ballot be mailed to an address other than *the address* that which appears on the registration card. Written requests must be accepted until noon the day before the ballots are scheduled to be mailed.
- (2) (a) Ballots mailed to electors on the active list pursuant to this section must be mailed the same day that all other ballots are mailed, except that a ballot requested pursuant to Title 13, chapter 21, may be sent to the elector as soon as the ballot is available.
- (b) A ballot may be provided pursuant to this section until noon on the day before election day if, after the ballots are mailed to active electors:

- (i) an inactive elector reactivates the elector's registration as provided in 13-2-222; or
- (ii) an individual registers under the late registration option provided for in 13-2-304."

Section 40. Section 13-19-304, MCA, is amended to read:

- "13-19-304. Voting by nonregistered electors. (1) For any election being conducted under this chapter by a political subdivision that allows individuals to vote who are not registered electors, such an the individual may vote by appearing in person at the election administrator's office or by providing materials by mail, facsimile, or electronic means and demonstrating that he the individual possesses the qualifications which entitle him to vote required for voting.
- (2) An individual complying with subsection (1) before official ballots are available may leave provide a card with to the election administrator containing his the signature of the individual or the individual's agent designated pursuant to 13-1-116 and the address to which his the ballot is to be mailed. The signature provided must then be used for verification when the mail ballot is returned.
- (3) An individual complying with subsection (1) after official ballots are available and before the close of the polls on election day must be permitted to vote at that time."

Section 41. Section 13-19-305, MCA, is amended to read:

- **"13-19-305. Replacement ballots procedures.** (1) An elector may obtain a replacement ballot as provided in this section if his the original ballot is destroyed, spoiled, lost, or not received by the elector.
- (2) An elector seeking *or receiving* a replacement ballot shall sign a sworn statement stating that the *original* ballot was either destroyed, spoiled, lost, or not received and shall present the statement to the election administrator no later than 8 p.m. on election day.
- (3) Upon receiving the sworn statement, the election administrator shall issue a replacement ballot to the elector. Each spoiled ballot must be returned before a new one another ballot may be issued.
- (4) The election administrator shall designate his the election administrator's office or a central location in the political subdivision in which the election is conducted as the single location for obtaining a replacement ballot.
 - (5) A replacement ballot may also be issued pursuant to 13-19-313.
- (6) The election administrator shall keep a record of each replacement ballot issued. If he the election administrator later determines that any elector to whom a replacement ballot has been issued has attempted to vote more than once, he the election administrator shall immediately notify the county attorney and the secretary of state of each instance."
 - Section 42. Section 13-19-306, MCA, is amended to read:
- **"13-19-306. Returning marked ballots** when where. (1) After complying with 13-19-301, an elector or his the elector's agent or designee may return his the elector's ballot on or before election day by either:
- (a) depositing the return/verification envelope in the United States mail, with sufficient postage affixed; or
- (b) returning it to any place of deposit designated by the election administrator pursuant to 13-19-307.

(2) In order to have his ballot Except as provided in 13-21-206, in order for the ballot to be counted, each elector must return it in such a manner that ensures it is received prior to 8 p.m. on election day."

Section 43. Section 13-19-307, MCA, is amended to read:

- "13-19-307. Places of deposit. (1) (a) The election administrator shall designate his the election administrator's office and may designate one or more places in the political subdivision in which the election is being conducted as places of deposit where ballots may be returned in person by the elector or the elector's agent or designee.
- (b) If the election administrator's office is not accessible pursuant to 13-3-205, the election administrator shall designate at least one accessible place of deposit.
- (2) Prior to election day, ballots may be returned to any designated place of deposit only during regular business hours during the days and times set by the election administrator and within the regular business hours of the location.
- (3) On election day, each location designated as a place of deposit must be open as provided in 13-1-106, and ballots may be returned during those hours.
- (4) The election administrator may designate certain locations as election day places of deposit, and any *designated* location so designated shall must function as a place of deposit only on election day.
- (5) Each place of deposit must be staffed by at least two election officials who are selected in the same manner as provided for the selection of election judges in 13-4-102.
- (5)(6) The election administrator shall provide each designated place of deposit with an official ballot transport box secured as provided by law."

Section 44. Section 13-19-308, MCA, is amended to read:

- **"13-19-308. Disposition of ballots returned in person.** Ballots returned by the elector in person by the elector or the elector's agent or designee must be processed as follows:
- (1) If returned to the election administrator's office directly, the ballot must be processed in the same manner provided for ballots returned by mail except that, while the elector, *agent, or designee* is present, officials shall:
 - (a) verify the signature pursuant to 13-19-310;
- (b) resolve any questions as to the validity of the ballot $as\ provided\ in\ 13-19-314;$ and
- (c) deposit the unopened secrecy envelope containing the *voted* ballot in the official ballot box.
- (2) If returned to a place of deposit other than the election administrator's office, the election official officials on location shall:
- (a) keep a log of the names of all electors from for whom he receives the officials receive ballots and the names of the people who deliver the ballots;
- (b) deposit the unopened return/verification envelope in the sealed ballot transport box provided for that purpose; and
- (c) securely retain all *voted* ballots until they are transported to the election administrator's office. The transport boxes must then be opened and the ballots disposed of handled in the same manner provided for ballots returned by mail."

Section 45. Section 13-19-310, MCA, is amended to read:

- "13-19-310. Signature verification procedures. (1) The election administrator shall verify the signature of each elector by comparing the affidavit printed on the return/verification envelope to the signature on that elector's registration card or agent designation form or on the signature card provided under 13-19-304.
- (2) If the election administrator is convinced that the individual signing the affidavit is the same as the one whose name appears on the registration card, he agent designation form, or signature card, the election administrator shall proceed to validate the ballot.
- (3) If the election administrator is not convinced that the individual signing the return/verification envelope is the same as the one whose name appears on the registration card, he may not validate the ballot but instead agent designation form, or signature card, the election administrator shall:
 - (a) designate the ballot as a provisional ballot; and
 - (b) give notice to the elector as provided in 13-19-313; and
- (b) if the discrepancy is not rectified to the election administrator's satisfaction, present the unopened envelope and the registration card to the canvassing board for a determination."

Section 46. Section 13-19-311, MCA, is amended to read:

- "13-19-311. Valid ballots requirements. (1) Only valid ballots may be counted in an election conducted under this chapter.
 - (2) For the purpose of this chapter, a *voted* ballot is valid only if:
- (a) it is sealed in the secrecy envelope and returned in the return/verification envelope;
- (b) the elector's signature on the affidavit on the return/verification envelope is verified pursuant to 13-19-310; and
- (c) it is received before 8 p.m. on election day, except as provided in 13-21-206.
- (3) If a voted ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.
 - (3)(4) A ballot is invalid if:
 - (a) any identifying marks are placed on the ballot by the elector; or
- (a)(b) more than one ballot is enclosed in a single return/verification or secrecy envelope unless:
- (i) there are multiple elections being held at the same time and there is the envelope contains only one ballot for each election in the envelope; or
- (ii) (A) the return/verification envelope contains ballots from the same household;
 - (B) each ballot is in its own secrecy envelope; and
- (C) the return/verification envelope contains a valid signature for each elector who has returned a ballot.
 - (b) any identifying marks are placed on the ballot by the elector.
- (4) Failure of an elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address in conjunction with a mailed ballot, as provided in 13-19-106, invalidates an otherwise valid mailed ballot."

Section 47. Section 13-19-312, MCA, is amended to read:

"13-19-312. Counting procedure. (1) Except as provided in subsection (2), after the close of voting on election day, the counting board appointed pursuant to 13-15-112 shall:

- (a) open the official ballot boxes;
- (b) open each secrecy envelope, removing the *voted* ballot; and
- (c) proceed to count the votes as provided in *Title 13*, chapter 15.
- (2) On election day, the election administrator may begin the procedures described in subsection (1) before the polls close if the election administrator complies with the procedures described in 13-15-207(3)."

Section 48. Section 13-19-313, MCA, is amended to read:

"13-19-313. Notice to elector — opportunity to resolve questions. (1) As soon as possible after receipt of an elector's return/verification envelope, the election administrator shall give notice to the elector, either by telephone or by first-class—mail, by the most expedient method available if the election administrator:

- (a) is unable to verify the elector's or agent's signature under 13-19-310; or
- (b) has discovered a procedural mistake made by the elector that would invalidate the elector's ballot under 13-19-311; or
- (c) finds that the elector has failed to attest to the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address as provided in 13-19-106.
- (2) The election administrator shall inform the elector that, the elector may appear in person at the election administrator's office prior to 8 p.m. on election day and verify the signature or correct the mistake.
- (3) Any elector appearing pursuant to subsection (2) must be permitted to, the elector may:
- (a) by mail or in person, verify the elector's or agent's signature, after proof of identification, by affirming that the signature is in fact the elector's, or by completing a new registration card containing the elector's current signature, or by providing a new agent designation form;
- (b) by mail, facsimile, telephone, or electronic means, provide the address information required under 13-19-106 or correct any minor mistake if the correction would render the ballot valid: or
- (c) if necessary, request and receive a replacement ballot and vote it at that time the election administrator's office.
- (3) The ballot of an elector who fails to provide information pursuant to subsection (2) must be handled as a provisional ballot pursuant to 13-15-107.
- (4) (a) If a mail ballot is returned as undeliverable, the election administrator shall investigate the reason for the return and mail a confirmation notice. The notice must be sent by forwardable, first-class mail with a postage-paid, return-addressed notice.
- (b) If the confirmation notice is returned to the election administrator, the elector must be placed on an the inactive list provided for in 13-2-220 until that the elector becomes a qualified elector."

Section 49. Section 13-19-314, MCA, is amended to read:

- "13-19-314. Resolving ballots in question. Any questions concerning the validity of a ballot or signature must be resolved in the following manner:
- (1) If the election administrator is unable to determine without doubt whether a *voted* ballot is valid or invalid, the election administrator shall give notice to the elector as provided in 13-19-313.
- (2) If, subsequent to following the procedure in 13-19-313, the election administrator is still unable to determine without doubt whether the *voted* ballot is valid or invalid, the election administrator shall present the issue for a determination to the counting board appointed pursuant to 13-15-112 ballot must be handled as a provisional ballot pursuant to 13-15-107.
- (3) If a majority of the counting board is unable to agree on whether the ballot is valid or invalid, it may not count the ballot in question, and the election administrator shall present the ballot to the board of canvassers for a determination of the issue.
- (4) If a majority of the board of canvassers is unable to agree that the ballot is valid, the ballot is invalid and may not be counted."
 - **Section 50.** Section 13-21-203, MCA, is amended to read:
- "13-21-203. Registration of United States electors after return. (1) A United States elector who has returned to the elector's residence too late to register at the time when and place where required for regular registration is required is entitled to may register:
 - (a) under the late registration provisions of 13-2-304; or
- (b) for the purpose of voting at the next election after the date of the elector's return up to noon on the day before the election for the purpose of voting at the next election after the date of the elector's return.
- (2) The elector shall execute a sworn affidavit qualifying the elector under this section to be filed in the office of the elector's registration. The county registrar shall provide to the person registering under the provisions of this section a certificate stating the precinct in which the elector is entitled to vote. This certificate must be presented to the election judges of that precinct at the time of voting."
 - Section 51. Section 13-21-210, MCA, is amended to read:
- **"13-21-210. Application for absentee ballots.** (1) (a) A United States elector may apply for a regular absentee ballot as follows:
- (i) by making a written request, which must include the elector's birth date and signature; or
- (ii) by properly completing, signing, and returning to the election administrator the federal post card application.
- (b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.
- (2) An application for a regular absentee ballot must be received by the appropriate county election administrator not less than 30 days before the date of an election. An application for a regular absentee ballot that is received less than 30 days before the date of an election must be processed for the next election.

- (3) An application under this section is valid for all state and local elections in the calendar year in which the application is made and the next two regularly scheduled federal general elections unless an elector requests to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains eligible to vote and resides at the address provided in the initial application.
- (4) If an elector fails to provide the address confirmation required by 13-13-212, the elector will be removed from the permanent absentee ballot list. An elector who is removed from the permanent absentee ballot list will continue to receive absentee ballots during the period covered in the elector's initial application under this section.
- (4)(5) The elector's county election administrator shall provide the elector with a regular absentee ballot for the elections described in subsection (3) as soon as the ballots are printed."

Section 52. Section 13-27-311, MCA, is amended to read:

- "13-27-311. Publication of proposed constitutional amendments. (1) If a proposed constitutional amendment or amendments are proposed by initiative is submitted to the people, the secretary of state shall have the proposed amendment or amendments published in full twice each month for 2 months previous prior to the election at which they are it is to be voted upon by the people, in not less than one newspaper of general circulation in each county.
- (2) (a) The For a proposed constitutional amendment referred to the voters by the legislature, the secretary of state may arrange for newspaper, publication or radio, or television publication of proposed constitutional amendments broadcast of the amendment, in each county.
- (b) A summary of The ballot statements reviewed or prepared by the attorney general for the amendment as provided by the attorney general, as described in 13-27-312 or 13-27-315, would suffice are sufficient for the publication required allowed by this section subsection (2) and should be made at least twice each month for 2 months previous prior to the election.
- (c) The election administrator shall select the method of notification that the election administrator believes is best suited to reach the largest number of potential electors."

Section 53. Section 13-37-226, MCA, is amended to read:

- **"13-37-226. Time for filing reports.** (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports:
- (a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot:
- (b) on the 10th day of March and September in each year that an election is to be held and on the 15th and 5th days preceding the date on which an election is held and within 24 hours after receiving a contribution of \$200 or more if received between the 10th day before the election and the day of the election;
 - (c) not more than 20 days after the date of the election; and

- (d) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).
- (2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:
- (a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which the text of the proposed ballot issue is submitted for review and approval pursuant to 13-27-202 during the year or years prior to the election year that an issue is or is expected to be on the ballot;
- (b) on the 10th day of March and on the 10th day of each subsequent month through September in each year that an election is to be held;
 - (c) on the 15th and 5th days preceding the date on which an election is held;
- (d) within 24 hours after receiving a contribution of \$500 or more if received between the 10th day before the election and the day of the election;
 - (e) within 20 days after the election; and
- (f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).
- (3) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized to support or oppose a particular state district candidate or issue shall file reports:
- (a) on the 12th day preceding the date on which an election is held and within 48 hours after receiving a contribution of \$100 or more if received between the 17th day before the election and the day of the election. The report under this subsection (3)(a) may be made by mail or by electronic communication to the clerk and recorder and the commissioner of political practices.
 - (b) not more than 20 days after the date of the election; and
- (c) whenever a candidate or political committee files a closing report as specified in 13-37-228(3).
- (4) Candidates for any other public office and political committees that are specifically organized to support or oppose a particular local issue shall file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds \$500, except as provided in 13-37-206.
- (5) For the purposes of this subsection, a committee that is not specifically organized to support or oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file:
- (a) a report on the 12th day preceding the date of an election in which it participates by making an expenditure;
- (b) a report not more than 20 days after the date of the election in which it participates by making an expenditure; and
- (c) a report on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.

- (6) The commissioner may promulgate rules regarding the extent to which organizations that are incidental political committees shall report their politically related activities in accordance with this chapter.
- (7) All reports required by this section must be complete as of the fifth day before the date of filing as specified in 13-37-228(2) and this section."

Section 54. Section 20-20-107, MCA, is amended to read:

- **"20-20-107. Election expenses.** (1) All expenses necessarily incurred in the matter of holding school elections shall *must* be paid out of the school funds of the district, except when such *the* expenses are by law to be shared by a community college district for which the district is conducting an election.
- (2) The trustees may shall pay the election judges of a school election at a rate not to exceed the prevailing at least the state or federal minimum wage, whichever is greater, per for each hour of service in connection with such the election, including the number of hours required to attend training pursuant to [section 55].
- (3) Election judges are exempt from unemployment insurance coverage for services performed pursuant to this chapter if the remuneration received by the election judge is less than \$1,000 per calendar year."

Section 55. Election judges — qualifications — training. (1) Election judges must be qualified registered electors of the school district in which they serve.

- (2) An election judge may not be:
- (a) the candidate;
- (b) an ascendant, descendant, brother, or sister of a candidate; or
- (c) the spouse of the candidate or of any of the individuals listed in subsection (2)(b).
- (3) School election judges must meet the training and certification requirements of 13-4-203.

Section 56. Section 20-20-203, MCA, is amended to read:

- **"20-20-203. Resolution for poll hours, polling places, and judges.** (1) At the trustee meeting when a school election is called, the trustees shall:
- (a) except as provided in 20-20-106(3), establish the time at which the polls are to open if in their discretion they determine that the polls $\frac{1}{2}$ shall $\frac{1}{2}$ must be open before noon:
- (b) establish the polling places for such the election, using the established polling places for general elections within the district wherever possible; and
- (c) appoint, from among the qualified electors of the district, at least three judges for each polling place for such election and notify each judge of such appointment not less than 10 days before the election.
- (2) There shall must be one polling place in each district unless the trustees establish additional polling places. If more than one polling place is established, the trustees shall define the boundaries for each polling place, and such trustee-defined polling place so that the boundaries shall be for each polling place are coterminous with county precinct boundaries existing within a district. If the site of a polling place is changed from the polling place site used for the last preceding school election, special reference to the changed site of the polling place shall must be included in the notice for such the election."

- **Section 57. Tie votes.** If a tie vote occurs among the candidates for a school trustee position, the trustees shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.
- **Section 58. Codification instruction.** (1) [Section 55] is intended to be codified as an integral part of Title 20, chapter 20, part 1, and the provisions of Title 20, chapter 20, apply to [section 55].
- (2) [Section 57] is intended to be codified as an integral part of Title 20, chapter 20, part 4, and the provisions of Title 20, chapter 20, apply to [section 57].
- **Section 59. Coordination instruction.** If [this act] and Senate Bill No. 394 are both passed and approved and both bills amend 13-19-205, then the sections amending 13-19-205 are void and 13-19-205 must be amended as follows:
- "13-19-205. Written plan for conduct of election amendments approval procedures. (1) The election administrator shall prepare a written plan, including a timetable, for the conduct of the election and shall submit it to the secretary of state and the governing body concerned in a manner that ensures that it is received at least 60 days prior to the date set for the election.
 - (2) (a) The written plan must include:
 - (i) a timetable for the election;
 - (ii) the location of places of deposit for ballots;
- (iii) the location of any accessible places of deposit that would include the use of specialized voting equipment designed to accommodate physically disabled voters;
- (iv) a description of any other voter services to be provided at the places of deposit;
- (v) any specific effort designed to increase or enhance the ability of a person to participate in the election; and
- (vi) sample written instructions that will be sent to the electors. The instructions must include but are not limited to information on the estimated amount of postage required to return the ballot and, if the information is available, the location of places of deposit for ballots and the days and times when ballots may be returned to the places of deposit.
- (b) If the information described in subsection (2)(a)(vi) is not available when the plan is submitted under subsection (1), the sample written instructions must include a section that will allow the information to be added before the instructions are mailed to electors.
- (2)(3) The plan may be amended by the election administrator any time prior to the 35th day before election day by notifying the secretary of state in writing of any changes. Only the governing body concerned must be notified of any changes to information required in subsection (2).
- (3)(4) Within 5 days of receiving the plan and as soon as possible after receiving any amendments, the secretary of state shall approve, disapprove, or recommend changes to the plan or amendments.
- (4)(5) When the written plan has been approved, the election administrator shall proceed to conduct the election according to the approved plan *unless the election is canceled for any reason provided by law*."

Approved April 18, 2009

CHAPTER NO. 298

[HB 34]

AN ACT REVISING TEACHERS' RETIREMENT SYSTEM LAWS; SUSPENDING RETIREMENT BENEFITS WHEN MEMBERS RETURN TO FULL-TIME EMPLOYMENT COVERED BY THE TEACHERS' RETIREMENT SYSTEM AND PROVIDING FOR THE CALCULATION OF A SECOND BENEFIT; REQUIRING EMPLOYER CONTRIBUTIONS ON WAGES PAID TO RETIRED MEMBERS; CLARIFYING THE EFFECTIVE DATE OF RETIREMENT OF A MEMBER WHO TERMINATES WITHIN 30 DAYS OF THE END OF A SCHOOL YEAR; AMENDING SECTIONS 19-20-501, 19-20-605, 19-20-703, AND 19-20-731, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Resumption of employment by retired member suspension of benefits. (1) If a retired member returns to full-time employment in a position covered by the retirement system and becomes an active contributing member, benefits must be suspended until the member terminates all employment and applies to have benefits reinstated.
- (2) Except as provided in subsection (4), upon termination and retirement of a previously retired member who was reinstated to active membership pursuant to 19-20-731 before July 1, 2009:
- (a) if the member earned less than 1 year of creditable service, the original benefit and retirement option the member was receiving at the time of suspension of benefits must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later; or
- (b) if the member earned 1 year or more of creditable service, retirement benefits must be recalculated under 19-20-804 if the member has attained normal retirement age or under 19-20-802 if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were suspended.
- (3) (a) Except as provided in subsection (4), upon the subsequent retirement of a formerly retired member who was reinstated to active membership pursuant to 19-20-731 on or after July 1, 2009, and earned:
- (i) at least 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option and beneficiary previously selected, plus an additional benefit based upon the new creditable service and compensation earned. The second benefit must be calculated as provided under 19-20-804 if the member is eligible for a service retirement benefit or under 19-20-802 if the member is eligible for early retirement. The second benefit must be paid under the same retirement allowance with the same beneficiary originally elected.
- (ii) less than 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option previously selected, plus a refund of the

employee contributions contributed after the member was reinstated to active service, plus interest.

- (b) If a member dies during the period of reemployment following an initial retirement, the member must be considered as retiring on the day preceding the date of death and benefits must be determined according to the following:
- (i) If the member elected the normal form benefit prior to reemployment, the member's designated beneficiary must receive an amount equal to the member's accumulated contributions on deposit.
- (ii) If the member elected a retirement option pursuant to 19-20-702 prior to reemployment, the benefits due are payable in accordance with the terms of the original option elected and this subsection (3).
- (4) If a member who retired under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if that member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled.

Section 2. Section 19-20-501, MCA, is amended to read:

- "19-20-501. Financial administration of money. The members of the retirement board are the trustees of all money collected for the retirement system, and as trustees, they shall provide for the financial administration of the money as provided in Article VIII, section 15, of the Montana constitution in the following manner:
- (1) The money must be invested and reinvested by the state board of investments.
- (2) The retirement board shall annually establish the rate of regular interest.
- (3) In accordance with the provisions of 19-20-605(7)(8), the amount to be credited to each reserve must be allocated from the interest and other earnings on the money of the retirement system actually realized during the preceding fiscal year, less the amount allocated to administrative expenses. The administrative expenses of the retirement system, less amortization of intangible assets, may not exceed 1.5% of retirement benefits paid.
- (4) The state treasurer is the custodian of the collected retirement system money and of the securities in which the money is invested.
- (5) For purposes of Article VIII, section 12, of the Montana constitution, all the reserves established by part 6 of this chapter must be accounts in the pension trust fund type of the treasury fund structure of the state.
- (6) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination."

Section 3. Section 19-20-605, MCA, is amended to read:

"19-20-605. Pension accumulation account — employer's contribution. (1) The pension accumulation account is the account in which the reserves for payment of retirement allowances and benefits must be accumulated and from which retirement allowances and benefits must be paid

to retirees or their beneficiaries. Contributions to and payments from the pension accumulation account must be made as provided in this section.

- (2) Except as provided in subsection (3), for each member employed during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to:
- (a) beginning July 1, 2007, through June 30, 2009, 9.47% of total earned compensation; and
 - (b) beginning July 1, 2009, 9.85% of total earned compensation.
- (3) For each member employed by a school district or a community college during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to 7.47% of total earned compensation.
- (4) Beginning July 1, 2013, for each retired member who returns to covered employment under the provisions of 19-20-731 during all or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to 9.85% of the total earned compensation paid to the retired member
- (4)(5) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.
- (5)(6) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.
- (6)(7) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.
- (7)(8) All interest and other earnings realized on the money of the retirement system must be credited to the pension accumulation account, and the amount required to allow regular interest on the annuity savings account must be transferred to that account from the pension accumulation account.
- (8)(9) The board may transfer from the pension accumulation account to the expense account an amount necessary to cover expenses of administration."
 - Section 4. Section 19-20-703, MCA, is amended to read:
- **"19-20-703. Payments to be monthly.** (1) All retirement allowances must be paid in equal monthly installments.
- (2) The Except as provided in subsection (5), the retirement allowance may commence:
- (a) no earlier than the first day of the month following the member's termination date or on the first day of the month following the date when the member first becomes eligible, whichever date is later; or
 - (b) if requested by the inactive member in writing:
 - (i) on the first day of a later month; or
 - (ii) on the first day of the month following the member's 60th birthday.
- (3) Distribution of a member's benefit must begin by the later of the April 1 following the calendar year in which a member attains age 70 1/2 or April 1 of the year following the calendar year in which the member terminates. If a

member fails to apply for retirement benefits by the later of either of those dates, the board shall begin distribution of the monthly benefit as provided in 19-20-702(2)(d)(i)(A).

- (4) The life expectancy of a member or the member's beneficiary may not be recalculated after benefits commence.
- (5) If a member terminates within 30 days of the last day of the school year, the member is considered to have terminated at the end of the member's contract, and the retirement allowance may not commence earlier than the first day of the month following the last scheduled pupil-instruction day or pupil-instruction-related day as described in 20-1-304, whichever is later."

Section 5. Section 19-20-731, MCA, is amended to read:

- "19-20-731. Postretirement employment limitations cancellation and recalculation of benefits. (1) (a) Except as otherwise provided in this section, a retired member may be employed part-time by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:
 - (i) one-third of the sum of the member's average final compensation; or
- (ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.
- (b) For the purposes of this subsection (1), the maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all remuneration paid to the retired member, excluding:
- (i) the amount of health insurance premiums paid by the employer on the retired member's behalf;
 - (ii) the value of housing provided by the employer to the retired member;
- (iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;
- (iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and
 - (v) payroll taxes paid by the employer on behalf of the retired member.
- (2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.
- (3) Except as provided in subsection (5) [section 1], the retirement benefit of a retired member:
- (a) employed in a part-time position or earning more than allowed by subsections (1) and (2) must be temporarily reduced by \$1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be canceled if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount
- (b) employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment.

- (4) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection (3), the retirement benefit of a member:
- (a) who was reemployed and earned less than 1 year of creditable service must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later. The reinstated retirement benefit is the amount and option that the retired member would have been entitled to receive had the retired member not returned to employment.
- (b) who was reemployed and earned at least 1 year of creditable service must be recalculated under 19-20-804 if the member has attained normal retirement age or under 19-20-802 if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated normal form benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were canceled.
- (5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled.
- (6)(4) For purposes of this section, "position eligible to participate in the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor, as those terms are defined in 39-8-102.
- (7)(5) The retirement allowance of any retired member who is employed in a position and who elects to participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the optional retirement program."
- Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 19, chapter 20, part 7, and the provisions of Title 19, chapter 20, part 7, apply to [section 1].
- **Section 7.** Coordination instruction. If [this act] and House Bill No. 363 are both passed and approved and if [section 1] of House Bill No. 363 establishes a new section dealing with the reemployment of certain retired teachers, specialists, and administrators, then [section 1 of this act] must read as follows:
- "NEW SECTION. Section 1. Resumption of employment by retired member suspension of benefits. (1) Except as provided in [section 1 of House Bill No. 363], if a retired member returns to full-time employment in a position covered by the retirement system and becomes an active contributing member, benefits must be suspended until the member terminates all employment and applies to have benefits reinstated.
- (2) Except as provided in subsection (4), upon termination and retirement of a previously retired member who was reinstated to active membership pursuant to 19-20-731 before July 1, 2009:

- (a) if the member earned less than 1 year of creditable service, the original benefit and retirement option the member was receiving at the time of suspension of benefits must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later; or
- (b) if the member earned 1 year or more of creditable service, retirement benefits must be recalculated under 19-20-804 if the member would qualify for a service retirement benefit under 19-20-801 or under 19-20-802 if the member is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were suspended.
- (3) (a) Except as provided in subsection (4), upon the subsequent retirement of a formerly retired member who was reinstated to active membership pursuant to 19-20-731 on or after July 1, 2009, and earned:
- (i) at least 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option and beneficiary previously selected, plus an additional benefit based upon the new creditable service and compensation earned. The second benefit must be calculated as provided under 19-20-804 if the member is eligible for a service retirement benefit or under 19-20-802 if the member is eligible for early retirement. The second benefit must be paid under the same retirement allowance with the same beneficiary originally elected.
- (ii) less than 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option previously selected, plus a refund of the employee contributions contributed after the member was reinstated to active service, plus interest.
- (b) If a member dies during the period of reemployment following an initial retirement, the member must be considered as retiring on the day preceding the date of death and benefits must be determined according to the following:
- (i) If the member elected the normal form benefit prior to reemployment, the member's designated beneficiary must receive an amount equal to the member's accumulated contributions on deposit.
- (ii) If the member elected a retirement option pursuant to 19-20-702 prior to reemployment, the benefits due are payable in accordance with the terms of the original option elected and this subsection (3).
- (4) If a retired member who has not attained normal retirement age is reemployed with the same employer within 30 days from the member's effective date of retirement or if that member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled."
- **Section 8. Coordination instruction.** If [this act] and House Bill No. 59 are both passed and approved and both contain a section that amends 19-20-731, then the section in House Bill No. 59 that amends 19-20-731 is void.

- **Section 9. Coordination instruction.** If [this act] and House Bill No. 363 are both passed and approved and if both contain a section that amends 19-20-731, then the sections that amend 19-20-731 are void and 19-20-731 must be amended as follows:
- "19-20-731. Postretirement employment limitations cancellation and recalculation of benefits. (1) (a) Except as provided in [section 1 of House Bill No. 363] or as otherwise provided in this section, a retired member may be employed part-time by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:
 - (i) one-third of the sum of the member's average final compensation; or
- (ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.
- (b) For the purposes of this subsection (1), the maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all remuneration paid to the retired member, excluding:
- (i) the amount of health insurance premiums paid by the employer on the retired member's behalf;
 - (ii) the value of housing provided by the employer to the retired member;
- (iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;
- (iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and
 - (v) payroll taxes paid by the employer on behalf of the retired member.
- (2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.
- (3) Except as provided in subsection (5) [section 1 of House Bill No. 34] and [section 1 of House Bill No. 363], the retirement benefit of a retired member:
- (a) employed in a part-time position or earning more than allowed by subsections (1) and (2) must be temporarily reduced by \$1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be canceled if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.
- (b) employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment.
- (4) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection (3), the retirement benefit of a member:
- (a) who was reemployed and earned less than 1 year of creditable service must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later. The reinstated retirement benefit is the amount and option

that the retired member would have been entitled to receive had the retired member not returned to employment.

- (b) who was reemployed and earned at least 1 year of creditable service must be recalculated under 19-20-804 if the member has attained normal retirement age or under 19-20-802 if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated normal form benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were canceled.
- (5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled.
- (6)(4) For purposes of this section, "position eligible to participate in the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor, as those terms are defined in 39-8-102.
- (7)(5) The retirement allowance of any retired member who is employed in a position and who elects to participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the optional retirement program."

Section 10. Effective date. [This act] is effective July 1, 2009.

Approved April 18, 2009

CHAPTER NO. 299

[HB 409]

AN ACT ESTABLISHING A CANCER DRUG REPOSITORY PROGRAM AND PARTICIPANT REGISTRY; PROVIDING DEFINITIONS; PROVIDING IMMUNITY; AND AMENDING SECTIONS 37-7-101, 37-7-1401, 37-7-1402, AND 37-7-1408, MCA.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Cancer drug repository program donations registry. (1) The board shall establish a cancer drug repository program for accepting donated cancer drugs and devices and dispensing the drugs and devices to qualified patients. Participation in the program is voluntary.
- (2) Any person or entity, including but not limited to a health care facility or the manufacturer of a cancer drug or device, may donate cancer drugs or devices to a participant pursuant to the provisions of [sections 1 through 3].
- (3) The board shall establish and maintain a registry of participants in the cancer drug repository program. The participant registry must:
 - (a) include the participant's name, address, and telephone number; and

- (b) identify whether the participant is a physician's office, pharmacy, hospital, or health clinic.
- (4) The board shall make the participant registry available to a person or entity wishing to donate a cancer drug or device to the cancer drug repository program.
- Section 2. Cancer drugs accepted or dispensed conditions. (1) (a) Unless otherwise prohibited by law, a cancer drug or device may be accepted or dispensed under the cancer drug repository program established under [section 1] if the drug or device is in its original, unopened, sealed, and tamper-evident unit dose packaging.
- (b) A cancer drug packaged in single-unit doses may be accepted and dispensed if the outside packaging is opened but the single-unit dose packaging is unopened.
- (2) A cancer drug may not be accepted or dispensed under this section if the drug:
- (a) bears an expiration date that is earlier than 6 months after the date the drug was donated;
- (b) is considered a dulterated or misbranded under the provisions of Title 50, chapter 31, part 3; or
 - (c) is subject to restricted distribution pursuant to 21 CFR 314.520.
- (3) Subject to the limitations provided in this section, an unused cancer drug or device dispensed under the medicaid program provided for in Title 53, chapter 6, may be accepted and dispensed under the cancer drug repository program.
 - (4) A cancer drug or device donated under this program must be stored:
 - (a) separately from other prescription drugs or stock;
 - (b) according to the manufacturer's recommended storage conditions; and
 - (c) in the compounding or dispensing area if stored in a pharmacy.
- (5) In dispensing a donated cancer drug or device, a participant shall give first priority to a qualified patient in the participant's service area. Other cancer patients may receive donated cancer drugs or devices if a qualified patient is not available.
- (6) A participant shall notify a patient if the patient is receiving a cancer drug or device that has been donated.
- Section 3. Participants duties fee authorized. (1) A participant shall comply with all applicable provisions of state and federal law relating to the storage, distribution, and dispensing of a donated cancer drug or device and shall inspect all donated drugs and devices before dispensing them to determine if they are adulterated or misbranded.
 - (2) A cancer drug or device may be:
- (a) dispensed only pursuant to a prescription issued by a prescriber authorized to prescribe cancer drugs or devices; or
 - (b) distributed to another participant for dispensing.
- (3) A cancer drug or device donated to the cancer drug repository program may not be resold.
- (4) A participant may charge a handling fee for distributing or dispensing a cancer drug or device.

- (5) A participant shall maintain records of donated drugs and devices and the distribution of the drugs and devices.
- (6) (a) For cancer drugs or devices that are donated to the participant, records maintained pursuant to subsection (5) must include but are not limited to the following information:
 - (i) the date the participant received the cancer drug or device;
 - (ii) the drug name, strength, and amount;
 - (iii) the prescription number;
 - (iv) the expiration date of the drug;
 - (v) the manufacturer's name and lot number; and
 - (vi) the name and address of the person or entity donating the drug.
- (b) For cancer drugs or devices that are distributed or dispensed by the participant, records maintained pursuant to subsection (5) must include but are not limited to the following information:
 - (i) the name and address of the receiving person or entity;
 - (ii) the name, strength, and quantity of the drug;
 - (iii) the dosage form, if applicable;
- (iv) the name and address of the participant who distributed or dispensed the drug or device;
 - (v) the date the participant distributed or dispensed the drug or device;
 - (vi) the manufacturer's name and lot number; and
 - (vii) the expiration date of the drug.

Section 4. Section 37-7-101, MCA, is amended to read:

- "37-7-101. Definitions. As used in parts 1 through 7 of this chapter, the following definitions apply:
- (1) (a) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.
- (b) The term does not include immunization by injection for children under 18 years of age.
 - (2) "Board" means the board of pharmacy provided for in 2-15-1733.
 - (3) "Cancer drug" means a prescription drug used to treat:
 - (a) cancer or its side effects; or
 - $(b) \ the \ side \ effects \ of \ a \ prescription \ drug \ used \ to \ treat \ cancer \ or \ its \ side \ effects.$
- (3)(4) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.
- (4)(5) "Collaborative pharmacy practice" means the practice of pharmacy by a pharmacist who has agreed to work in conjunction with one or more prescribers, on a voluntary basis and under protocol, and who may perform certain patient care functions under certain specified conditions or limitations authorized by the prescriber.
- (5)(6) "Collaborative pharmacy practice agreement" means a written and signed agreement between one or more pharmacists and one or more prescribers that provides for collaborative pharmacy practice for the purpose of drug therapy management of patients.

- (6)(7) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.
- (7)(8) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device based on:
 - (a) a practitioner's prescription drug order;
- (b) a professional practice relationship between a practitioner, pharmacist, and patient;
- (c) research, instruction, or chemical analysis, but not for sale or dispensing; or
- (d) the preparation of drugs or devices based on routine, regularly observed prescribing patterns.
- (8)(9) "Confidential patient information" means privileged information accessed by, maintained by, or transmitted to a pharmacist in patient records or that is communicated to the patient as part of patient counseling.
- (9)(10) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
 - (10)(11) "Device" has the same meaning as defined in 37-2-101.
- (11)(12) "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for administration to or use by a patient.
- (12)(13) "Distribute" means the delivery of a drug or device by means other than administering or dispensing.
 - (13)(14) "Drug" means a substance:
 - (a) recognized as a drug in any official compendium or supplement;
- (b) intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;
- (c) other than food, intended to affect the structure or function of the body of humans or animals: and
- (d) intended for use as a component of a substance specified in subsection (13)(a) (14)(a), (13)(b) (14)(b), or (13)(c) (14)(c).
- (14)(15) "Drug utilization review" means an evaluation of a prescription drug order and patient records for duplication of therapy, interactions, proper utilization, and optimum therapeutic outcomes. The term includes but is not limited to the following evaluations:
 - (a) known allergies;
 - (b) rational therapy contraindications;
 - (c) reasonable dose and route administration;
 - (d) reasonable directions for use;
 - (e) drug-drug interactions;
 - (f) drug-food interactions;
 - (g) drug-disease interactions; and
 - (h) adverse drug reactions.
- (15)(16) "Equivalent drug product" means a drug product that has the same established name, active ingredient or ingredients, strength or concentration,

dosage form, and route of administration and meets the same standards as another drug product as determined by any official compendium or supplement. Equivalent drug products may differ in shape, scoring, configuration, packaging, excipients, and expiration time.

- (17) "Health care facility" has the meaning provided in 50-5-101.
- (18) (a) "Health clinic" means a facility in which advice, counseling, diagnosis, treatment, surgery, care, or services relating to preserving or maintaining health are provided on an outpatient basis for a period of less than 24 consecutive hours to a person not residing at or confined to the facility.
- (b) The term includes an outpatient center for primary care and an outpatient center for surgical services, as those terms are defined in 50-5-101, and a local public health agency as defined in 50-1-101.
- (c) The term does not include a facility that provides routine health screenings, health education, or immunizations.
 - (19) "Hospital" has the meaning provided in 50-5-101.
 - (16)(20) "Intern" means:
- (a) a person who is licensed by the state to engage in the practice of pharmacy while under the personal supervision of a preceptor and who is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist:
- (b) a graduate of an accredited college of pharmacy who is licensed by the state for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;
 - (c) a qualified applicant awaiting examination for licensure; or
 - (d) a person participating in a residency or fellowship program.
 - (21) "Long-term care facility" has the meaning provided in 50-5-101.
- (17)(22) (a) "Manufacturing" means the production, preparation, propogation propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis.
 - (b) Manufacturing includes:
 - (i) any packaging or repackaging;
 - (ii) labeling or relabeling;
 - (iii) promoting or marketing; and
- (iv) preparing and promoting commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons.
- (18)(23) "Medicine" means a remedial agent that has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.
- (24) "Participant" means a physician's office, pharmacy, hospital, or health clinic that has elected to voluntarily participate in the cancer drug repository program provided for in [section 1] and that accepts donated cancer drugs or devices under rules adopted by the board.
- (19)(25) "Patient counseling" means the communication by the pharmacist of information, as defined by the rules of the board, to the patient or caregiver in order to ensure the proper use of drugs or devices.
- (20)(26) "Person" includes an individual, partnership, corporation, association, or other legal entity.

(21)(27) "Pharmaceutical care" means the provision of drug therapy and other patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of disease process.

(22)(28) "Pharmacist" means a person licensed by the state to engage in the practice of pharmacy and who may affix to the person's name the term "R.Ph.".

(23)(29) "Pharmacy" means an established location, either physical or electronic, registered by the board where drugs or devices are dispensed with pharmaceutical care or where pharmaceutical care is provided.

(24)(30) "Pharmacy technician" means an individual who assists a pharmacist in the practice of pharmacy.

(25)(31) "Poison" means a substance that, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or that destroys living tissue with which it comes in contact.

(26)(32) "Practice of pharmacy" means:

- (a) interpreting, evaluating, and implementing prescriber orders;
- (b) administering drugs and devices pursuant to a collaborative practice agreement and compounding, labeling, dispensing, and distributing drugs and devices, including patient counseling;
- (c) properly and safely procuring, storing, distributing, and disposing of drugs and devices and maintaining proper records;
 - (d) monitoring drug therapy and use;
- (e) initiating or modifying drug therapy in accordance with collaborative pharmacy practice agreements established and approved by health care facilities or voluntary agreements with prescribers;
- (f) participating in quality assurance and performance improvement activities;
- (g) providing information on drugs, dietary supplements, and devices to patients, the public, and other health care providers; and
- (h) participating in scientific or clinical research as an investigator or in collaboration with other investigators.
- (27)(33) "Practice telepharmacy" means to provide pharmaceutical care through the use of information technology to patients at a distance.
- (28)(34) "Preceptor" means an individual who is registered by the board and participates in the instructional training of a pharmacy intern.
 - (29)(35) "Prescriber" has the same meaning as provided in 37-7-502.
- (30)(36) "Prescription drug" means any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act, (21 U.S.C. 353).

(31)(37) "Prescription drug order" means an order from a prescriber for a drug or device that is communicated directly or indirectly by the prescriber to the furnisher by means of a signed order, by electronic transmission, in person, or by telephone. The order must include the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name, strength, and quantity of the drug, drugs, or device prescribed, the directions for use, and the date of its issue. These stipulations apply to written, oral, electronically transmitted, and telephoned prescriptions and orders derived from collaborative pharmacy practice.

- (38) "Provisional community pharmacy" means a pharmacy that has been approved by the board, including but not limited to federally qualified health centers, as defined in 42 CFR 405.2401, where prescription drugs are dispensed to appropriately screened, qualified patients.
- (39) "Qualified patient" means a person who is uninsured, indigent, or has insufficient funds to obtain needed prescription drugs or cancer drugs.
- (32)(40) "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician in the practice of pharmacy to perform tasks that:
- (a) do not require the exercise of the pharmacist's independent professional judgment; and
 - (b) are verified by the pharmacist.
 - (33)(41) "Wholesale" means a sale for the purpose of resale."
 - Section 5. Section 37-7-1401, MCA, is amended to read:
- "37-7-1401. Department of public health and human services and board of pharmacy to create program Programs for donation of unused prescription drugs, cancer drugs, and devices rulemaking required.

 (1) The board of pharmacy shall, in consultation and cooperation with the department of public health and human services, create a program for the donation of prescription drugs collected from long-term care facilities to qualified patients.
- (2) For the purposes of the program created pursuant to subsection (1), prescription drugs, except those drugs defined as a dangerous drug in 50-32-101 or a drug designated as a precursor to a controlled substance in 50-32-401, unneeded by a resident or former resident of a long-term care facility may be donated by the long-term care facility to a provisional community pharmacy that provides or may provide prescription drugs to individuals who are qualified patients for transfer free of charge or at a reduced charge to those individuals.
- (3) This section does not amend or otherwise change the law applicable to the prescribing of prescription drugs, the sale of those drugs, or the licensing of long-term care facilities or pharmacies.
- (4) The board of pharmacy shall adopt rules to implement this part. The rules must address the subjects of:
- (a) the collection, and receipt, and storage of donated prescription drugs and devices from residents of long-term care facilities, keeping of those drugs within the long-term care facility,;
- (b) the transfer of the drugs prescription drugs donated by a long-term care facility to provisional community pharmacies;
- (c) which pharmacies may be considered provisional community pharmacies that may sell or give the *prescription* drugs donated by long-term care facilities to others, and:
- (d) eligibility criteria and other standards and procedures for participants that accept and distribute or dispense donated cancer drugs or devices;
 - (e) the forms needed for the administration of the donated drug programs;
- (f) categories of cancer drugs and devices that the cancer drug repository program will accept for dispensing and categories it will not accept, including the reason that a cancer drug or device will not be accepted;

- (g) the price for which the prescription drugs donated by a long-term care facility may be sold; and
- (h) the maximum handling fee that may be charged by participants that accept and distribute or dispense a cancer drug or device.
- (5) In adopting the rules, the board of pharmacy shall consider the ability of persons to pay for the drugs and the existence and operation of similar programs in other states.
 - (5) As used in this part, the following definitions apply:
 - (a) "Long-term care facility" has the meaning provided in 50-5-101.
- (b) "Provisional community pharmacy" means the practice of pharmacy at a site that has been approved by the board, including but not limited to federally qualified health centers as defined in 42 CFR 405.2401, where prescription drugs are dispensed to appropriately screened, qualified patients.
- (c) "Qualified patients" mean persons who are uninsured, indigent, or have insufficient funds to obtain needed prescription drugs."

Section 6. Section 37-7-1402, MCA, is amended to read:

"37-7-1402. Long-term care facilities to delete identifying Identifying information to be deleted from donated prescription drugs or devices. A long-term care facility A person or entity donating a prescription drug, a cancer drug, or a device pursuant to the program programs created under this part shall delete from the container in which that the drug or device is held any information by which the long-term care facility resident or former resident person for whom the drugs were drug or device was prescribed may be identified."

Section 7. Section 37-7-1408, MCA, is amended to read:

- "37-7-1408. Immunity Donated drugs and devices immunity for long-term care patients and facilities donating prescription drugs. (1) A resident or former resident of a long-term care facility and the long-term care facility donating a prescription drug, a cancer drug, or a device as part of the program programs created pursuant to this part are not liable for simple negligence in the donation of a drug or device if the requirements of this part and the rules implementing this part have been complied with.
 - (2) Except as provided in subsection (3):
- (a) a person or entity, including the manufacturer of a cancer drug or device that exercises reasonable care in donating, accepting, distributing, or dispensing a cancer drug or device under the provisions of [sections 1 through 3] and rules adopted by the board, is immune from civil or criminal liability or professional disciplinary action of any kind for an injury, death, or loss to a person or property relating to the accepting, distributing, or dispensing of the cancer drug or device;
- (b) a person or entity, unless directly negligent, is not liable for the negligence or lack of care of other persons or entities and is entitled to the immunity of this part.
- (3) (a) The donation of a cancer drug or device by the manufacturer of the drug or device does not absolve the manufacturer from criminal or civil liability or increase a liability that would have existed had the drug or device not been donated
- (b) The civil immunity provisions of subsection (2) do not apply to a person employed by or an entity operated by the state or a political subdivision of the state."

Section 8. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 37, chapter 7, part 14, and the provisions of Title 37, chapter 7, part 14, apply to [sections 1 through 3].

Approved April 18, 2009

CHAPTER NO. 300

[HB 420]

AN ACT PROVIDING THAT A COUNTY, CITY, OR TOWN WITH A BUILDING CODE ENFORCEMENT PROGRAM MAY ADOPT INCENTIVE-BASED ENERGY CONSERVATION STANDARDS FOR NEW CONSTRUCTION; PROVIDING THAT THE INCENTIVE-BASED ENERGY CONSERVATION STANDARDS ADOPTED MAY EXCEED ANY APPLICABLE ENERGY CONSERVATION STANDARDS CONTAINED IN THE STATE BUILDING CODE; AND AMENDING SECTIONS 50-60-102, 50-60-106, 50-60-301, AND 50-60-802, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-60-102, MCA, is amended to read:

- "50-60-102. Applicability local government energy conservation standards. (1) Except as provided in subsection (5), the state building code, as defined in 50-60-203(3), does not apply to:
- (a) residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building of any size, and any private garage or private storage structure of any size used only for the owner's own use, located within a county, city, or town, unless the local legislative body by ordinance or resolution makes the state building code applicable to these structures;
- (b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to inspection under the Federal Mine Safety and Health Act;
- (c) petroleum refineries and pulp and paper mills, except a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section 901, group H, outside of process units, of the 1991 edition of the Uniform Building Code; or
- (d) industrial process piping, vessels, and equipment and process-related structures located outside of another structure occupied on a regular basis by employees or the public.
- (2) Except as provided in subsection (5), the state may not enforce the state building code under 50-60-205 for the buildings referred to in subsection (1). A county, city, or town that has made the state building code applicable to the buildings referred to in subsection (1) may enforce within the area of its jurisdiction the state building code as adopted by the county, city, or town.
- (3) When good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.
- (4) The department may limit the application of any rule or portion of the state building code to include or exclude:
- (a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

- (b) specified areas of the state based on size, population density, special conditions prevailing in the area, or other factors that make differentiation or separate classification or regulation necessary, proper, or desirable.
- (5) (a) For Subject to subsection (6), for purposes of promoting the energy efficiency of home design and operation, the provisions of the state building code relating to energy conservation adopted pursuant to 50-60-203(1) apply to residential buildings, except:
 - (i) farm and ranch buildings; and
- (ii) any private garage or private storage structure attached to a residential building and used only for the owner's own use.
- (b) The Subject to subsection (6), the provisions of the state building code relating to energy conservation in residential buildings are enforceable:
- (i) by the department only for those residential buildings containing five or more dwelling units or otherwise subject to the state building code; and
- (ii) through the builder self-certification program provided for in 50-60-802 for those residential buildings containing less than five dwelling units and not otherwise subject to the state building code.
- (6) (a) A county, city, or town with a building code enforcement program may, as part of its building code or by town ordinance or resolution, adopt voluntary energy conservation standards for new construction for the purpose of providing incentives to encourage voluntary energy conservation. The incentive-based standards adopted may exceed any applicable energy conservation standards contained in the state building code.
- (b) New construction is not required to meet local standards that exceed state energy conservation standards unless the building contractor elects to receive a local incentive."

Section 2. Section 50-60-106, MCA, is amended to read:

- "50-60-106. Powers and duties of counties, cities, and towns. (1) As allowed by Title 50, chapter 60, part 3, the examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the limits of a city or town are the responsibility of the city or town. The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the portion of a county that is covered by a county building code enforcement program are the responsibility of the county.
- (2) Each county, city, or town certified under 50-60-302 shall, within its jurisdictional area:
- (a) examine, approve, or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the applicable provisions of the state building code or county, city, or town building code, and direct the inspection of the buildings during and in the course of construction;
- (b) require that construction of buildings be in accordance with the applicable provisions of the state building code or county, city, or town building

code, subject to the powers of variance or modification granted to the department;

- (c) make available to building contractors at a price that is commensurate with reproduction costs a checklist devised by the department pursuant to 50-60-118 for single-family dwellings and provide to contractors who attach a completed checklist to the plans submitted for examination the relevant building permit or notice of plan disapproval within 10 working days of the contractor's submission;
- (d) during and in the course of construction, order in writing the remedying of any condition found to exist in, on, or about any building that is being constructed in violation of the state building code or county, city, or town building code. Orders may be served upon the owner or the owner's authorized agent personally or by sending by certified mail a copy of the order to the owner or the owner's authorized agent at the address set forth in the application for permission for the construction of the building. A county, city, or town certified pursuant to 50-60-302, by action of its building official, may grant in writing time as may be reasonably necessary for achieving compliance with the order. For the purposes of subsection (2)(a) and this subsection (2)(d), the phrase "during and in the course of construction" refers to the construction of a building until all necessary building permits have been obtained and all work authorized by those permits has been fully approved by the building official having jurisdiction.
 - (e) issue certificates of occupancy as provided in 50-60-107;
- (f) issue permits, licenses, and other required documents in connection with the construction of a building;
- (g) ensure that all construction-related fees or charges imposed and collected by the county, city, or town are necessary, reasonable, and uniform and are:
- (i) except as provided in subsection (2)(g)(iii), used only for building code enforcement, which consists of those necessary and reasonable costs directly and specifically identifiable for the enforcement of building codes, plus indirect costs charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges. If indirect costs are waived for any local government proprietary fund, they must also be waived for the program established in this section. Indirect charges are limited to the charges that are allowed under federal cost accounting principles that are applicable to a local government.
- (ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce building codes for 12 months. The excess must be placed in a reserve account and may be used only for building code enforcement. Collection and expenditure of fees and charges must be fully documented.
- (iii) allocated and remitted to the department, in an amount not to exceed 0.5% of the building fees or charges collected, for the building codes education program established in 50-60-116.
- (3) Each county, city, or town with a building code enforcement program that has been certified under 50-60-302 may, within the area of its jurisdiction:
- (a) make, amend, and repeal rules for the administration and enforcement of the provisions of this section and for the collection of fees and charges related to construction; and

- (b) prohibit the commencement of construction until a permit has been issued by the building code enforcement authority having jurisdiction after a showing of compliance with the requirements of the applicable provisions of the state building code or county, city, or town building code or other county, city, or town ordinance or resolution that pertains to the proposed construction. A county, city, or town subject to this subsection (3) may, as part of its building code or by town ordinance or resolution, adopt voluntary energy conservation standards for new construction for the purpose of providing incentives to encourage voluntary energy conservation. The incentive-based energy conservation standards adopted may exceed any applicable energy conservation standards contained in the state building code. New construction is not required to meet local standards that exceed state energy conservation standards unless the building contractor elects to receive a local incentive.
- (4) Each county, city, or town with a building code enforcement program that has been certified under 50-60-302 may perform inspections of buildings that are outside its jurisdictional limits, subject to the following conditions:
- (a) The inspections are requested in writing by the owners or builders of the buildings to be inspected.
- (b) The inspections are not done in lieu of inspections by another county, city, or town that has jurisdiction over the buildings to be inspected.
- (c) (i) The county, city, or town powers of enforcement possessed as a result of building code enforcement certification by the department may not be exercised in conjunction with the requested inspections.
- (ii) Similar powers of building code enforcement may not be contractually created or required by the requester and the inspecting jurisdiction.
- (5) In situations in which buildings may be annexed into an inspecting city's or town's jurisdiction subsequent to a requested inspection, the city or town may not require owners or builders to have duplicative inspections of those buildings prior to annexation as a condition precedent to receiving any public services or utilities."

Section 3. Section 50-60-301, MCA, is amended to read:

- "50-60-301. County, city, and town building codes authorized health care facility and public health center doors fee adjustment for model plans. (1) The local legislative body of a county, city, or town may adopt a building code to apply to the county, city, or town by an ordinance or resolution, as appropriate:
 - (a) adopting a building code; or
 - (b) authorizing the adoption of a building code by administrative action.
- (2) (a) Except as provided in subsection (2)(b), a A county, city, or town building code may include only codes adopted by the department.
- (b) A county, city, or town may, as part of its building code or by town ordinance or resolution, adopt voluntary energy conservation standards for new construction for the purpose of providing incentives to encourage voluntary energy conservation. The incentive-based energy conservation standards adopted may exceed any applicable energy conservation standards contained in the state building code. New construction is not required to meet local standards that exceed state energy conservation standards unless the building contractor elects to receive a local incentive.

- (3) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities, as defined in 50-5-101, or to a public health center, as defined in 7-34-2102.
- (4) (a) When the same single-family dwelling plan is constructed at more than one site, the county, city, or town shall, after the first examination of the plan, adjust the required plan fee to reflect only the cost of reviewing requirements pertaining to the review of:
 - (i) zoning;
 - (ii) footings, foundations, and basements;
 - (iii) curbs;
 - (iv) gutters;
 - (v) landscaping;
 - (vi) utility connections;
 - (vii) street requirements;
 - (viii) sidewalks; and
 - (ix) other requirements related specifically to the exterior of the building.
- (b) If a building contractor alters the single-family dwelling plan referred to in subsection (4)(a) in a fashion that substantially affects the building code requirements, the county, city, or town may impose the full examination fee permitted under 50-60-106."

Section 4. Section 50-60-802, MCA, is amended to read:

- "50-60-802. Enforcement of energy code through builder self-certification. (1) Except as provided in subsection (2), a A person who begins construction on a residential building in Montana after October 1, 1993, shall certify in writing to the building owner at the conclusion of construction that the residential building has been constructed in compliance with the energy-efficient construction standards adopted under the provisions of 50-60-203(1).
- (2) A person who begins construction on a residential building in Montana after [the effective date of this act] shall certify in writing to the building owner at the conclusion of construction that the residential building has been constructed in compliance with the voluntary energy-efficient construction standards adopted by a county, city, or town with a building code enforcement program that has jurisdiction over the construction if the building meets or exceeds those standards."

Approved April 18, 2009

CHAPTER NO. 301

[HB 443]

AN ACT CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO MANAGE CERTAIN SPECIES; REVISING THE DEFINITION OF "MANAGEMENT"; AMENDING SECTION 87-5-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-5-102, MCA, is amended to read:

- "87-5-102. **Definitions.** As used in this part, the following definitions apply:
 - (1) "Account" means the nongame wildlife account established in 87-5-121.
- (2) "Commercial purposes" means the collection, harvest, possession, or transportation of a species or subspecies of nongame wildlife from the wild with the intent to barter, offer for sale, ship or transport for eventual sale, or sell the animal or any part of the animal.
- (3) "Ecosystem" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life.
- (4) "Endangered species" means a species or subspecies of wildlife that is actively threatened with extinction due to any of the following factors:
 - (a) the destruction, drastic modification, or severe curtailment of its habitat;
 - (b) its overutilization for scientific, commercial, or sporting purposes;
 - (c) the effect on it of disease, pollution, or predation;
- (d) other natural or artificial factors affecting its prospects of survival or recruitment within the state; or
 - (e) any combination of the foregoing factors.
- (5) "Management" means the collection and application of biological information for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining those levels conserving populations of wildlife consistent with other uses of land and habitat. The term includes the entire range of activities that constitute a modern scientific resource program, including but not limited to research, census, law enforcement, habitat improvement, control, and education. The term also includes the periodic or total protection of species or populations as well as regulated taking.
- (6) "Nongame wildlife" means a wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other wild animal not otherwise legally classified by statute or regulation of this state legally classified by statute or regulation of this state. Animals designated by statute or regulation of this state as predatory in nature are not classified as nongame wildlife for purposes of this part. Animals designated by statute or regulation of this state as predatory in nature are not classified as nongame wildlife for purposes of this part.
- (7) "Optimum carrying capacity" means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the habitat to continue that function.
- (8)(7) "Person" means an individual, firm, corporation, association, or partnership.
- (9)(8) "Take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife.
- (10)(9) "Wildlife" means a wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild animal or any part, product, egg, or offspring or the dead body or parts of the animal."

Section 2. Effective date. [This act] is effective on passage and approval. Approved April 18, 2009

CHAPTER NO. 302

[HB 451]

AN ACT REQUIRING GENERAL CONTRACTORS AND BUILDERS OR DEVELOPERS TO DISCLOSE CERTAIN INFORMATION AND TO PROVIDE EXPRESS WARRANTIES WITH RESPECT TO THE BUILDING OR SALE OF NEW RESIDENCES.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Residential construction contracts disclosure and warranty requirements. (1) For the purposes of this section, "residential construction contract" means a contract between a general contractor and an owner for the construction of a new residence.
- (2) All residential construction contracts that are subject to the provisions of this section must be in writing and must contain the following:
- (a) a disclosure that the general contractor has a current general liability policy;
- (b) a disclosure that the general contractor has a workers' compensation policy or is an independent contractor without employees;
- (c) a provision setting out the billing cycle establishing the payment schedule to be followed by the owner;
- (d) a provision establishing procedures for handling change orders by the owner;
- (e) a statement of all inspections and tests that the general contractor will perform or have performed prior to, during, or upon completion of construction and a statement that the owner is entitled to receive the results of any tests conducted by the general contractor or conducted at the general contractor's request:
- (f) a statement that the owner is entitled at the owner's expense to have any inspections and tests conducted that the owner considers necessary; and
- (g) a statement that the general contractor is providing an express warranty that is valid for a period of at least 1 year from completion of the construction project. The warranty must provide detailed descriptions of those components that are included or excluded from the warranty, the length of the warranty, and any specialty warranty provisions or time periods relating to certain components. The warranty provisions must also clearly set forth the requirements that must be adhered to by the buyer, including the time and method for reporting warranty claims, in order for the warranty provision to become applicable.
- Section 2. Disclosure and warranty requirements for sales of newly constructed residences. (1) This section applies only to the sale of a newly constructed residence that has not been previously occupied and where the seller is the builder or a developer who has built or had the residence built for the purpose of resale.
- (2) A builder or developer that is subject to the provisions of this section is required to provide to a buyer, prior to the sale of a new residence, the following:
- (a) a statement of all inspections and tests that the general contractor performed or had performed prior to, during, or upon completion of construction of the residence that is the subject of the potential sale; and

(b) an express warranty that is valid for a period of at least 1 year from the date of the sale of the residence. The warranty must provide detailed descriptions of those components that are included or excluded from the warranty, the length of the warranty, and any specialty warranty provisions or time periods relating to certain components. The warranty provisions must also clearly set forth the requirements that must be adhered to by the buyer, including the time and method for reporting warranty claims, in order for the warranty provisions to become applicable.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 28, chapter 2, and the provisions of Title 28, chapter 2, apply to [sections 1 and 2].

Approved April 18, 2009

CHAPTER NO. 303

[HB 475]

AN ACT RELATING TO ELECTRONIC-FORMAT RULES AND RULEMAKING NOTICES, ELECTRONIC RULEMAKING SERVICES, AND FEES FOR THOSE RULES, NOTICES, AND SERVICES CHARGED BY THE SECRETARY OF STATE; AND AMENDING SECTIONS 2-4-305, 2-4-306, 2-4-311, AND 2-4-313, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-305, MCA, is amended to read:

- **"2-4-305.** Requisites for validity authority and statement of reasons. (1) The agency shall fully consider written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed published in the register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.
- (2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.
- (3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement. A substantive rule may not be proposed or adopted ruless:
- (a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter of the rule as a subject upon which the agency shall or may adopt rules; or

- (b) the rule implements and relates to a subject matter or an agency function that is clearly and specifically included in a statute to which the grant of rulemaking authority extends.
- (4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.
- (5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.
- (6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:
 - (a) consistent and not in conflict with the statute; and
- (b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency. A statement that merely explains what the rule provides is not a statement of the reasonable necessity for the rule.
- (7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.
- (8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in citations of authority for rules and in citations of sections implemented by rules. An agency may use an amended proposal notice but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a statement of reasonable necessity.
- (9) If a majority of the members of the appropriate administrative rule review committee notify the committee presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to the proposal notice and will address the objections at the next committee meeting. Following notice by the committee to the agency, the proposal notice may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period during which the adoption notice must be published, unless prior to that time, the committee meets and does not make the same objection. A copy of the

committee's notification to the agency must be included in the committee's records."

Section 2. Section 2-4-306, MCA, is amended to read:

- **"2-4-306. Filing,** and format, and adoption and effective dates dissemination of emergency rules. (1) Each agency shall file with the secretary of state a copy of each rule adopted by it or a reference to the rule as contained in the proposal notice. A rule is adopted on the date that the adoption notice is filed with the secretary of state and is effective on the date referred to in subsection (4), except that if the secretary of state requests corrections to the adoption notice, the rule is adopted on the date that the revised notice is filed with the secretary of state.
- (2) Pursuant to 2-15-401, the secretary of state may prescribe rules to effectively administer this chapter, including rules regarding the *printed or electronic* format, style, and arrangement for notices and rules that are filed pursuant to this chapter, and may refuse to accept the filing of any notice or rule that is not in compliance with this chapter and the secretary of state's rules. The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing copies.
- (3) If the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be published with the rule if the rule is adopted by the agency.
- (4) Each rule is effective after publication in the register, as provided in 2-4-312, except that:
- (a) if a later date is required by statute or specified in the rule, the later date is the effective date;
 - (b) subject to applicable constitutional or statutory provisions:
- (i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and
- (ii) an emergency rule is effective at a stated date following publication in the register or immediately upon filing with the secretary of state if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons for the finding must be filed with the rule. The agency shall, in addition to the required publication in the register, take appropriate and extraordinary measures to make emergency rules known to each person who may be affected by them.
- (c) if, following written administrative rule review committee notification to an agency under 2-4-305(9), the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the proposed rule is adopted, the proposed rule or portion of the proposed rule objected to is not effective until the day after final adjournment of the regular session of the legislature that begins after the notice proposing the rule was published by the secretary of state, unless, following the committee's objection under 2-4-406(1):
- (i) the committee withdraws its objection under 2-4-406 before the proposed rule is adopted; or
- (ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the committee members, as communicated in writing to

the committee presiding officer and staff, make it comply with the committee's objection and concerns.

(5) An agency may not enforce, implement, or otherwise treat as effective a rule proposed or adopted by the agency until the effective date of the rule as provided in this section. Nothing in this subsection prohibits an agency from enforcing an established policy or practice of the agency that existed prior to the proposal or adoption of the rule as long as the policy or practice is within the scope of the agency's lawful authority."

Section 3. Section 2-4-311, MCA, is amended to read:

- **"2-4-311. Publication and arrangement of ARM.** (1) The secretary of state shall compile, index, arrange, rearrange, correct errors or inconsistencies without changing the meaning, intent, or effect of any rule, and publish in the appropriate format all rules filed pursuant to this chapter in the ARM. The secretary of state shall supplement, revise, and publish the ARM or any part of the ARM as often as the secretary of state considers necessary. The secretary of state may include editorial notes, cross-references, and other matter that the secretary of state considers desirable or advantageous. The secretary of state shall publish supplements to the ARM at the times and in the form that the secretary of state considers appropriate.
- (2) The ARM must be arranged, indexed, and printed published or duplicated in a manner that permits separate publication of portions relating to individual agencies. An agency may make arrangements with the secretary of state for the printing or electronic distribution of as many copies of the separate publications as it may require. The secretary of state may charge a fee for any separate printed or electronic publications. The fee must be set and deposited in accordance with 2-15-405 and must be paid by the agency."

Section 4. Section 2-4-313, MCA, is amended to read:

- **"2-4-313. Distribution, costs, and maintenance,** *and fees.* (1) The secretary of state shall distribute copies of the ARM and supplements or revisions to the ARM to the following in an electronic format unless a hard copy is requested:
 - (a) attorney general, one copy;
 - (b) clerk of United States district court for the district of Montana, one copy;
 - (c) clerk of United States court of appeals for the ninth circuit, one copy;
- (d) county commissioners or governing body of each county of this state, for use of county officials and the public, at least one but not more than two copies, which may be maintained in a public library in the county seat or in the county offices as the county commissioners or governing body of the county may determine;
 - (e) state law library, one copy;
 - (f) state historical society, one copy;
 - (g) each unit of the Montana university system, one copy;
 - (h) law library of the university of Montana-Missoula, one copy;
 - (i) legislative services division, two copies;
 - (j) library of congress, one copy;
 - (k) state library, one copy.
- (2) The secretary of state, each county in the state, and the librarians for the state law library and the university of Montana-Missoula law library shall

maintain a complete, current set of the ARM, including supplements or revisions to the ARM. The designated persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall maintain a permanent set of the registers. An entity required by this section to maintain a copy or set of the ARM and supplements or revisions to it and a copy of the register complies with this section if it provides access to an electronic version of the current ARM and the current year's issues of the register or the current year's issue and register archives for the prescribed period of time.

- (3) The secretary of state shall make *printed or electronic* copies of and subscriptions to the ARM and supplements or revisions to the ARM and the register available to any person for a fee set in accordance with subsection (5) (6). Fees are not refundable.
- (4) The secretary of state may charge agencies a filing fee for all material to be published in the ARM or the register.
- (5) In addition to the fees authorized by 2-4-311 and 2-4-312 and other fees authorized by this section, the secretary of state may charge fees for internet or other computer-based services requested by state agencies, groups, or individuals.
- (5)(6) The secretary of state shall set and deposit the fees authorized in this section in accordance with 2-15-405."

Approved April 18, 2009

CHAPTER NO. 304

[HB 480]

AN ACT AUTHORIZING NONRESIDENT YOUTH TO HUNT UPLAND GAME BIRDS AND MIGRATORY BIRDS WITH THE PURCHASE OF A CLASS B-1 NONRESIDENT UPLAND GAME BIRD LICENSE AT A DISCOUNTED PRICE; AMENDING SECTIONS 87-1-270 AND 87-2-805, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-270, MCA, is amended to read:

- "87-1-270. Allocation of license fees to hunting access enhancement program. (1) The Except as provided in 87-2-805(1)(b)(ii), the amount of \$55 from the sale of each Class B-1 nonresident upland game bird license must be used by the department to encourage public access to private lands for hunting purposes in accordance with 87-1-265 through 87-1-267.
- (2) The resident hunting access enhancement fee in 87-2-202(3)(c) and the nonresident hunting access enhancement fee in 87-2-202(3)(d) must be used by the department to encourage public access to private and public lands for hunting purposes in accordance with 87-1-265 through 87-1-267."

Section 2. Section 87-2-805, MCA, is amended to read:

- "87-2-805. (Temporary) Persons under eighteen years of age youth combination sports license terminally ill youth under seventeen years of age free wildlife conservation license for resident seniors and certain minors. (1) (a) Resident minors who are:
- (i) 12 years of age or older and under 15 years of age may fish and may hunt upland game and migratory game birds during the open season with only a conservation license;

- (ii) Resident minors who are 15 years of age may hunt migratory game birds with only a conservation license.; and
- (iii) Resident minors who are under 12 years of age may fish without a license.
 - (b) A nonresident person minor:
- (i) under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B, B-4, or B-5 fishing license unless the nonresident person under 15 years of age minor is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person minor and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.
- (ii) who is 12 years of age or older and under 16 years of age may hunt upland game and migratory game birds during the open season with the purchase of a Class B-1 nonresident upland game bird license for a cost of \$35. Of that fee, \$17 must be deposited pursuant to 87-1-270 and \$7 must be deposited pursuant to 87-1-246.
- (2) A resident, as defined by 87-2-102, who is 12 years of age or older and under 15 years of age may purchase a Class A-3 deer A tag for 6.50 and a Class A-5 elk tag for 8.50
- (3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license for \$25. A resident who is 12 years of age or older and under 18 years of age and who applies for any hunting license for the first time is entitled to receive a youth combination sports license free of charge.
 - (b) The youth combination sports license includes:
 - (i) a conservation license;
 - (ii) a fishing license;
 - (iii) an upland game bird license;
 - (iv) an elk license; and
 - (v) a deer license.
- (c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license for \$8.
- (d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license for \$3.
- (e) A person who lawfully purchases or is granted a free youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A person who hunts or fishes using a youth combination sports license purchased or granted free after the person reaches 18 years of age is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:
- (i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and
- (ii) a monetary fine of not less than \$500 and not more than \$5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.

- (f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license.
- (4) (a) The department may issue a free resident or nonresident big game combination license, as applicable, to a resident or nonresident youth under 17 years of age who has been diagnosed with a terminal illness. In order for a youth to qualify for the free license, the department must receive documentation from a licensed physician verifying that the youth is terminally ill. The free license may be issued to a youth on a one-time basis for only one hunting season.
- (b) In exercising hunting privileges, the youth must be in the company of an adult in possession of a valid Montana hunting license or of a licensed Montana outfitter and conduct all hunting within the terms and conditions of the license issued.
- (c) The department may waive hunter safety and education and bowhunter education requirements in 87-2-105 for a qualified youth under this subsection (4) and, in appropriate circumstances, may also allow the qualified youth to hunt from a vehicle in the manner described in 87-2-803.
- (5) Resident minors who are 12 years of age or older and under 15 years of age and residents who are 62 years of age or older must, upon application and production of the documentation and information required by 87-2-202(1), be issued a resident wildlife conservation license without charge. (Terminates February 28, 2009—sec. 7, Ch. 452, L. 2007.)
- 87-2-805. (Effective March 1, 2009) Persons under eighteen years of age—youth combination sports license—terminally ill youth under seventeen years of age. (1) (a) Resident minors who are:
- (i) 12 years of age or older and under 15 years of age may fish and may hunt upland game and migratory game birds during the open season with only a conservation license;
- (ii) Resident minors who are 15 years of age may hunt migratory game birds with only a conservation license.; and
- (iii) Resident minors who are under 12 years of age may fish without a license.
 - (b) A nonresident person minor:
- (i) under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B, B-4, or B-5 fishing license unless the nonresident person under 15 years of age minor is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person minor and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.
- (ii) who is 12 years of age or older and under 16 years of age may hunt upland game and migratory game birds during the open season with the purchase of a Class B-1 nonresident upland game bird license for a cost of \$35. Of that fee, \$17 must be deposited pursuant to 87-1-270 and \$7 must be deposited pursuant to 87-1-246.
- (2) A resident, as defined by 87-2-102, who is 12 years of age or older and under 15 years of age may purchase a Class A-3 deer A tag for 6.50 and a Class A-5 elk tag for 8.
- (3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license for \$25. A resident who is 12

years of age or older and under 18 years of age and who applies for any hunting license for the first time is entitled to receive a youth combination sports license free of charge.

- (b) The youth combination sports license includes:
- (i) a conservation license;
- (ii) a fishing license;
- (iii) an upland game bird license;
- (iv) an elk license; and
- (v) a deer license.
- (c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license for \$8.
- (d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license for \$3.
- (e) A person who lawfully purchases or is granted a free youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A person who hunts or fishes using a youth combination sports license purchased or granted free after the person reaches 18 years of age is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:
- (i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and
- (ii) a monetary fine of not less than \$500 and not more than \$5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.
- (f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license.
- (4) (a) The department may issue a free resident or nonresident big game combination license, as applicable, to a resident or nonresident youth under 17 years of age who has been diagnosed with a terminal illness. In order for a youth to qualify for the free license, the department must receive documentation from a licensed physician verifying that the youth is terminally ill. The free license may be issued to a youth on a one-time basis for only one hunting season.
- (b) In exercising hunting privileges, the youth must be in the company of an adult in possession of a valid Montana hunting license or of a licensed Montana outfitter and conduct all hunting within the terms and conditions of the license issued.
- (c) The department may waive hunter safety and education and bowhunter education requirements in 87-2-105 for a qualified youth under this subsection (4) and, in appropriate circumstances, may also allow the qualified youth to hunt from a vehicle in the manner described in 87-2-803."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 18, 2009

CHAPTER NO. 305

[HB 488]

AN ACT REVISING TERRITORY TRANSFER LAWS RELATING TO SCHOOL DISTRICTS; AMENDING SECTION 20-6-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-6-105, MCA, is amended to read:

- "20-6-105. Transfer of territory from one district to another hearing on effects of proposed transfer burden of proof standard of proof appeal to district court. (1) (a) Except as provided in 20-6-214, 20-6-215, 20-6-308, 20-6-322, and subsection subsections (1)(b) and (1)(c) of this section, a petition to transfer territory from one school district to another may be presented to the county superintendent if:
- (i) the petition is signed by 60% of the registered electors qualified to vote at general elections in the territory proposed for transfer;
- (ii) the territory to be transferred is contiguous to the district to which it is to be attached, includes taxable property, and has school-age children living in it;
- (iii) the territory to be transferred is not located within 3 miles, over the shortest practicable route, of an operating school in the district from which it is to be transferred; and
- (iv) the board of trustees of the school district that would receive the territory has approved the proposed transfer by a resolution adopted by a majority of the members of the board of trustees at a meeting for which proper notice was given.
- (b) A petition to transfer territory to or from a K-12 district may not be presented to a county superintendent unless both school boards and the county superintendents have agreed in writing.
- (c) Registered voters within the exterior boundaries of school districts that consolidated during the years 2004 to 2008 may petition for changes in their boundaries under the law in effect on July 1, 2005.
- (2) Once a petition to transfer territory has been filed, an additional petition to transfer that territory may not be filed for 4 years *unless the county superintendents have agreed in writing*.
- (3) The petition for a transfer of territory must be delivered to the county superintendent and must:
- (a) provide a legal description of the territory that is requested to be transferred and a description of the district to which the territory is to be transferred;
 - (b) state the reasons why the transfer is requested; and
 - (c) state the number of school-age children residing in the territory.
- (4) If both the trustees of the receiving and transferring school districts have approved the proposed territory transfer in writing, the county superintendent shall grant the transfer.
- (5) For any petition that meets the criteria specified in subsection (1) and contains the information required by subsection (3) but that has not been approved in writing by the board of trustees of the school district that would transfer the territory, the county superintendent shall:

- (a) not more than 40 days after receipt of the petition, set a place, date, and time for a hearing to consider the petition; and
- (b) give notice of the place, date, and time of the hearing. The notice must be posted in the districts affected by the petition for the transfer of territory in the manner prescribed in this title for notices for school elections, with at least one notice posted in the territory to be transferred. Notice must also be delivered to the board of trustees of the school district from which the territory is to be transferred.
- (6) The county superintendent shall conduct a hearing as scheduled, and any resident, taxpayer, or representative of the receiving or transferring district must, upon request, be heard. At the hearing, the petitioners have the initial burden of presenting evidence on the proposed transfer's effect on:
- (a) the educational opportunity for the students in the receiving and transferring districts, including but not limited to:
 - (i) class size;
 - (ii) ability to maintain demographic diversity;
 - (iii) local control;
 - (iv) parental involvement; and
 - (v) the capability of the receiving district to provide educational services;
 - (b) student transportation, including but not limited to:
 - (i) safety;
 - (ii) cost; and
 - (iii) travel time of students;
- (c) the economic viability of the proposed new districts, including but not limited to:
- (i) the existence of a significant burden on the taxpayers of the district from which the territory will be transferred;
- (ii) the significance of any loss in state funding for the students in both the receiving and transferring districts;
- (iii) the viability of the future bonding capacity of the receiving and transferring districts, including but not limited to the ability of the receiving district and the transferring district to meet minimum bonding requirements;
- (iv) the ability of the receiving district and the transferring district to maintain sufficient reserves; and
- (v) the cumulative effect of other transfers of territory out of the district in the previous 8 years on the taxable value of the district from which the territory is to be transferred. In cases where the cumulative effect of other transfers of territory out of the district in the previous 8 years is equal to or greater than 25% of the district's taxable value, the following additional factors must be considered and weighed in the decision:
- (A) the district's rate of passage of discretional levies placed before the voters over the previous 8 years;
- (B) the district's reduction or elimination of instructional staff or programs over the previous 8 years; and
- (C) any increase in district taxes over the previous 8 years and the likely increase in district taxes if the transfer is granted.

- (7) After receiving evidence from both the proponents and opponents of the proposed territory transfer on the effects described in subsection (6), the county superintendent shall, within 30 days after the hearing, issue findings of fact, conclusions of law, and an order.
- (8) If, based on a preponderance of the evidence, the county superintendent determines that the evidence on the effects described in subsection (6) supports a conclusion that a transfer of the territory is in the best and collective interest of students in the receiving and transferring districts and does not negatively impact the ability of the districts to serve those students, the county superintendent shall grant the transfer. If the county superintendent determines that, based on a preponderance of the evidence presented at the hearing, a transfer of the territory is not in the best and collective interest of students in the receiving and transferring districts and will negatively impact the ability of the districts to serve those students, the county superintendent shall deny the territory transfer.
- (9) The decision of the county superintendent is final 30 days after the date of the decision unless it is appealed to the district court by a resident, taxpayer, or representative of either district affected by the petitioned territory transfer. The county superintendent's decision must be upheld unless the court finds that the county superintendent's decision constituted an abuse of discretion under this section.
- (10) Whenever a petition to transfer territory from one district to another district creates a joint district or affects the boundary of an existing joint district, the petition to transfer territory must be delivered to the county superintendent of the county in which the territory proposed to be transferred is located. The county superintendent shall notify any other county superintendents of counties with districts affected by the petition, and the duties prescribed in this section for the county superintendent must be performed jointly. If the number of county superintendents involved is an even number, the county superintendents shall jointly appoint an additional county superintendent from an unaffected county to join them in conducting the hearing required in subsection (6) and in issuing the decision required in subsection (8). The decision issued under subsection (8) must be made by a majority of the county superintendents.
- (11) A petition seeking to transfer territory out of or into a K-12 district must propose the transfer of territory for both elementary and high school purposes. In the case of a proposed transfer out of or into a K-12 district, a petition that fails to propose the transfer of territory for both elementary and high school purposes is invalid for the purposes of this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 18, 2009

CHAPTER NO. 306

[HB 499]

AN ACT REVISING LAWS RELATED TO THE UPLAND GAME BIRD ENHANCEMENT PROGRAM; ESTABLISHING A CITIZENS' ADVISORY COUNCIL; AUTHORIZING DEVELOPMENT OF A STRATEGIC PROGRAM PLAN; REVISING REPORTING REQUIREMENTS; AMENDING SECTIONS 87-1-247 AND 87-1-250, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-247, MCA, is amended to read:

- "87-1-247. Authorized Upland game bird enhancement program—authorized use of funds. (1) Not more than 15% of the money generated under Subject to subsections (2) and (3), revenue dedicated to the upland game bird enhancement program pursuant to 87-1-246 may must be used by the department to:
- (a) prepare and disseminate information to landowners and organizations concerning the upland game bird enhancement program;
 - (b) review potential upland game bird release sites;
 - (c) assist applicants in preparing management plans for project areas; and
 - (d) evaluate the upland game bird enhancement program.;
 - (e) develop a strategic plan pursuant to [section 3(2)(a)];
 - (2) The remainder of the money raised must be used for releasing
- (f) pursuant to subsection (2), release upland game birds in suitable habitat;
- (g) for the development, enhancement, and conservation of develop, enhance, and conserve upland game bird habitat in Montana; and
- (h) establish and assist an upland game bird citizens' advisory council pursuant to [section 3].
- (3)(2) (a) At least 15% of the funds collected under 87-1-246 must be set aside each fiscal year for expenditures related to upland game bird releases.
- (b) At least 25% of the funds set aside for upland game bird release releases must be spent each year.
- (3) As far as practicable, expenditures made pursuant to subsection (1) must be prioritized by administrative region based on need, taking into consideration any biological, recreational, or economic benefit and the objectives established in a strategic plan developed pursuant to [section 3(2)(a)]."

Section 2. Section 87-1-250, MCA, is amended to read:

- "87-1-250. Report Upland game bird enhancement program report. The department shall report to the fish and game committee of each house of the legislature concerning upland game bird enhancement activities undertaken pursuant to 87-1-246 through 87-1-249 and [section 3] during the preceding biennium, including providing:
- (1) copies of reports made to the upland game bird citizens' advisory council pursuant to [section 3(2)(b)]; and
- (2) together with any recommendations concerning the operation of the program."
- Section 3. Upland game bird enhancement program advisory council. (1) There is an upland game bird citizens' advisory council consisting of 12 members appointed by the director and serving staggered 4-year terms. The 12 members must include a public member representing each of the department's administrative regions. Council membership must include:
 - (a) an upland game bird hunter;
 - (b) a local chamber of commerce representative;
 - (c) a conservationist;

- (d) an upland game bird biologist;
- (e) at least two landowners, one of whom must be enrolled in the block management program; and
 - (f) a senator and a representative from different political parties.
- (2) The council shall meet at least once each year but not more than once each month as necessary to:
- (a) advise the department on the development and maintenance of a 10-year strategic plan that at a minimum:
- (i) defines quantifiable goals, objectives, and performance measurements for the upland game bird enhancement program based on need by administrative region, taking into consideration any biological, recreational, or economic benefit, including the prioritization of at-risk upland game bird species and their associated habitats;
- (ii) establishes regional and statewide priorities for the development of upland game bird habitat based on land management needs, sustaining upland game bird populations, and landowner input;
- (iii) prioritizes resource allocation, including funding and personnel, in accordance with objectives and goals established pursuant to this subsection (2)(a);
- (iv) promotes landowner outreach and relations with both private and public landowners:
- (v) provides for the ongoing monitoring of, access to, and signage for upland game bird enhancement projects, as well as the renewal or replacement of expiring projects; and
- (vi) develops strategies to ensure the effective release of upland game birds and use of funding for upland game bird releases; and
- (b) provide ongoing monitoring of upland game bird enhancement program activities, including but not limited to receipt from the department of an annual:
- (i) activity report to evaluate whether objectives, goals, and performance measurements established pursuant to subsection (2)(a) are being met or are expected to be met:
- (ii) financial report, providing a summary of revenue and expenditures for the upland game bird enhancement program and any unreserved balance remaining at the end of the fiscal year from fees collected pursuant to 87-1-246; and
- (iii) report reviewing whether upland game bird enhancement project contracts are in compliance with 87-1-248 and rules adopted pursuant to 87-1-249.
 - (3) The council may recommend rules for adoption by the department.
- (4) Each member of the council is entitled to receive \$50 in compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official council business. Council members who conduct official council business in their city of residence are entitled to receive a midday meal allowance as provided for in 2-18-502.
- (5) The department shall provide administrative support as necessary to assist the advisory council in its duties pursuant to this section.

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 3].

Section 5. Effective date. [This act] is effective July 1, 2009.

Approved April 18, 2009

CHAPTER NO. 307

[HB 546]

AN ACT PROVIDING THAT A PRIVATE ENTITY MAY NOT, AS A CONDITION OF PROPERTY OWNERSHIP WITHIN THE JURISDICTION OF THE PRIVATE ENTITY OR BY OTHER MEANS, PROHIBIT THE PLACEMENT OF A SIGN ADVOCATING THE ELECTION, APPOINTMENT, OR DEFEAT OF A CANDIDATE FOR PUBLIC OFFICE OR THE PASSAGE OR DEFEAT OF A BALLOT ISSUE ON PROPERTY BELONGING TO AN INDIVIDUAL OR JOINT OWNER WHO AUTHORIZES THE SIGN TO BE PLACED ON PROPERTY BELONGING TO THE OWNER OR ON COMMON AREAS IN WHICH THE OWNER OWNS AN UNDIVIDED INTEREST; ALLOWING FOR REGULATION OF SIGN SIZE AND PLACEMENT; AND AMENDING SECTIONS 70-1-521, 70-17-203, 70-17-204, 70-17-206, 70-20-306, 70-23-308, 70-23-506, AND 70-23-601, MCA.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Certain restrictions on political free speech contrary to public policy enforcement prohibited definitions. (1) A person, homeowners' association, property owners' association, corporation, or other private entity may not, as a condition of property ownership within the jurisdiction of the private entity or by other means, prohibit the placement of a sign advocating the election, appointment, or defeat of a candidate for public office or the passage or defeat of a ballot issue on:
- (a) property belonging to individual or joint property owners who authorize the placement of the sign; or
 - (b) common areas in which an owner owns an undivided interest.
- (2) A person, homeowners' association, property owners' association, corporation, or other private entity may impose limits on the size of signs allowed to be displayed within the jurisdiction of the private entity and may regulate the location of sign placement and the time period during which signs may be displayed.
- (3) An ordinance, covenant, contract term, or other provision, whether agreed to or not between the homeowners' association, property owners' association, corporation, or other private entity and the owner or tenant, is contrary to the public policy of this state. A court may not enforce the terms of an ordinance, covenant, contract term, or other provision that is contrary to public policy under this section.
- (4) As used in this section, "ballot issue" and "candidate" have the meanings provided in 13-1-101.

Section 2. Section 70-1-521, MCA, is amended to read:

"70-1-521. Grant may inure to benefit of stranger. A Except as provided in [section 1], a present interest and the benefit of a condition or covenant

respecting property may be taken by any natural person under a grant although not named a party thereto to the grant."

Section 3. Section 70-17-203, MCA, is amended to read:

- "70-17-203. Covenants that run with land. (1) Every Except as provided in [section 1], every covenant contained in a grant of an estate in real property that is made for the direct benefit of the property or some part of the property then in existence runs with the land.
 - (2) Subsection (1) includes:
- (a) covenants of warranty, for quiet enjoyment, or for further assurance on the part of the grantor and covenants for the payment of rent or of taxes or assessments upon the land on the part of a grantee; and
 - (b) conservation easements pursuant to 76-6-209.
- (3) A covenant for the addition of some new thing to real property or for the direct benefit of some part of the property not then in existence or annexed to the property, when contained in a grant of an estate in the property and made by the covenantor expressly for covenantor's assigns or to the assigns of the covenantee, runs with the land so far as the assigns mentioned are concerned."

Section 4. Section 70-17-204, MCA, is amended to read:

"70-17-204. Who bound by covenant. A Except as provided in [section 1], a covenant running with the land binds only those who acquire the whole estate of the covenantor in some part of the property."

Section 5. Section 70-17-206, MCA, is amended to read:

"70-17-206. Apportionment of burdens and benefits. Where Except as provided in [section 1], if several persons holding by several titles are subject to the burden or entitled to the benefits of a covenant running with the land, it the covenant must be apportioned among them according to the value of the property subject to it held by them respectively if such the value can be ascertained and, if not, then according to their respective interests in point of quantity."

Section 6. Section 70-20-306, MCA, is amended to read:

"70-20-306. Responsibility of heirs of covenantor — certain warranties abolished. Lineal and collateral warrants, with all their incidents, are abolished, but the heirs and devisees of every person who has made any covenant or agreement in reference to the title of, in, or to any real property are, except as provided in [section 1], answerable upon such the covenant or agreement to the extent of the land descended or devised to them in the cases and in the manner prescribed by law."

Section 7. Section 70-23-308, MCA, is amended to read:

"70-23-308. Contents of bylaws. The Subject to [section 1], the bylaws must provide for:

- (1) the election from among the unit owners of a board of directors, the number of persons constituting the board, and that the terms of at least one-third of the directors expire annually; the powers and duties of the board; the compensation, if any, of the directors; the method of removal from office of the directors; and whether or not the board may engage the services of a manager or managing agent;
- (2) the method of calling meetings of the unit owners and the percentage, if other than a majority as defined by 70-23-102, that constitutes a quorum;

- (3) the election of a presiding officer, a secretary, and a treasurer;
- (4) the maintenance, upkeep, and repair of the common elements and payment for those expenses, including the method of approving payment vouchers:
- (5) the employment of personnel necessary for the maintenance, upkeep, and repair of the common elements;
- (6) the manner of collecting from the unit owners their share of the common expenses;
- (7) the method of adopting and of amending administrative rules governing the details of the operation and use of the common elements;
- (8) restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not included in the declaration, as are designed to prevent unreasonable interference with the use of the unit owners' respective units and of the common elements by the several unit owners:
 - (9) the method of amending the bylaws subject to 70-23-307."

Section 8. Section 70-23-506, MCA, is amended to read:

"70-23-506. Compliance with bylaws, rules, and covenants required — action. Each Except as provided in [section 1], each unit owner shall comply with the bylaws and with the administrative rules adopted pursuant thereto to the bylaws and with the covenants, conditions, and restrictions in the declaration or in the deed to his the owner's unit. Failure to comply therewith shall be with the bylaws and rules is grounds for an action maintainable by the association of unit owners or by an aggrieved unit owner."

Section 9. Section 70-23-601, MCA, is amended to read:

"70-23-601. Contents of deed or lease of unit. The Except as provided in [section 1], the deed or lease of a unit shall must contain:

- (1) a description of the land, the name of the property, and the recording index numbers and date of recording of the declaration;
 - (2) the unit designation of the unit;
 - (3) the use for which the unit is intended;
- (4) the percentages of undivided interest in the common elements appertaining to the unit;
- (5) any further details the grantor and grantee or lessor and lessee may consider desirable."

Section 10. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 70, chapter 1, and the provisions of Title 70, chapter 1, apply to [section 1].

Approved April 18, 2009

CHAPTER NO. 308

[HB 567]

AN ACT GENERALLY REVISING NEW MOTOR VEHICLE FRANCHISING LAWS; REVISING DEFINITIONS; MODIFYING CLAIMS PROCEDURES BETWEEN FRANCHISORS AND NEW MOTOR VEHICLE DEALERS; REVISING PROCEDURES FOR CANCELLING OR TERMINATING

FRANCHISE AGREEMENTS; REVISING PROVISIONS PERTAINING TO PROHIBITED ACTS; AMENDING SECTIONS 61-4-201, 61-4-202, 61-4-204, 61-4-205, 61-4-207, 61-4-208, AND 61-4-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

- **Section 1.** Section 61-4-201, MCA, is amended to read:
- **"61-4-201. Definitions.** As used in this part, the following definitions apply unless the context clearly indicates otherwise:
- (1) "Community" means the relevant market area of a franchise. For the purposes of this part, the relevant market area of a franchise is the county or counties in which the franchisee is located.
- (2) "Distribute" means to sell new motor vehicles other than at retail or to enter into a franchise agreement authorizing a dealer to buy new motor vehicles for resale or to service motor vehicles under a manufacturer's or distributor's warranty.
- (2)(3) "Distributor" or "wholesaler" means a person who sells or distributes a line-make of new motor vehicles to new motor vehicle dealers in this state or who maintains distributor representatives in this state.
- (3)(4) "Distributor branch" means a branch office maintained or availed of by a distributor or wholesaler for the sale of a *line-make* of new motor vehicles to new motor vehicle dealers in this state for directing or supervising its representatives in this state.
- (4)(5) "Factory branch" means a branch office maintained or availed of by a manufacturer for the sale of *a line-make of* new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle dealers in this state or for directing or supervising its representatives in this state.
- (5)(6) "Franchise" means a contract and any agreed-to amendments between or among two or more persons when all of the following conditions are included:
- (a) a commercial relationship of definite duration or continuing indefinite duration is involved;
 - (b) the franchisee is granted the right to:
- (i) offer, sell, and service in this state new motor vehicles manufactured or distributed by the franchisor; or
- (ii) service motor vehicles pursuant to the terms of a franchise and a manufacturer's warranty;
- (c) the franchisee, as an independent and separate business, constitutes a component of the franchisor's distribution system; and
- (d) the operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts, and accessories.
- (6)(7) "Franchisee" means a person who receives new motor vehicles from the franchisor under a franchise and who offers, sells, and services the new motor vehicles to and for the general public.
- (7)(8) "Franchisor" means a person who manufactures, imports, or distributes new motor vehicles and who may enter into a franchise.
- (8)(9) "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.

- (10) "Line-make" means vehicles that are offered for sale, lease, or distribution under a common name, trademark, or service mark.
- (9)(11) "Manufacturer" means a person who manufactures or assembles a line-make of new motor vehicles and distributes them directly or indirectly through one or more distributors to one or more new motor vehicle dealers in this state or who manufactures or installs on previously assembled truck chassis special bodies or equipment that, when installed, forms an integral part of the new motor vehicle and that constitutes a major manufacturing alteration, but does not include a person who installs a camper on a pickup truck. The term includes a central or principal sales corporation or other entity through which, by contractual agreement or otherwise, a manufacturer distributes its products.
- (10)(12) "Motor vehicle" includes a personal watercraft as defined in 23-2-502, a snowmobile as defined in 23-2-601, and an off-highway vehicle as defined in 23-2-801.
- (11)(13) "New motor vehicle" means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.
- (12)(14) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor vehicles under a franchise with the manufacturer of the new motor vehicles or used motor vehicles taken in trade on new motor vehicles.
 - (13)(15) (a) "Retail sale" means the sale of a new motor vehicle.
 - (b) "Retail sale" does not mean a sale:
- (i) of a new motor vehicle to a purchaser who is acquiring the vehicle for the purposes of a resale; or
- (ii) that is the result of a transfer between two licensed new motor vehicle dealers."

Section 2. Section 61-4-202, MCA, is amended to read:

- "61-4-202. License requirements. (1) A new motor vehicle dealer, manufacturer, distributor, factory branch, distributor branch, importer, or franchisor may not engage in business in Montana except in accordance with the requirements of this part. The provisions of this part do not apply to a public officer engaged in the discharge of official duties or to a trustee, receiver, or other officer acting under the jurisdiction of a court, to financial institutions disposing of repossessed vehicles, or to a person disposing of a personal motor vehicle. The provisions of this part regulating and licensing new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, importers, and franchisors apply only to those new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, importers, and franchisors of motor vehicles as defined by this part.
- (2) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor transacting business within Montana by offering, selling, trading, consigning, or otherwise transferring a new motor vehicle to a new motor vehicle dealer must be licensed by the state of Montana. The department shall issue licenses to qualified applicants upon receipt of a license fee in the amount of \$15 accompanied by the information required in this section.
- (3) The following information, if applicable, must be submitted by an applicant upon forms supplied by the department:

- (a) the name and address of the applicant;
- (b) the make and model of each new motor vehicle to be franchised;
- (c) the name and address of each of the applicant's franchisees within the state; and
- (d) the name and address of each factory branch, distributor branch, agent, or representative within the state.
- (4) A license may be renewed each year if the applicant is in compliance with the provisions of this part, remits a renewal fee in the amount of \$15, and notifies the department of any changes in the information previously supplied.
- (5) (a) A new motor vehicle may not be sold in this state unless either the manufacturer on direct dealership of domestic motor vehicles, the importer of foreign manufactured motor vehicles on direct dealership, or the distributor on indirect dealerships of either domestic or foreign motor vehicles is licensed as provided in this part.
- (b) Notwithstanding any other licensing provision contained in Montana law, every new motor vehicle dealer shall obtain a license under part 1 of this chapter.
- (c) The obtaining of a license under Title 61, chapter 4, part 1, or this part conclusively establishes that a new motor vehicle dealer, manufacturer, distributor, or importer is subject to the laws of this state regulating new motor vehicle dealers, manufacturers, importers, and distributors.
- (6) When an objection to a proposal to terminate or not continue a franchise or a proposal to enter into a franchise establishing an additional new motor vehicle dealership of the same line-make is made pursuant to 61-4-206, a replacement license or new license may not be issued under this section to any replacement dealer or new dealer until adjudication by the department of the written objection filed pursuant to 61-4-206 and the exhaustion of all appellate remedies available to the objector."

Section 3. Section 61-4-204, MCA, is amended to read:

- "61-4-204. Filing agreement product liability. (1) A franchisee shall, at the time of application for a new motor vehicle dealer license under the provisions of 61-4-101, file with the department a certified copy of the franchisee's written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic motor vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign-made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured motor vehicles or by an authorized agent of the manufacturer or importer of foreign-made motor vehicles.
- (2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical

with the filed blanket agreement and that the franchisee has filed with the department one agreement together with a list of franchised dealers or distributors

- (3) A manufacturer, distributor, or importer franchisor shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.
- (4) A manufacturer shall file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only. However, this section may not affect the obligations of new motor vehicle dealers to perform warranty repair and maintenance that may be required by law or contract. Except with regard to household appliances, including but not limited to ranges, refrigerators, and water heaters, in a recreational vehicle and except with regard to a truck rated at more than 10,000 pounds gross vehicle weight, the manufacturer shall compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or for delivery and preparation obligations at the same rate and time the dealer charges to its retail customers for nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat-rate labor time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work.
- (5) (a) All claims made by the dealer pursuant to this section for compensation for delivery, preparation, warranty, and recall service, including labor, parts, and other expenses, and claims made for incentives must be paid by the manufacturer within 30 days of receipt of the claim from the dealer, except that a manufacturer of a motor home shall pay any claim within 60 days of receipt from the dealer.
- (b) If a claim is disapproved, the dealer must be notified in writing of the grounds for disapproval. A claim that has not been disapproved in writing within 30 days of having been received must be considered approved, and payment is due to the claimant immediately. However, the manufacturer retains the right to audit a claim for a period of 12 months following the payment of the claim.
- (c) A claim that has been approved and paid may not be charged back to the dealer unless the manufacturer proves that:
 - (i) the claim was false or fraudulent;
 - (ii) the repairs were not properly made; or
 - (iii) the repairs were not necessary to correct the defective condition.
- (d) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services in compliance with the written policies and procedures of the manufacturer. A manufacturer may not deny a claim based solely on a dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error or other administrative technicality that does not put into question the legitimacy of the claim.

- (6) Notwithstanding the terms of any agreement, the franchisor may not refuse to allocate, sell, or deliver motor vehicles, may not penalize a dealer, may not charge back or withhold payments or other things of value for which the dealer is otherwise eligible under a sales promotion, program, or contest, and may not prevent the dealer from participating in any promotion, program, or contest based on the dealer's selling of a motor vehicle to a customer who was present at the dealership and that the dealer did not know or could not have reasonably known that the motor vehicle would be shipped to a foreign country. There is a rebuttable presumption that the dealer did not know or could not have reasonably known that the vehicle would be shipped to a foreign country if the motor vehicle is titled in the United States.
- (7) A franchisor may not recover or seek to recover any of its costs for compensating a dealer for warranty work, including labor and parts, or for the dealer's participation in incentives by imposing on the dealer any charge or surcharge to the wholesale price paid by the dealer to the franchisor for any product, including motor vehicles and parts.
- (e)(8) A franchisor may reasonably and periodically audit a motor vehicle dealer to determine the validity of paid claims or chargebacks for customer or dealer incentives. An audit of incentive payments may apply only to the 18-month period immediately preceding the date on which the dealer was notified of an impending audit.
- (9) A dealer has 60 days from the date of notification by a manufacturer of a denial or a chargeback to the dealer to resubmit a claim for payment or compensation if the claim was denied for a dealer's incidental failure as set forth in subsection (5)(d), regardless of whether the denial or chargeback was a direct or an indirect transaction.
- (10) A dealer has 90 days after the expiration of a franchisor incentive program, or a longer time if provided by the franchise agreement, to submit a claim for payment or compensation under the program.
- (11) Notwithstanding the terms of a franchise agreement or other contract with a dealer and except as provided in subsection (5)(c), after the expiration of 1 year after the date of payment of a motor vehicle claim or 1 year from the end of a program that does not exceed 1 year in length, whichever is later, a franchisor may not:
- (a) charge back to a dealer, whether directly or indirectly, the amount of a claim that has been approved and paid by the franchisor under an incentive program;
- (b) charge back to a dealer, whether directly or indirectly, the cash value of a prize or other thing of value awarded to the dealer under an incentive program; or
- (c) audit the records of a dealer to determine compliance with the terms of an incentive program.
- (12) Subsection (11) does not prohibit a franchisor from making chargebacks to a dealer for fraud at any time as permitted by subsection (5)(c).
- (6)(13) The dealer shall furnish the purchaser of a new motor vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed."
 - **Section 4.** Section 61-4-205, MCA, is amended to read:
- "61-4-205. Limitations on cancellation and termination. (1) Notwithstanding the terms, provisions, or conditions of any agreement or

franchise, a franchisor may not cancel, terminate, or refuse to continue a franchise unless the franchisor has cause for termination or noncontinuance.

- (2) A franchisor may not enter into a franchise for the purpose of establishing an additional new motor vehicle dealership in any community in which the same line-make is then represented unless there is good cause for an additional new motor vehicle dealership under a franchise and it is in the public interest
- (3) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less than 60 days prior to the intended action, and the franchisee may, at any time, file a notice with the department of intention to terminate or not continue the franchise or to enter into a franchise for additional representation of the same line-make. A notice of intention to terminate or not continue a franchise is not required from a franchisor until the conclusion of any review proceeding of that intention offered to the franchisee under the franchise. This section does not apply to an intended termination or noncontinuance of a franchise that the franchisee elects voluntarily, pursuant to a plan established by a franchisor, to submit to binding arbitration.
- (4) Upon receiving a notice of intention under the provisions of subsection (3), the department shall, within 5 days of receipt of a notice of intention, send by certified mail, with return receipt requested, a copy of the notice to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate, or not continue. If the notice states an intent to establish an additional new motor vehicle dealership, a copy of the notice must be sent within 5 days of receipt to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of notices must be addressed to the principal place of business of each recipient and to the statutory agent of each corporate recipient. The department may also give a copy of the franchisor's notice to any other parties whom the department may consider interested persons.
- (5) In instances where the change in ownership has the effect of the sale of the franchise, the franchisor may not without good cause withhold its consent to the sale. Good cause relates only to the transferee's financial and managerial capabilities or to the inability of the transferee to comply with a state or federal law relating to new motor vehicle dealerships. The burden of establishing good cause is upon the franchisor.
- (6) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, in the event of the sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer to the dealer's or wholesaler's spouse, son, or daughter or child, the franchisor shall give effect to the sale or transfer of ownership in the franchise unless the transfer of the franchisee's new motor vehicle dealer's or wholesaler's license is denied or the new owner is unable to obtain a license under the laws of this state.
- (7) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional new motor vehicle dealership in a community where the same line-make is then represented, without first complying with the provisions of this part, a license under Title 23 or 61-4-101 may not be issued to that franchisee or proposed franchisee to engage in the business of selling new motor vehicles manufactured or distributed by that franchisor.

- (8) A franchisor shall, unless a new franchisor of the line-make continues or replaces the dealer's franchise under subsection (10), compensate the dealer as provided in subsection (9) if the franchisor renders itself incapable of performing under a franchise agreement or renders a distributor incapable of performing under a franchise agreement by:
- (a) selling or otherwise transferring some or all of the assets essential to the manufacture or distribution of the line-make covered by the franchise agreement;
 - (b) ceasing production of the line-make; or
- (c) terminating, canceling, or not renewing the distributor's rights to distribute the line-make.
- (9) (a) A franchisor considered incapable of performing under subsection (8) shall compensate the affected dealer in an amount equal to the greater of:
- (i) the actual pecuniary loss that the dealer and its owners suffered as a result of the termination, cancellation, or failure to renew; or
 - (ii) the higher of the fair market value of the franchise on the following dates:
 - (A) the effective date of the termination, cancellation, or failure to renew;
- (B) the date 1 year prior to the effective date of termination, cancellation, or failure to renew; or
- (C) the day prior to the date on which the franchisor announces the action that results in the termination, cancellation, or failure to renew.
- (b) The compensation required by this subsection (9) must be paid to the dealer within 30 days of the affected parties' mutual agreement in writing as to the amount of the compensation. If an agreement on compensation is not reached within 90 days of the effective date of the termination, cancellation, or failure to renew, an affected dealer may bring an action for a determination of the amount of compensation due and for recovery of that amount, plus costs and attorney fees.
- (10) If, as a result of any of the circumstances described in subsection (8), an entity other than the original manufacturer or distributor of a line-make becomes the manufacturer or distributor for the line-make and intends to distribute motor vehicles of that line-make in this state, the entity shall honor the franchise agreements of the original franchisor and its dealers or offer those dealers a new franchise agreement for the line-make on substantially similar terms and conditions.
- (11) The franchisor that is terminating, canceling, or not renewing a franchise agreement pursuant to subsection (8) shall:
- (a) authorize the franchisee or another new motor vehicle dealer of the franchisor in the area to continue servicing and supplying parts, including service and parts pursuant to a warranty issued by the franchisor for any goods or services marketed by the franchisee pursuant to the motor vehicle franchise for a period of not less than 5 years from the effective date of the termination, cancellation, or nonrenewal; and
- (b) continue to reimburse the franchisee or another new motor vehicle dealer of the franchisor in the area for warranty parts and service in an amount and on terms not less favorable than those in effect prior to the termination, cancellation, or nonrenewal.
- (12) The franchisor shall continue to supply the franchisee whose agreement is terminated, canceled, or not renewed pursuant to subsection (8) or another new motor vehicle dealer of the franchisor in the area with replacement parts for any

goods or services marketed by the franchisee pursuant to the franchise agreement for a period of not less than 5 years from the effective date of the termination, cancellation, or nonrenewal at the same price and terms as the franchisor supplies the parts, goods, or services to the remaining franchisees of the franchisor or if there are not any remaining franchisees, at a price and on terms not less favorable than those in effect prior to the termination, cancellation, or nonrenewal.

(13) If the franchisee continues to service motor vehicles and sell parts after the termination, cancellation, or nonrenewal of the franchise agreement pursuant to subsection (8), the compensation paid to the franchisee pursuant to subsection (9) must be reduced to the extent, if any, of the fair market value of the right to continue to service motor vehicles and sell parts as of the effective date of the termination, cancellation, or nonrenewal."

Section 5. Section 61-4-207, MCA, is amended to read:

- **"61-4-207. Determination of good cause.** (1) In determining whether good cause has been established for terminating or not continuing a franchise, the department shall take into consideration the existing circumstances, including but not limited to:
- (a) amount of business transacted by the franchise the franchisee's sales in relation to the market:
- (b) investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee's part of the franchise;
 - (c) permanency of the investment;
- (d) whether it is injurious to the public welfare for the business of the franchisee to be discontinued;
- (e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and qualified management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold at retail by the franchisee and any other new motor vehicle of the same line-make;
- (f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee if the franchiser reimburses the franchisee for warranty work performed by the franchisee *pursuant to this part*; and
- (g) except as provided in subsection (2), failure by the franchisee to substantially comply with the written and uniformly applied requirements of the franchise that are determined by the department to be reasonable and material actions by the franchisee that result in a material breach of the written and uniformly applied requirements of the franchise that are determined by the department to be reasonable and material; and
- (h) the enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise's terms and the parties' relative bargaining power.
- (2) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the following do not constitute good cause for the termination or noncontinuance of a franchise:
 - (a) a change in ownership of the franchisee's dealership; or
- (b) the fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, part, accessory, or any other commodity or service not ordered by the franchisee;

- (c) the failure of a franchisee to change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities; or
- (d) the desire of a franchisor or a franchisor's representative for market penetration.
- (3) In determining whether good cause has been established for entering into an additional franchise for the same line-make, the department shall take into consideration the existing circumstances, including but not limited to:
- (a) amount of business transacted by other franchisees of the same line-make in that community;
- (b) investment necessarily made and obligations incurred by other franchisees of the same line-make in that community in the performance of their part of their franchises; and
- (c) whether the franchisees of the same line-make in that community are providing adequate consumer care, including satisfactory new motor vehicle dealer sales and service facilities, equipment, parts supply, and qualified management, sales, and service personnel, for the new motor vehicle products of the line-make."

Section 6. Section 61-4-208, MCA, is amended to read:

- **"61-4-208. Prohibited acts.** (1) A manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of the persons or entities listed may not:
- (a) coerce, attempt to coerce, or require a new motor vehicle dealer or transferee of a new motor vehicle dealer to:
- (i) accept delivery of a new motor vehicle, a part, or an accessory for a new motor vehicle or any other commodity that has not been ordered by the *new motor vehicle dealer or transferee of a new motor vehicle* dealer;
- (ii) participate in or contribute to any local, regional, or national advertising fund or to participate in or to contribute to contests, giveaways, or other sales devices;
- (iii) change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles that would justify an expansion;
- (iv) either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing franchise relationship with another manufacturer that was established before April 8, 1997, when those requirements are not justified by reasonable business considerations; in order to keep or enter into a franchise agreement or to participate in any program discount, credit, rebate, or sales incentive;
- (v) require, coerce, or attempt to coerce a new motor vehicle dealer or transferee of a new motor vehicle dealer to refrain from participation in the management of, investment in, or acquisition of any other line-make of new motor vehicle or related products, as long as the new motor vehicle dealer or transferee of a new motor vehicle dealer maintains a reasonable line of credit for each franchise and the new motor vehicle dealer or transferee of a new motor vehicle dealer remains in substantial compliance with reasonable facilities requirements. The reasonable facilities requirements may not include any

requirement that a new motor vehicle dealer or transferee of a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space.

- (v)(vi) refrain from participation in the management of, investment in, or acquisition of any other line of new motor vehicle or related products if the new motor vehicle dealer or transferee of a new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles and remains in compliance with any reasonable capital standards and facility requirements of the manufacturer; or
- (vi)(vii) enter into an agreement with a manufacturer, factory branch, distributor, distributor branch, or representative of the listed persons or entities or do any other act unfair to the *new motor vehicle* dealer or transferee of a new motor vehicle dealer by:
- (A) threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative of the listed persons or entities and the *new motor vehicle* dealer or transferee of a new motor vehicle dealer; or
- (B) threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts or supplies ordered by the *new motor vehicle dealer* dealer or transferee of a new motor vehicle dealer from the manufacturer, factory branch, distributor, distributor branch, importer, or representative or agent of the listed entities;
- (b) delay, refuse, or fail to deliver new motor vehicles in a reasonable time in a reasonable quantity relative to the new motor vehicle dealer's or transferee of a new motor vehicle dealer's facilities and sales potential after accepting an order from a new motor vehicle dealer or transferee of a new motor vehicle dealer if the new motor vehicles are publicly advertised as being available for immediate delivery; or
- (c) impose unreasonable restrictions on the assertion of legal or equitable rights on the new motor vehicle dealer or transferee of a new motor vehicle dealer or franchise of a new motor vehicle dealer or transferee of a new motor vehicle dealer regarding transfer; sale; right to renew; termination; discipline; noncompetition covenants; site control, whether by sublease, collateral pledge of lease, or otherwise; or compliance with subjective standards; or
- (d) notwithstanding the terms, provisions, or conditions of any agreement or franchise, use or consider the new motor vehicle dealer's or transferee of a new motor vehicle dealer's performance relating to the sale of new motor vehicles or ability to satisfy any minimum sales or market share quota or responsibility relating to the sale of new motor vehicles, parts, or service contracts in determining:
 - (i) eligibility to purchase program, certified, or other used motor vehicles;
- (ii) the volume, type, or model of program, certified, or other used motor vehicles the new motor vehicle dealer or transferee of a new motor vehicle dealer is eligible to purchase;
- (iii) the price or prices of any program, certified, or other used motor vehicles that the new motor vehicle dealer or transferee of a new motor vehicle dealer is eligible to purchase; or
- (iv) the availability or amount of any discount, credit, rebate, or sales incentive that the new motor vehicle dealer or transferee of a new motor vehicle dealer is eligible to receive for the purchase of any program, certified, or other used motor vehicles.

- (2) There is no violation of subsection (1)(a)(iii) or (1)(b) if a failure on the part of the manufacturer, factory branch, distributor, or distributor branch is beyond the control of the listed persons or entities.
- (3) (a) Except as provided in subsection (3)(b) or (3)(c), a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may not own or operate, directly or indirectly, a motor vehicle dealership in Montana that is for sale or has been for sale under a franchise agreement with a new motor vehicle dealer in Montana.
- (b) If there is no independent person available to own and operate a motor vehicle dealership in a manner that is consistent with the public interest, a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own and operate a motor vehicle dealership for a temporary period, not to exceed 1 year, during the transition from one owner of the dealership to another. Approval of the sale may not be unreasonably withheld by the manufacturer.
- (c) A manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own an interest in a motor vehicle dealership but may not operate the dealership unless a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities has a bona fide business relationship with an independent person who is not a franchisor or a franchisor's agent or affiliate, who has made an investment that is subject to loss in the dealership, and who reasonably expects to acquire full ownership of the dealership on reasonable terms and conditions."

Section 7. Section 61-4-210, MCA, is amended to read:

- **"61-4-210. Penalties administrative penalties.** (1) Except as provided in subsection (2), a person who violates any provision of this part is guilty of a misdemeanor and upon conviction shall be fined not less than \$500 or more than \$1,000 for each violation. Each day that a violation continues or occurs constitutes a separate violation.
- (2) A manufacturer on direct dealerships, distributor on indirect dealerships, or importer on direct dealerships who has filed with the department an agreement used by all its franchisees in this state together with a list of all such franchisees and who fails to notify the department within 30 days of any revision, change, or addition thereto is guilty of a misdemeanor and upon conviction shall be fined not to exceed \$500.
- (3) If any new motor vehicle dealer or transferee of a new motor vehicle dealer incurs pecuniary loss due to a violation of this part by a manufacturer, distributor, importer, or factory branch or representative or agent thereof of the listed persons or entities, the new motor vehicle dealer or transferee of a new motor vehicle dealer may recover damages therefor in a court of competent jurisdiction in an amount equal to three times the pecuniary loss, together with costs including reasonable attorney's attorney fees.
- (4) In addition to any other penalty provided for in this part, the department may take appropriate enforcement action on its own initiative in accordance with the contested case procedures of Title 2, chapter 4. A person who violates

the provisions of this part may be subject to administrative action and a civil penalty not to exceed \$500 for each violation."

Section 8. Damage notice. (1) Except as provided in subsection (2), a franchisor is required:

- (a) to disclose in writing to a new motor vehicle dealer damage to a new motor vehicle delivered to the new motor vehicle dealer if the damage is known to the franchisor and repaired, the damage occurred after the manufacturing process is complete but before delivery to the new motor vehicle dealer, and the damage exceeds 5% of the franchisor's suggested retail price as calculated at the rate of the new motor vehicle dealer's authorized warranty rate for labor and parts; and
- (b) to disclose in writing to a purchaser of the new motor vehicle before entering into a sales contract that the new motor vehicle has been damaged and repaired if the damage to the new motor vehicle exceeds 5% of the franchisor's suggested retail price as calculated at the rate of the new motor vehicle dealer's authorized warranty rate for labor and parts.
- (2) Disclosure is not required for any glass, tires, or bumper of a new motor vehicle if the damaged item has been replaced with original or comparable equipment.
- (3) If disclosure is not required under subsection (2), a purchaser may not revoke or rescind a sales contract due solely to the fact that the new motor vehicle was damaged and repaired before completion of the sale.
- (4) For purposes of this section, "franchisor's suggested retail price" means the retail price of the new motor vehicle suggested by the franchisor, including the retail delivered price suggested by the franchisor for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer that is not included within the retail price suggested by the franchisor for the new motor vehicle.
- **Section 9. Codification instruction.** [Section 8] is intended to be codified as an integral part of Title 61, chapter 4, and the provisions of Title 61, chapter 4, apply to [section 8].
- **Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. Effective date. [This act] is effective on passage and approval. Approved April 18, 2009

CHAPTER NO. 309

[HB 635]

AN ACT REPEALING THE MONTANA EQUITY CAPITAL INVESTMENT ACT; AMENDING SECTIONS 33-2-705 AND 90-1-112, MCA; REPEALING SECTIONS 15-30-184, 15-31-152, 90-10-101, 90-10-102, 90-10-103, 90-10-201, 90-10-202, 90-10-301, 90-10-302, 90-10-303, 90-10-304, 90-10-305, 90-10-306, 90-10-307, 90-10-308, 90-10-309, AND 90-10-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-705. MCA. is amended to read:

- "33-2-705. Report on premiums and other consideration tax. (1) Each authorized insurer and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report in a form prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance, whether designated as a premium or otherwise, received by a life insurer or written by an insurer other than a life insurer during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from the total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to the policies. As to title insurance, "premium" includes the total charge for the insurance. A deduction may not be made of the cash surrender values of policies. Considerations received on annuity contracts may not be included in total direct premium income and are not subject to tax.
- (2) Coincident with the filing of the tax report referred to in subsection (1), each insurer shall pay to the commissioner a tax upon the net premiums computed at the rate of 2 3/4%.
- (3) That portion of the tax paid under this section by an insurer on account of premiums received for fire insurance must be separately specified in the report as required by the commissioner, for apportionment as provided by law. When insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make a reasonable allocation from the entire premium to the fire portion of the coverage as must be stated in the report and as may be approved or accepted by the commissioner.
- (4) With respect to authorized insurers, the premium tax provided by this section must be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.
- (5) Insurers paying a premium tax under subsection (2) and holding a certificate pursuant to Title 90, chapter 10, may redeem the certificate under the terms of 90-10-304 as a credit against the premium tax after excluding the portion of premiums identified in subsection (3).
- (6)(5) The commissioner may suspend or revoke the certificate of authority of any insurer that fails to pay its taxes as required under this section.
- (7)(6) In addition to the penalty provided for in subsection (6) (5), the commissioner may impose upon an insurer who fails to pay the tax required under this section a fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%.

(8)(7) The commissioner may by rule provide a quarterly schedule for payment of portions of the premium tax under this section during the year in which tax liability is accrued."

Section 2. Section 90-1-112, MCA, is amended to read:

"90-1-112. Policy — purpose. (1) It is the policy of this state to:

- (a) strengthen the foundations of the state's business environment and diversify and expand existing economic endeavors to achieve long-term economic stability:
- (b) cooperate with business enterprises, local governments, other public organizations, and the federal government and use all practical means and measures, including financial and technical assistance, to:
- (i) establish an economic climate in which the state's natural resources and agricultural operations remain constant contributors to the state's economic welfare:
 - (ii) articulate a coherent economic development vision for the future; and
- (iii) take a proactive role to ensure that Montana has the flexibility and resources to be an effective competitor in the changing global marketplace.
- (2) The purpose of 2-15-218, 2-15-219, and 90-1-112 through 90-1-114, and Title 90, chapter 10, is to provide a vision and a direction through the development of strategies and initiatives to ensure that the state's role in expanding the economy takes place in an orderly and effective manner."

Section 3. Repealer. Sections 15-30-184, 15-31-152, 90-10-101, 90-10-102, 90-10-103, 90-10-201, 90-10-202, 90-10-301, 90-10-302, 90-10-303, 90-10-304, 90-10-305, 90-10-306, 90-10-307, 90-10-308, 90-10-309, and 90-10-310, MCA, are repealed.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 18, 2009

CHAPTER NO. 310

[SB 26]

AN ACT REVISING THE REGULATION OF ECONOMIC CREDENTIALING OF PHYSICIANS; MODIFYING ECONOMIC CREDENTIALING REGULATIONS TO INCLUDE OUTPATIENT CENTERS FOR SURGICAL SERVICES AND TO EXCLUDE DIAGNOSTIC FACILITIES; DEFINING "CONFLICT OF INTEREST"; REVISING REGULATORY AUTHORITY OF DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; RETAINING THE RESTRICTION ON HOSPITALS LIMITING MEMBERSHIP OR PRIVILEGES; AMENDING SECTIONS 50-5-117 AND 50-5-207, MCA; REPEALING SECTION 6, CHAPTER 351, LAWS OF 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-117, MCA, is amended to read:

"50-5-117. (Temporary) Economic credentialing of physicians prohibited — definitions. (1) A Except to the extent necessary to determine physician competency or to comply with medicare or medicaid certification under Titles XVIII and XIX of the Social Security Act, respectively, or for accreditation by organizations that accredit hospitals or outpatient centers for

surgical services, a hospital or an outpatient center for surgical services may not engage in economic credentialing by:

- (a) except as may be required for medicare certification or for accreditation by the joint commission on accreditation of healthcare organizations, requiring a physician requesting medical staff membership or medical staff privileges to agree to make referrals to that hospital, to an outpatient center for surgical services, or to any facility related to the hospital or the outpatient center for surgical services;
- (b) refusing to grant staff membership or medical staff privileges or conditioning or otherwise limiting a physician's medical staff participation because the physician or a partner, associate, or employee of the physician:
- (i) provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility; or
 - (ii) participates or does not participate in any particular health plan; or
- (c) refusing to grant participatory status in a hospital or hospital system health plan or outpatient center for surgical services health plan to a physician or a partner, associate, or employee of the physician who has medical staff privileges because the physician or a partner, an associate, or an employee of the physician provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility.
- (2) Notwithstanding the prohibitions in subsection (1), a hospital or an outpatient center for surgical services may refuse to appoint a physician to the governing body of the hospital or to the position of president of the medical staff or presiding officer of a medical staff committee if the physician or a partner or employee of the physician provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility require recusal of a physician member of the board, the president of the medical staff of the hospital or outpatient center for surgical services, or the presiding officer of a medical staff committee from financial decisions and information related to the hospital or outpatient center for surgical services if the physician member of the board, president of the hospital medical staff or outpatient center for surgical services staff, or the presiding officer of a medical staff committee has a conflict of interest relevant to those decisions or that information.
 - (3) For the purposes of this section, the following definitions apply:
- (a) "Board" means the governing body or board of directors of a hospital or an outpatient center for surgical services.
- (b) "Conflict of interest" means, notwithstanding the board's own conflict of interest policy, a situation in which a physician in a leadership position either individually or through an immediate family member, as defined in 15-30-602, or through a partner or employee of the physician has a financial interest in any health care facility that may compromise the board's fiduciary responsibility.
- (c) (i) "Economic credentialing" means the denial of a physician's application for staff membership or clinical privileges to practice medicine in a hospital or an outpatient center for surgical services on criteria other than the individual's education, training, current competence, experience, ability, personal character, and judgment.

- (ii) This term does not mean use by the hospital or the outpatient center for surgical services of:
- (i)(A) exclusive contracts with physicians if the contracts do not violate the unfair trade practices provisions of Title 30, chapter 14, part 2;
- (ii)(B) medical staff on-call requirements if the on-call requirements do not violate the unfair trade practices and consumer protection provisions of 30-14-103; or Title 30, chapter 14, part 2;
 - (iii)(C) adherence to a formulary approved by the medical staff; or
- $\overline{\text{(iv)}}(D)$ other medical staff policy adopted to manage health care costs or improve quality.
- (b)(d) "Health care facility" has the meaning provided in 50-5-101 and includes diagnostic facilities.
- (e)(e) "Health plan" means a plan offered by any person, employer, trust, government agency, association, corporation, or other entity to provide, sponsor, arrange for, indemnify another for, or pay for health care services to eligible members, insureds, enrollees, employees, participants, beneficiaries, or dependents, including but not limited to a health plan provided by an insurance company, health service organization, health maintenance organization, preferred provider organization, self-insured health plan, captive insurer, multiple employee welfare arrangement, workers' compensation plan, medicare, or medicaid.
 - (d)(f) "Physician" has the meaning provided in 37-3-102.
- (4) For the purposes of this section, the provisions of 50-5-207 do not apply. (Terminates June 30, 2009—sec. 6, Ch. 351, L. 2007.)"
 - **Section 2.** Section 50-5-207, MCA, is amended to read:
- "50-5-207. (Temporary) Denial, suspension, or revocation of health care facility license provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:
- (a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.
- (b) The staff is insufficient in number or unqualified by lack of training or experience.
- (c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.
- (d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.
- (e) There is cruelty or indifference affecting the welfare of the patients or residents.
- (f) There is misappropriation of the property or funds of a patient or resident.
- (g) There is conversion of the property of a patient or resident without the patient's or resident's consent.
 - (h) Any provision of parts 1 through 3, except 50-5-117, is violated.
- (2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a

provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

- (3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.
- (4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court. (Terminates June 30, 2009—sec. 6, Ch. 351, L. 2007.)
- 50-5-207. (Effective July 1, 2009) Denial, suspension, or revocation of health care facility license—provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:
- (a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.
- (b) The staff is insufficient in number or unqualified by lack of training or experience.
- (c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.
- (d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.
- (e) There is cruelty or indifference affecting the welfare of the patients or residents.
- (f) There is misappropriation of the property or funds of a patient or resident.
- (g) There is conversion of the property of a patient or resident without the patient's or resident's consent.
 - (h) Any provision of parts 1 through 3 is violated.
- (2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.
- (3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.
- (4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court."
 - Section 3. Repealer. Section 6, Chapter 351, Laws of 2007, is repealed.
 - Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 19, 2009

CHAPTER NO. 311

[SB 76]

AN ACT REVISING THE PERCENTAGE OWNERSHIP REQUIREMENTS FOR APPROVAL OF UNIT PLAN OPERATIONS BY PERSONS PAYING THE COSTS OF UNIT OPERATIONS; AMENDING SECTION 82-11-207, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-11-207, MCA, is amended to read:

"82-11-207. Approval of plan for unit operations by persons paying costs. An order of the board providing for unit operations may not become effective unless and until the plan for unit operations prescribed by the board has been approved in writing by those persons who under the board's order will be required to pay at least 80% 70% of the costs of the unit operations and also by the persons owning at least 80% 60% of the production or proceeds thereof of the unit operations that will be credited to interests which that are free of cost, such as royalties, overriding royalties, and production payments, and the board has made a finding, either in the order providing for unit operations or in a supplemental order, that the plan for unit operations has been so approved; however, However, if one owner who is obligated to pay costs of the unit operation owns 80% 70% or more but less than 100%, the approval of that owner and at least one other such owner is required, and if one person entitled to production or proceeds thereof of the production that will be credited to interests which that are free of costs owns 80% 60% or more but less than 100%, the approval of that person and at least one other such person owner is required. If the plan for unit operations has not been so approved at the time the order providing for unit operations is made, the board shall, upon application and notice, hold such supplemental hearings as that may be required to determine if and when the plan for unit operations has been so approved. If the requisite number of owners and persons and the requisite percentage of interests in the unit area do not approve the plan for unit operations within a period of 6 months from the date on which the order providing for unit operations is made, the board shall revoke the order unless, for good cause shown, the board extends the time.'

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved April 19, 2009

CHAPTER NO. 312

[SB 84]

AN ACT AUTHORIZING THE MONTANA CORRECTIONAL ENTERPRISES PROGRAM; REORGANIZING STATUTES DEALING WITH MONTANA CORRECTIONAL ENTERPRISES; AMENDING SECTIONS 39-71-118, 53-1-202, 53-30-131, 53-30-132, 53-30-133, AND 61-3-478, MCA; REPEALING SECTIONS 53-1-301, 53-1-302, 53-1-303, AND 53-1-304, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined. (1) As used in this chapter, the term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service

for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

- (b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;
- (c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.
- (d) an aircrew member or other person who is employed as a volunteer under 67-2-105;
- (e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):
- (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and
- (ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.
- (f) an inmate working in a federally certified prison industries program authorized under 53-1-301 53-30-132;
- (g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1; and
- (h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by

another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

- (2) The terms defined in subsection (1) do not include a person who is:
- (a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;
- (b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;
- (c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.
- (d) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.
- (3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).
- (4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.
- (b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.
- (5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.
- (b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.
- (c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.
- (d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of

not less than \$900 a month and not more than 1 1/2 times the state's average weekly wage.

- (6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).
- (b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.
- (c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.
- (d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (6)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$200 a week and not more than 1 1/2 times the state's average weekly wage.
- (7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.
- (b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the state's average weekly wage.
- (c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.
- (8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).
- (9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for

all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

- (10) For purposes of this section, an "employee or worker in this state" means:
- (a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;
- (b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;
- (c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or
- (d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:
 - (i) nonresident employees are hired in Montana;
 - (ii) nonresident employees' wages are paid in Montana;
 - (iii) nonresident employees are supervised in Montana; and
 - (iv) business records are maintained in Montana.
- (11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d)."

Section 2. Section 53-1-202, MCA, is amended to read:

- **"53-1-202. Department of corrections.** (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.
- (2) Adult corrections services consist of the following correctional facilities or programs:
 - (a) the prisons listed in 53-30-101;
- (b) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:
 - (i) in prerelease centers;
 - (ii) under intensive supervision;
 - (iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or
 - (iv) in other appropriate programs; and
 - (c) the boot camp authorized by 53-30-403; and
- (d) the Montana correctional enterprises prison industries training program authorized by 53-30-131.
- (3) Youth correctional services consist of the following correctional facilities or programs to provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in need of intervention pursuant to Title 52, chapter 5:
- (a) Pine Hills youth correctional facility or other state youth correctional facility; and
- (b) any other facility or program that provides custody and services for delinquent youth.

- (4) A state institution or correctional facility may not be moved, discontinued, or abandoned without the consent of the legislature."
 - **Section 3.** Section 53-30-131, MCA, is amended to read:
- "53-30-131. Prison Montana correctional enterprises prison industries training program purpose and scope. (1) In addition to any correctional facility industry operated at the Montana state prison, the department of corrections shall conduct a prison industries training program.
 - (2) The purpose of the prison industries training program is to:
- (a) provide innovative and progressive inmate reformation and rehabilitation possibilities by exposing inmates to worthwhile training;
- (b) prepare inmates for release by providing industries at the prison that utilize their skills, thus providing experience beyond mere training, inculcating inmates with good production and work habits, and providing them with a means to earn money that will be available to them upon release. There is a Montana correctional enterprises program within the department of corrections to operate a prison industries training program. The Montana correctional enterprises program shall:
- (a) prepare inmates for release by providing vocational education training and work programs at facilities owned, operated, and contracted with by the department; and
- (b) provide inmates the opportunity to earn money to pay restitution, fines, and fees, to pay for hygiene and commissary items, and to save for their eventual release from incarceration.
- (3) The prison industries training program consists of vocational training, on-the-job training, and production experience. The department may contract with public and private vocational education entities to provide this training.
- (2) The prison industries training program consists of vocational education, on-the-job training, and production experience. The Montana correctional enterprises program may contract with public and private educational entities to provide this training.
 - (4)(3) The Montana correctional enterprises program may:
 - (a) provide training and experience involving within the prison system in:
- (i) cultivation, production, processing, manufacture, repair, construction, refurbishment, service, and related processes involving personal property, including but not limited to such items as crops, milk and milk products, wood products, livestock, furniture, and office and electrical equipment, and motor vehicles:
 - (ii) animal training and boarding;
 - (iii) vehicle and equipment maintenance and repair;
 - (iv) wildland fire suppression; and
- (v) approved community work programs for governmental entities and not-for-profit organizations;. The products and services, with the exception of livestock and agricultural products produced from the Montana state prison ranch and products or services of a federally certified prison industries program, may be provided only to state agencies, local government units, school districts, authorities, and other governmental entities.
- (b) provide for the repair and maintenance of property and equipment of institutions or facilities by inmates;

- (c) provide for construction projects, up to the aggregate sum of \$200,000 for each project, performed by inmates. The department of administration may:
- (i) exempt projects authorized by this subsection (3)(c) from the provisions of Title 18, chapter 2, relating to construction, public bidding, bonding, or contracts; and
- (ii) exempt inmates who provide labor for those projects from the labor and wage requirements of Title 18, chapter 2, part 4.
- (d) provide for the manufacture by prison industries of highway, road, and general information signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract; and
- (e) provide for the manufacture of motor vehicle license plates and other related articles.
- (4) The Montana correctional enterprises program may provide its products and services to government agencies, school districts, and nonprofit and for-profit organizations through contracts and dealer networks. Furniture, print, and sign shop products may be sold to the general public only through dealer networks.
- (5) Except as provided in subsection (6), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4.
- (6) Any state institution, facility, or program operated by the department of corrections may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.
- (5)(7) The department Montana correctional enterprises program may donate surplus food grown or produced at the prison to local food banks, nonprofit organizations, and low-income persons.
- (8) The Montana correctional enterprises program is authorized to sell livestock on the open market."
 - **Section 4.** Section 53-30-132, MCA, is amended to read:
- "53-30-132. Inmate participation and status in prison work programs *Montana correctional enterprises* prison industries and vocational training program wages and benefits. (1) The department of corrections may:
- (a) establish prison industries that will result in the production or manufacture of products and the rendering of services that may be needed by any department or agency of the state or any political subdivision of the state, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of inmates in institutions; Able-bodied persons committed to a state prison as adult offenders may be required to perform work as provided for by the department of corrections, including work in the Montana correctional enterprises prison industries training program involving the manufacture of products or the rendering of services. In order to ensure the public safety, the department may secure inmates performing work.
- (b)(2) The Montana correctional enterprises prison industries training program may:
- (a) obtain federal certification, as required by federal law, of specific prison industries programs in order to gain access to interstate markets for prison industries products;

- (c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction and for the employment of inmates in federally certified prison industries programs;
- (d)(b) print catalogs describing goods manufactured or produced by prison industries and distribute the catalogs;
- (e)(c) fix the sale price for goods produced or manufactured by prison industries. Prices may not exceed prices existing in the open market for goods of comparable quality. Prices may be set according to market standards and prices for goods or services of comparable quality. The price of products must include the cost of all raw materials and labor used to manufacture or produce the product.
- (f)(d) require a correctional facility to purchase needed goods and services from other correctional facilities; the Montana correctional enterprises program.
- (g) provide for the repair and maintenance of property and equipment of institutions by inmates;
- (h) provide for the removal of graffiti from property and equipment of institutions and the removal of litter from the property of institutions, public roads, and public parks by inmates;
- (i) provide for construction projects, up to the aggregate sum of \$200,000 for each project, performed by inmates. The department of administration may:
- (i) exempt projects authorized by this subsection from the provisions of Title 18, chapter 2, relating to construction, public bidding, bonding, or contracts; and
- (ii) exempt inmates who provide labor for those projects from the labor and wage requirements of Title 18, chapter 2, part 4. Inmates providing labor for projects under this subsection must be paid a rate of pay as provided in subsection (5).
- (j) provide for the repair and maintenance by prison industries of furniture and equipment of any state agency:
- (k) provide for the manufacture by prison industries of motor vehicle license plates and other related articles;
- (l) sell manufactured or agricultural products and livestock on the open market;
- (m) provide for the manufacture by prison industries of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;
 - (n)(3) The Montana correctional enterprises program may:
- (a) pay an inmate from receipts from the sale of products produced or manufactured or services rendered in a program in which the inmate is working;
- (o)(b) collect 15% of the gross wages paid to an inmate employed in a federally certified prison industries program, to be deposited in a department restitution fund and used to satisfy any unpaid court-ordered obligations, including restitution obligation of the inmate or, if the obligation has on previously discharged sentences for which restitution remains owing. If the inmate's court-ordered obligations have been fully paid or no restitution was ordered, the Montana correctional enterprises program shall collect 15% of the gross wages paid to an inmate for transfer quarterly to the crime victims

compensation and assistance program in the department of justice for deposit in the state general fund as provided in Title 53, chapter 9, part 1; and.

- (p)(c) collect charges for room and board from an inmate employed in a federally certified prison industries program charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers. The Montana correctional enterprises program shall deposit inmates' room and board charges into its enterprise fund to help defray the cost of prison industries training programs.
- (2) Except as provided in subsection (3), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.
- (3) Any state institution, facility, or program operated by the department of corrections may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.
- (4) While engaged in on-the-job training and production, inmates not employed in a federally certified prison industries program may be paid a wage in accordance with subsection (5). Inmates employed in a federally certified prison industries program must be paid as provided in subsection (5)(b).
- (5) (a) Except as provided for in subsection (5)(b), the maximum rate of pay must be determined by the appropriation established for the program, and payment for the performance of work may be based on the following criteria:
 - (i) knowledge and skill;
 - (ii) attitude toward authority;
 - (iii) physical effort;
 - (iv) responsibility for equipment and materials; and
 - (v) regard for safety of others.
- (b) The maximum rate of pay must be determined by the appropriation established for the program, except that an inmate Inmates employed in a federally certified prison industries program must be paid the federal minimum wage or be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work as determined by the federal bureau of justice.
- (6) Premiums for workers' compensation and occupational disease coverage for federally certified prison industries programs must be paid by the *Montana correctional enterprises* prison industries *training* program or by the department of corrections. If the department of corrections pays the premium, reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department of corrections by the private company contracting with the federally certified prison industries program for services and products.
- (7) Inmates not working in a federally certified prison industries training program are not employees, either public or private, and employment rights accorded other classes of workers do not apply to the inmates. Inmates working in a federally certified prison industry industries program are entitled to coverage and benefits as provided in 39-71-744.
- (8) Able-bodied persons committed to a state prison as adult offenders must be required to perform work as provided for by the department of corrections,

including the manufacture of products or the rendering of services. In order to ensure the public safety, the department may secure inmates performing work."

Section 5. Section 53-30-133, MCA, is amended to read:

- "53-30-133. Administration of prison industries training Montana correctional enterprises program. (1) (a) The prison industries training Montana correctional enterprises program need not be a self-supporting program. The department of corrections may enter into contracts and establish prices for products or services produced by this program. Within budgetary restrictions, the department shall establish prices that tend to maximize the amount of work available for inmates. All revenue raised through the program may be used only for the program, and including the payment of inmate wages.
- (b) State agencies, local governments, school districts, authorities, and other local government entities are encouraged to explore the possibilities of using use the prison industries training program Montana correctional enterprises program's products and services. State agencies shall cooperate with the department of corrections in notifying governmental entities within the state of the program and of the services and products that are available.
- (2) (a) The department of corrections shall adopt rules implementing this program. Any price lists established by the department are exempt from the provisions of Title 2, chapter 4, but the department may, if it considers it an effective method of dissemination, publish the price lists in the Montana Administrative Register or the Administrative Rules of Montana, or both.
- (b) The department of corrections Montana correctional enterprises program is subject to program audits of the prison industries training program by the legislative auditor."

Section 6. Section 61-3-478, MCA, is amended to read:

- "61-3-478. Generic specialty license plate sponsor fee exception. (1) Except as provided in subsection (2), upon approval of an organization's application to sponsor a generic specialty license plate and before a sponsor's generic specialty license plates may be manufactured, the department shall assess and the sponsor shall pay a \$4,000 fee to reimburse the department of corrections for the Montana correctional enterprises prison industries training program enterprise fund for the initial costs incurred in producing the generic specialty license plates for the sponsor.
- (2) In lieu of the fee required in subsection (1), a minimum of 400 applications for a sponsor's generic specialty license plates must be filed and prepaid with the department before the generic specialty license plates may be manufactured and issued."
- **Section 7. Repealer.** Sections 53-1-301, 53-1-302, 53-1-303, and 53-1-304, MCA, are repealed.
- **Section 8. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to any money that Montana correctional enterprises collected from inmates for room and board reimbursement before October 1, 2009.

Approved April 19, 2009

CHAPTER NO. 313

[SB 127]

AN ACT REVISING LAWS RELATING TO INSURANCE PRODUCERS; REVISING INSURANCE PRODUCER LICENSING; PROVIDING DEFINITIONS; AMENDING SECTIONS 33-2-301, 33-2-305, 33-2-306, 33-17-102, 33-17-212, 33-17-214, 33-17-1001, AND 33-17-1203, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-301, MCA, is amended to read:

"33-2-301. Short title—purpose—definitions. (1) This part constitutes and may be referred to as "The Surplus Lines Insurance Law".

- (2) This The purpose of this part must be applied is to:
- (a) protect persons seeking insurance in this state;
- (b) permit surplus lines insurance to be placed with reputable and financially sound unauthorized insurers and to be exported from this state pursuant to this part;
- (c) establish a system of regulation that will permit orderly access to surplus lines insurance in this state and encourage authorized insurers to provide new and innovative types of insurance to consumers in this state; and
 - (d) protect revenues of this state.
 - (3) As used in this part, the following definitions apply:
- (a) "Authorized insurer" means an insurer authorized pursuant to 33-2-101 to transact insurance in this state.
- (b) (i) "Business entity" means a corporation, a limited liability company, an association, a partnership, a limited liability partnership, or other legal entity.
 - (ii) The term does not include an individual.
- (b)(c) "Eligible surplus lines insurer" means an unauthorized insurer with which a surplus lines insurance producer may place surplus lines insurance under 33-2-307.
- (e)(d) "Export" means to place surplus lines insurance with an unauthorized insurer.
- (d)(e) "Producing insurance producer" means the individual insurance producer dealing directly with the person seeking insurance.
- (e)(f) (i) "Surplus lines insurance" means any insurance on risks resident, located, or to be performed in this state permitted to be placed through a surplus lines insurance producer with an unauthorized insurer eligible to accept the insurance.
- (ii) The term does not include the kinds of insurance exempted under 33-2-317.
- (f)(g) "Surplus lines insurance producer" means an individual, partnership, or corporation or business entity licensed under 33-2-305 to place surplus lines insurance on risks resident, located, or to be performed in this state with unauthorized insurers eligible to accept the insurance.
- (g)(h) "Unauthorized insurer" means an insurer not authorized pursuant to 33-2-101 to transact insurance in this state. The term includes insurance exchanges authorized under the laws of other states."

Section 2. Section 33-2-305, MCA, is amended to read:

- "33-2-305. Licensing of surplus lines insurance producer fee. (1) A If a person may not place places a contract of surplus lines insurance with an unauthorized insurer, unless the person is the person placing the contract must be licensed as a property and casualty insurance producer and possesses possess a current surplus lines insurance producer's license issued by the commissioner.
- (2) The commissioner shall issue a surplus lines insurance producer's license to any qualified holder of a current property and casualty insurance producer license only if the insurance producer has:
 - (a) remitted to the commissioner the fee prescribed by 33-2-708; and
- (b) submitted to the commissioner a completed license application in a form approved by the commissioner; and
- (c) been licensed as a property and casualty insurance producer continuously for 5 years or more.
- (3) The licensee shall renew the license on a form prescribed by the commissioner. The commissioner may establish rules for biennial renewal of the license. A license lapses if not renewed.
- (4) A corporation $business\ entity$ is eligible to be licensed as a surplus lines insurance producer if:
- (a) the corporate business entity license lists the individuals within the corporation business entity who have satisfied the requirements of this part to become surplus lines insurance producers; and
- (b) only those individuals listed on the ${\it eorporate}$ business entity license transact surplus lines insurance.
- (5) This section may not be construed to require agents, producers, or brokers acting as intermediaries between a surplus lines insurance producer and an unauthorized insurer under this part to hold a valid Montana surplus lines insurance producer's license."
 - **Section 3.** Section 33-2-306, MCA, is amended to read:
- "33-2-306. Surplus lines insurance producer's authority under license acceptance of business from other insurance producers. (1) Under a surplus lines insurance producer's license the licensee may place surplus lines insurance, in compliance with The Surplus Lines Insurance Law, with a foreign or alien insurer not authorized to transact insurance in this state and may act as a surplus lines insurance producer in this state for the insurer.
- (2) The surplus lines insurance producer may accept surplus lines insurance from a licensed insurance producer of an authorized insurer or, if the commissioner agrees in advance, through an individual, partnership, or corporation business entity that has not been appointed as an insurance producer in this state and may compensate him therefor provide compensation for the service, notwithstanding 33-17-1103.
- (3) A surplus lines insurance producer who places or renews surplus lines insurance in accordance with subsection (1) may collect an inspection fee for the actual costs of inspecting the risk to be covered."
 - Section 4. Section 33-17-102, MCA, is amended to read:
- **"33-17-102. Definitions.** As used in this title, the following definitions apply:

- (1) (a) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of an independent contractor or for a fee or commission investigates and negotiates the settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer.
 - (b) The term does not include a:
 - (i) licensed attorney who is qualified to practice law in this state;
 - (ii) salaried employee of an insurer or of a managing general agent;
- (iii) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies issued by the insurer;
- (iv) licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies issued by the insurer; or
 - (v) claims examiner as defined in 39-71-116.
- (2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster.
- (3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on these coverages.
 - (b) The term does not include:
- (i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;
 - (ii) a union on behalf of its members;
- (iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by the insurer in and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or
 - (B) a health service corporation as defined in 33-30-101;
- (iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;
- (v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;
- (vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;
- (vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;
- (viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;
- (ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;
- (x) a company that issues credit cards and that advances for and collects premiums or charges from the company's credit card holders who have authorized the company to do so, if the company does not adjust or settle claims;
- (xi) a person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities; or

- (xii) a person appointed as a managing general agent in this state whose activities are limited exclusively to those described in 33-2-1501(10) and Title 33, chapter 2, part 16.
- (4) "Administrator license" means a document issued by the commissioner that authorizes a person to act as an administrator.
- (5) (a) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.
 - (b) The term does not include an individual.
- (6) "Consultant" means an individual who for a fee examines, appraises, reviews, evaluates, makes recommendations, or gives advice regarding an insurance policy, annuity, or pension contract, plan, or program.
- (7) "Consultant license" means a document issued by the commissioner that authorizes an individual to act as an insurance consultant.
- (8) "Home state" means the District of Columbia or any state or territory of the United States in which the insurance producer:
- (a) maintains a principal place of residence or a principal place of business; and
 - (b) is licensed as an insurance producer.
 - (8)(9) "Individual" means a natural person.
- (9)(10) "Insurance producer", except as provided in 33-17-103, means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.
- (10)(11) "Lapse" means the expiration of the license for failure to renew by the biennial renewal date.
- (11)(12) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.
- (12)(13) "Limited line credit insurance" includes credit life insurance, credit disability insurance, credit property insurance, credit unemployment insurance, involuntary unemployment insurance, mortgage life insurance, mortgage guaranty insurance, mortgage disability insurance, gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation and that the commissioner determines should be designated as a form of limited line credit insurance.
- (13)(14) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.
- (14)(15) "Limited lines insurance" means those lines of insurance that the commissioner finds necessary to recognize for the purposes of complying with 33-17-401(3).
- (15)(16) "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or negotiate limited lines insurance.
- $\frac{(16)}{(17)}$ "Lines of authority" means any kind of insurance as defined in Title 33.

(17)(18) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in negotiation either sells insurance or obtains insurance from insurers for purchasers.

(18)(19) "Person" means an individual or a business entity.

(19)(20) "Public adjuster" means an adjuster employed by and representing the interests of the insured.

(20)(21) "Sell" means to exchange a contract of insurance by any means, for money or the equivalent, on behalf of an insurance company.

(21)(22) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance.

 $\frac{(22)}{(23)}$ "Suspend" means to bar the use of a person's license for a period of time.

(23)(24) "Uniform application" means the national association of insurance commissioners' uniform application for resident and nonresident insurance producer licensing.

(24)(25) "Uniform business entity application" means the national association of insurance commissioners uniform business entity application for resident and nonresident business entities."

Section 5. Section 33-17-212, MCA, is amended to read:

- "33-17-212. Examination required exceptions fees. (1) Except as provided in subsection (6), an individual applying for a license is required to pass a written examination. The examination must test the knowledge of the individual concerning each kind of insurance listed in subsection (5) for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. The examination must be developed and conducted under rules adopted by the commissioner.
- (2) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination. The commissioner may arrange for the testing service to recover the cost of the examination from the applicant.
- (3) An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination and shall remit all forms before being rescheduled for another examination.
- (4) If Except as provided in subsection (6), if the applicant is a partnership or eorporation business entity, each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license shall must meet the qualifications as provided in this section.
- (5) Examination of an applicant for a license must cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:
 - (a) life insurance;
 - (b) disability insurance;
- (c) property insurance. For, which, for the purposes of this provision, property insurance includes marine insurance.;
 - (d) casualty insurance;
 - (e) surety insurance;

- (f) limited lines credit insurance;
- (g) title insurance.
- (6) This section does not apply to and an examination is not required of:
- (a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and who continues to be licensed;
- (b) an applicant for a license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months immediately preceding the date of application unless the commissioner has suspended, revoked, or terminated the previous license;
 - (c) an applicant for a license as a nonresident insurance producer;
- (d) transportation ticket agents of common carriers applying for a license to solicit and sell only:
 - (i) accident insurance ticket policies; or
- (ii) insurance of personal effects while being carried as baggage on a common carrier, as incidental to their duties as transportation ticket agents; or
 - (e) an association applying for a license under 33-17-211; or
- (f) an individual who, within 90 days of cancellation of a license issued by the state of the individual's residence, files with the commissioner a current letter of clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and that is not covered under the license held in the other state.
- (7) (a) Subject to the provisions of subsection (7)(b), an individual who applies for a nonresident insurance producer license in this state and who was previously licensed for the same lines of authority in another state may not be required to complete any prelicensing education or examination.
- (b) The exemption in subsection (7)(a) is available only if the individual is currently licensed in the other state or the individual's application is received within 90 days of the cancellation of the individual's previous license and if the other state issues a certification that, at the time of the cancellation, the individual was in good standing in that state or the state's database records, maintained by the national association of insurance commissioners or any of the association's affiliates or subsidiaries that the association oversees, indicate that the insurance producer is or was licensed in good standing for the lines of authority requested."

Section 6. Section 33-17-214, MCA, is amended to read:

- "33-17-214. Issuance of license insurance producer lines of authority license data lapse of license change of address. (1) A person who has met the requirements of 33-17-211 and 33-17-212 must be issued a license unless that person has been denied a license pursuant to 33-17-1001.
- (2) An insurance producer may receive a license qualifying the insurance producer in one or more of the following lines of authority:
- (a) life insurance coverage on human lives, including benefits of endowment and annuities, and the coverage may include:

- (i) funeral insurance as defined in 33-20-1501;
- (ii) benefits in the event of death or dismemberment by accident; and
- (iii) benefits for disability income;
- (b) accident and health or sickness insurance coverage providing for sickness, bodily injury, or accidental death, and the coverage may provide benefits for disability income;
- (c) property insurance coverage for the direct or consequential loss or damage to property of every kind;
- (d) casualty insurance coverage against legal liability, including liability for death, injury, or disability or damage to real or personal property;
- (e) variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities;
- (f) personal lines of property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;
 - (g) limited line credit insurance; or
 - (h) any other line of insurance permitted under Title 33.
- (3) The license must state the name and address of the licensee, personal identification number, date of issuance, general conditions relative to expiration or termination, kind of insurance covered, and other information that the commissioner considers necessary.
- (4) The license of a partnership, corporation, or association business entity must also state the name of each individual authorized to exercise the license powers.
- (5) Each license remains in effect, unless it is suspended, revoked, or terminated or the license lapses.
 - (6) (a) A person shall inform the commissioner in writing within 30 days of:
 - (i) a change of address;
- (ii) the final disposition resulting in disciplinary action taken against or a conviction of the insurance producer in any state or federal jurisdiction or by another governmental agency in this state of:
 - (A) any administrative action related to transacting insurance;
 - (B) any action taken against any type of securities license; and
 - (C) any criminal action, excluding traffic violations.
- (b) (i) As used in this subsection (6), "final disposition" includes but is not limited to a settlement agreement, consent order, plea agreement, sentence and judgment, or order.
- (ii) The term does not include an action that is dismissed or that results in an acquittal, for which no report is necessary."

Section 7. Section 33-17-1001, MCA, is amended to read:

- "33-17-1001. Suspension, revocation, or refusal of license. (1) The commissioner may suspend, revoke, refuse to renew, or refuse to issue an insurance producer's license, adjuster license, or consultant license, may levy a civil penalty in accordance with 33-1-317, or may choose any combination of actions when an insurance producer, adjuster, consultant, or applicant for those licenses has:
- (a) engaged or is about to engage in an act or practice for which issuance of the license could have been refused:

- (b) obtained or attempted to obtain a license through misrepresentation or fraud, including but not limited to providing incorrect, misleading, incomplete, or materially untrue information in the license application or in the continuing education affidavit;
- (c) violated or failed to comply with a provision of this code or has violated a rule, subpoena, or order of the commissioner or of the commissioner of any other state:
- (d) improperly withheld, misappropriated, or converted to the licensee's or applicant's own use money or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of business under the license;
 - (e) been convicted of a felony;
- (f) in the conduct of the affairs under the license, used fraudulent, coercive, or dishonest practices or the licensee or applicant is incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public;
- (g) misrepresented the terms of an actual or proposed insurance contract or application for insurance;
- (h) been found guilty of an unfair trade practice or fraud prohibited by Title 33, chapter 18;
 - (i) had a similar license *denied*, suspended, or revoked in any other state;
- (j) forged another's name to an application for insurance or to any document related to an insurance transaction;
 - (k) cheated on an examination for a license; or
 - (l) knowingly accepted insurance business from a person who is not licensed;
- (m) failed to comply with a final administrative or court order imposing a child support obligation; or
- (n) failed to pay state income tax determined to be delinquent or to comply with any final administrative or court order directing payment of state income tax.
- (2) The license of a partnership or corporation business entity may be suspended, revoked, refused, or denied if a reason listed in subsection (1) applies to an individual designated in the license to exercise its powers.
- (3) The commissioner retains the authority to enforce the provisions of and impose any penalty or remedy authorized by the insurance code against any person who is under investigation for or charged with a violation of the insurance code even if the person's license or registration has been surrendered or has lapsed."

Section 8. Section 33-17-1203, MCA, is amended to read:

"33-17-1203. Continuing education — basic requirements — exceptions. (1) Unless exempt under subsection (3):

- (a) an individual licensed to act as an insurance producer, adjuster, or consultant other than an individual licensed for limited lines credit insurance shall, during each 24-month period, complete at least 24 credit hours of approved continuing education, including at least 3 hours of ethics credits and at least 1 credit hour on changes in Montana insurance statutes and administrative rules:
- (b) an individual licensed to act as an insurance producer only for limited lines credit insurance shall, during each biennium, complete 5 credit hours of

approved continuing education, including at least 1 credit hour on changes in Montana insurance statutes and administrative rules and the remaining credit hours in the areas of insurance law, ethics, or limited lines credit insurance;

- (c) an individual licensed as an insurance producer, adjuster, or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.
- (2) The commissioner may, for good cause, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.
 - (3) The minimum continuing education requirements do not apply to:
 - (a) an individual holding a temporary license issued under 33-17-216; or
- (b) an insurance producer, adjuster, or consultant otherwise exempted by the commissioner."

Section 9. Effective date. [This act] is effective July 1, 2009.

Section 10. Applicability. [Section 8] applies to 24-month periods for obtaining continuing education beginning on or after January 1, 2010.

Approved April 18, 2009

CHAPTER NO. 314

[SB 193]

AN ACT REQUIRING THE PRESERVATION OF MONUMENTS FOR THE PURPOSES OF LAND SURVEYS.

Be it enacted by the Legislature of the State of Montana:

- **Section 1. Monument preservation.** (1) A public or private entity or person shall, before engaging in activity that will or is likely to disturb or destroy a monument or the accessories to a monument, require the following activities to be performed by a professional land surveyor, as defined in 37-67-101, or a qualified person under the direct supervision of a professional land surveyor:
- (a) locate and reference the monument or the accessories to the monument; and $% \left(1\right) =\left(1\right) \left(1\right) \left($
- (b) file a corner record showing the location of the references to the monument or to the accessories to the monument as required in 70-22-104 and 70-22-105.
- (2) A public or private entity or person shall, within 30 days of completing activity that has disturbed or destroyed a monument or the accessories to a monument, require the following activities to be performed by a professional land surveyor, as defined in 37-67-101, or a qualified person under the direct supervision of a professional land surveyor:
- (a) restore or replace the monument or the accessories to the monument, using the references established in subsection (1)(b); and
 - (b) file a new corner record as required in 70-22-104 and 70-22-105.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 70, chapter 22, part 1, and the provisions of Title 70, chapter 22, apply to [section 1].

Approved April 19, 2009

CHAPTER NO. 315

[SB 226]

AN ACT AUTHORIZING THE TEMPORARY LICENSURE OF NONRESIDENT DENTISTS AND DENTAL HYGIENISTS TO PROVIDE VOLUNTARY SERVICES TO PERSONS SERVED BY UNIVERSITY CLINICS, CORRECTIONAL FACILITY CLINICS, AND CERTAIN FEDERALLY FUNDED CLINICS.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Licensure of out-of-state volunteer dentists and dental hygienists without examination. (1) The board may issue a restricted temporary license to a nonresident dentist or dental hygienist, without examination, to practice in a clinic listed in 37-4-103(6) if the applicant:
- (a) has graduated from a dental or dental hygiene program or school accredited by the commission on dental accreditation;
- (b) is currently licensed in another state as an actively practicing dentist or dental hygienist; and
- (c) is in good standing and does not have a disciplinary action pending in the other state.
- (2) A dentist or dental hygienist holding a restricted temporary license under this section:
- (a) may not receive monetary or other compensation for providing services; and $% \left(1\right) =\left(1\right) \left(1\right) \left($
 - (b) may serve only those persons served by the clinics listed in 37-4-103(6).
- (3) An application for a restricted temporary license must be submitted on a form approved by the board.
- (4) The board shall issue a restricted temporary license within 60 days of receipt of a completed application that demonstrates the applicant meets the requirements of this section. A temporary restricted license may be renewed annually.
- (5) A restricted temporary license is not intended as a means to allow an applicant to practice in this state before a permanent license is granted or as a means to obtain a permanent license when the applicant does not otherwise meet the requirements for permanent licensure.
- (6) The board may adopt rules to implement this section, including but not limited to rules to:
- (a) establish the scope of practice for a dentist or dental hygienist practicing with a temporary license;
- (b) establish a limitation on the number of days a dentist or dental hygienist may practice with a temporary license during any 12-month period; and
 - (c) set fees for issuance of the license that must be commensurate with costs.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 4, and the provisions of Title 37, chapter 4, apply to [section 1].

Approved April 18, 2009

CHAPTER NO. 316

[SB 247]

AN ACT REVISING LAWS RELATED TO NONFERROUS METAL TRANSACTIONS; REQUIRING SALVAGE METAL DEALERS TO MAINTAIN AND RETAIN NONFERROUS METAL ACQUISITION RECORDS; AUTHORIZING INSPECTION OF THOSE RECORDS; AND PROVIDING THAT A VIOLATION CONSTITUTES A MISDEMEANOR.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 3], unless the context requires otherwise, the following definitions apply:

- (1) "Nonferrous metal" means metal and metal alloys not containing significant quantities of iron or steel, including but not limited to:
 - (a) copper;
 - (b) brass;
 - (c) aluminum, other than aluminum cans;
 - (d) bronze;
 - (e) lead;
 - (f) zinc:
 - (g) nickel;
 - (h) stainless steel, including stainless steel beer kegs; and
 - (i) precious metals, including catalytic converters.
- (2) "Person" means an individual, partnership, corporation, joint venture, trust, association, or any other legal entity.
- (3) "Salvage metal dealer" means a person who is engaged in the business of paying, trading, or bartering for or collecting nonferrous metals that have served their original economic purpose, whether or not the person is engaged in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value.
- (4) "Seller" means a person who sells or delivers nonferrous metal or otherwise makes nonferrous metal available to a salvage metal dealer.

Section 2. Recordkeeping. (1) A salvage metal dealer shall:

- (a) maintain a nonferrous metal acquisition record for nonferrous metal transactions that exceed \$50;
- (b) retain a nonferrous metal acquisition record for a period of not less than 2 years from the date of the transaction; and
- (c) make nonferrous metal acquisition records available to any peace officer on demand.
- (2) The nonferrous metal acquisition record required under subsection (1) must contain:
- (a) the time and date of the transaction and the name of the person conducting the transaction on behalf of the salvage metal dealer;
- (b) a general description, using scrap specifications recognized by the institute of scrap recycling industries, inc., of the property acquired, including the type and amount and, if readily discernible, any identifiable marks on the property;

- (c) the amount of consideration given for the nonferrous metal;
- (d) a photocopy or scanned copy of a current, valid driver's license, passport, or state identification card of the seller, except that the identification copies required under this subsection (2)(d) do not apply if a check for payment is provided to a seller or transferor;
 - (e) a signature of the seller or transferor; and
- (f) a description of any motor vehicle and its license number used in the delivery of the nonferrous metal.
- **Section 3. Penalty.** A salvage metal dealer who violates the provisions of [section 2] is guilty of a misdemeanor. Absolute liability, as provided for in 45-2-104, is imposed for a violation of [section 2].
- **Section 4. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 30, and the provisions of Title 30 apply to [sections 1 through 3].

Approved April 18, 2009

CHAPTER NO. 317

[SB 269]

AN ACT GENERALLY REVISING LAWS REGULATING THE SALE OF TIMESHARES; REVISING DEFINITIONS; REVISING THE BOARD OF REALTY REGULATION'S RULEMAKING AUTHORITY; REVISING REGISTRATION APPLICATION PROCEDURES; SUBSTITUTING "PUBLIC OFFERING STATEMENT" FOR "DISCLOSURE DOCUMENT"; REQUIRING NOTICE TO THE BOARD OF ANY CHANGES IN A TIMESHARE OFFERING; EXPANDING THE EXEMPTIONS FROM REGISTRATION FOR TIMESHARE OFFERINGS; AMENDING SECTIONS 37-53-102, 37-53-104, 37-53-202, 37-53-203, 37-53-204, 37-53-205, 37-53-301, 37-53-302, 37-53-303, 37-53-304, 37-53-312, 37-53-214, 37-53-401, 37-53-402, 37-53-403, 37-53-504, AND 37-53-505, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-53-102, MCA, is amended to read:

- "37-53-102. **Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:
- (1) "Advertisement" means a written, printed, audio, or visual communication that is published in whole or in part to sell, offer to sell, or solicit an offer for a timeshare.
- (2)(1) "Affiliate" means a person who controls, is controlled by, or is under the control of a developer.
- (3)(2) "Association" or "owners' association" means the association of owners created by the timeshare instruments for purposes of managing and maintaining the project for the benefit of all timeshare owners.
- (4)(3) "Board" means the board of realty regulation provided for in 2-15-1757.
 - (5)(4) "Developer" means:
- (a) a person creating timeshares or engaged in the business of selling his own timeshares;

- (b) a person who controls, is controlled by, or is in common control with the person engaged in creating or selling timeshares; or
- (c) any successor, *agent*, or assignee of a person referred to in subsection (5)(a)(4)(a) or (5)(b)(4)(b).
- (5) (a) "Expenses" means expenditures, fees, charges, or liabilities, including any allocations to reserves:
- (i) incurred, with respect to timeshare intervals or units, by or on behalf of all timeshare owners in one timeshare property; and
- (ii) imposed on the timeshare intervals or units by the entity governing the project of which the timeshare intervals or units are a part.
- (b) The term does not include purchase money payable for timeshare intervals or units.
- (6) "Managing entity" means a person hired by the timeshare association or developer to manage the timeshare plan or the timeshare property.
- (7) "Offer" or "offering" means an inducement, solicitation, or attempt to encourage a person to acquire a timeshare *interest*. An offer is made in this state if the offer originates in this state, is advertised in this state, or if the principal timeshare property is located in this state.
- (8) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity.
- (9) "Prize and gift promotional offer" means advertising material stating that a prospective purchaser may receive goods or services other than the timeshare plan itself, either free or at a discount, including but not limited to the use of a prize, gift, award, premium, or lodging or vacation certificate.
- (10)(9) "Project" means the real property or real estate, that which must contain more than one unit, in which timeshares are created by a single instrument or set of instruments.
- (11)(10) "Promoter" means any person who initiates the inducement, solicitation, or encouragement of induces, solicits, or encourages another person, by any means, of to the review or acquisition acquire of a timeshare interval.
- (11) "Public offering statement" means the written statement required by 37-53-303.
- (12) "Purchaser" means a person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare, other than as security for an obligation.
 - (13) "Real estate" means real estate as defined in 37-51-102.
- (14) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a timeshare for value.
- (15) "Timeshare broker" means a natural person who supervises a timeshare sales operation and one or more timeshare salespersons.
 - (16) "Timeshare expenses" means expenditures, fees, charges, or liabilities:
- (a) incurred with respect to the timeshares by or on behalf of all timeshare owners in one timeshare property; and
- (b) imposed on the timeshare by the entity governing a project of which the timeshare is a part, together with any allocations to reserve. The term does not include purchase money payable for timeshares.

- (17)(15) "Timeshare instrument" means one or more documents, by whatever name denominated, creating or regulating timeshares.
- (18)(16) "Timeshare interval" or "timeshare interest" means the right, however evidenced or documented, to use and occupy one or more timeshare units on a periodic basis according to an arrangement allocating such use and occupancy rights between similar users.
- (19)(17) "Timeshare owner" means a person, other than a developer, who is an owner or co-owner of a timeshare. If title to a timeshare is held in trust, timeshare owner means the beneficiary of the trust.
- (20) "Timeshare salesperson" means a person who for a salary, commission, or compensation of any kind is associated, either directly or indirectly, regularly or occasionally, with a timeshare broker to sell, purchase, or negotiate for sale, purchase, lease, or exchange of the timeshare interests in real estate and who, on behalf of a developer, sells or offers to sell a timeshare to a purchaser.
- (18) "Timeshare salesperson" means a person who for a salary, commission, or compensation of any kind is associated with a timeshare development to sell, purchase, or negotiate for sale, purchase, lease, or exchange of the timeshare interests in real estate and who, on behalf of a developer, sells or offers to sell a timeshare to a purchaser.
- (21)(19) "Timeshare unit" or "unit" means the real property or portion thereof of the property in which the timeshare interval exists or will exist and that is designated for separate use, including campgrounds, campsites, and outdoor recreation sites with spaces designed or promoted for the purpose of locating a trailer, tent, tent trailer, camper, or similar device for land-based portable housing."
 - **Section 2.** Section 37-53-104, MCA, is amended to read:
- "37-53-104. Rulemaking authority. The board shall adopt rules to carry out the provisions of this chapter. The rules may include but are not limited to:
- (1) qualifications for applicants and any additional applicant registration information that must be supplied;
 - (2) documents acceptable in lieu of registration documents under 37-53-204;
 - (3) conditions that may be placed upon registration under 37-53-212;
- (4) the subject matter of the examination or continuing education requirement for license as a timeshare salesperson or timeshare broker;
 - (3) qualifications for applicants as provided in 37-53-301;
- (4) continuing education requirements for renewal of a timeshare salesperson's license;
- (5)(5) additional information included in a disclosure document public offering statement; and
 - (6) fees established pursuant to 37-1-134."
 - Section 3. Section 37-53-202, MCA, is amended to read:
- "37-53-202. Application for registration. An application for registration of a timeshare offering must be in a form developed by the board in conjunction with input from the timeshare industry. The application must be signed by the applicant developer and accompanied by the registration fee. A timeshare offering may not be registered unless the developer has filed a complete application as determined by the board or the board's designee. Except as provided in 37-53-204, the application must contain:

- (1) audited financial statements showing the financial condition of the developer and any affiliate, including:
- (a) a balance sheet dated within 4 months before the filing of the application for registration; and
- (b) statements of income, shareholders' equity, and material changes in financial position as of the end of the prior fiscal year and for any period between the end of the prior fiscal year and the date of the last balance sheet;
- (2) a projected budget for the timeshare project for 2 years after the offering being made, including but not limited to source of revenues and expenses of construction, development, management, maintenance, advertisement, operating reserves, interest, and any other necessary reserves;
- (3) a description of the background of the developer for the previous 10 years, including information about the business experience of the developer and any relevant criminal convictions, civil lawsuits, or administrative actions related to any offering during that period financial statements prepared in accordance with generally accepted accounting principles that fully and fairly disclose the current financial condition of the developer;
- (4)(2) a statement disclosing any fees in excess of the stated price per unit to be charged to the purchasers, a description of their purpose, and the method of calculation:
- (5) a statement disclosing when and where the developer or an affiliate has previously sold timeshares;
- (6) a statement of any liens, defects, or encumbrances on or affecting the title to the timeshare units;
 - (7)(3) copies of all timeshare instruments;
- (8)(4) a copy of the disclosure document public offering statement provided for in 37-53-303, signed by the applicant;
- $\ensuremath{(9)}(5)$ an irrevocable consent to service of process signed by the $\frac{\ensuremath{\mathsf{applicant}}}{\ensuremath{\mathsf{developer}}};$ and
- (10)(6) any other information that the board may require by rule require in the protection of the public interest or necessary to describe the risks involved."
 - Section 4. Section 37-53-203, MCA, is amended to read:
- "37-53-203. Registration period—renewal Notice of changes in timeshare offering. (1) A timeshare offering registration is effective for 1 year from the date of approval of the registration application.
- (2) Registration of a timeshare offering may be renewed for an additional 1-year period by filing a renewal application with the board no later than 30 days before the expiration of the registration period and paying the prescribed fee. A renewal application must contain any information the board requires to indicate any substantial changes in the information contained in the original application.
- (3) If a materially adverse material change in the condition of the developer or an affiliate timeshare offering occurs, during any year, the developer is required to file an amendment to the documents filed under 37-53-202 must be filed, along with the prescribed fee.
 - (4) This section may not be interpreted to conflict with 37-1-138."
 - **Section 5.** Section 37-53-204, MCA, is amended to read:

- "37-53-204. Alternative filing documents. (1) In lieu of the documents required to be filed with an application under 37-53-202, the board may accept:
- (a) a disclosure document public offering statement filed with an agency of the United States or any other state.; or
- (b) a disclosure document compiled in accordance with a rule of an agency of the United States or any other state.
- (2) The board $\frac{1}{3}$ may prescribe by rule those documents acceptable under subsection (1)."

Section 6. Section 37-53-205, MCA, is amended to read:

- "37-53-205. Exemption from registration. The registration requirements of this chapter do not apply to:
- (1) an offer, sale, or transfer of not more than two timeshare interests by a timeshare owner in a 12-month period;
 - (2) a gratuitous transfer of a timeshare *interest*;
 - (3) a sale under court order;
 - (4) a sale by any government or a governmental agency;
 - (5) a sale by forfeiture, foreclosure, or deed in lieu of foreclosure; or
- (6) a sale of a project timeshare offering already registered in Montana or a sale of all timeshare units or timeshare intervals therein in the timeshare offering to any one purchaser; or
- (7) a transfer of a timeshare interest by a timeshare owner other than the developer or the developer's agent unless the transfer is made for the purpose of avoiding the provisions of this chapter."
 - **Section 7.** Section 37-53-301, MCA, is amended to read:
- "37-53-301. Licensure of timeshare brokers and timeshare salespersons—licensee duties. (1) (a) A person offering timeshare units for his own account or for the account of others intervals in a project located in Montana must be licensed as a timeshare salesperson or timeshare broker and affiliated with at least one registered timeshare project unless the offering is exempt under 37-53-205.
 - (2) Licensure may be obtained *upon*:
- (i)(a) upon completion of an application and personal disclosure statement and passage of an examination prescribed by the board demonstrating knowledge of the timeshare industry and this chapter;
 - (b) meeting the qualifications listed in subsection (3);
- (c) demonstration to the board that the applicant is an individual of good repute and competent to transact the business of a timeshare salesperson in a manner that safeguards the interests of the public;
 - (d) payment of fees set by the board by rule; and
- (ii)(e) upon successful completion of a course of education related to the timeshare industry that has been approved by the board.
 - (b) The board shall then issue a certificate of completion to the applicant.
- (2) A person licensed as a real estate broker or salesperson under Title 37, chapter 51, may act as a timeshare salesperson or timeshare broker upon successful completion of a course of education related to the timeshare industry that has been approved by the board. The board shall then issue a certificate of completion to the applicant. No license other than that issued pursuant to Title 37, chapter 51, is required.

- (3) An applicant for a timeshare salesperson license must:
- (a) be at least 18 years of age; and
- (b) have graduated from an accredited high school or completed equivalent education as determined by the board.
- (4) The board shall issue a certificate of completion to an applicant who successfully completes the course of education provided for in subsection (2)(e) and may issue a license to an applicant meeting the qualifications and licensure provisions.
- (5) A licensed timeshare salesperson shall notify the department of a change of affiliation within 10 days of the change, designate the new license affiliation, and pay all required fees.
- (6) If a timeshare salesperson is no longer affiliated with a timeshare project, the timeshare salesperson shall notify the board that the license is inactive and pay the fees required by rule. A timeshare salesperson may reactivate an inactive license by filling out an application, listing a new affiliation, and paying all required fees."

Section 8. Section 37-53-302, MCA, is amended to read:

- "37-53-302. Denial, suspension, or revocation of license or application. The board may by an order deny, suspend, or revoke a timeshare salesperson's or timeshare broker's license or application for license if the board finds that the order is in the public interest and that the applicant or licensee:
- (1) has filed an application for licensure and personal disclosure statement as a timeshare salesperson or timeshare broker that is incomplete in any material respect or contains any statement that is, in the light of the circumstances under which it was made, false or misleading with respect to any material fact:
- (2) has violated or failed to comply with any provision of this chapter, rules adopted under this chapter, or Title 37, chapter chapters 1, 51, and 53, or any rules adopted by the board if the violation or the failure to comply related to the timeshare business;
- (3) has been convicted of a felony involving theft, fraud, or any consumer protection statute or a felony involving moral turpitude and related to the occupation of timeshare salesperson or timeshare broker unless the provisions of Title 37, chapter 1, part 2, are met;
- (4) is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving an aspect of the timeshare business;
- (5) has engaged in dishonest or unethical practices *related to public health*, welfare, and safety in as those practices apply to the timeshare business; or
- (6) has not complied with any condition imposed by the board or is not qualified on the basis of knowledge of the timeshare industry or this chapter."

Section 9. Section 37-53-303, MCA, is amended to read:

"37-53-303. Disclosure document Public offering statement. Unless exempt from registration, a A person who offers or sells a timeshare interval shall provide the prospective purchaser with a written disclosure document public offering statement before the prospective purchaser signs an agreement for the purchase of a timeshare. The disclosure document public offering statement must include and fully and accurately disclose:

- (1) the official name and address of the developer, its parent or affiliates, and the names and addresses of the director and officers of each;
 - (2) the location of the timeshare property;
- (3) a general description of the timeshare property and the timeshare units and associated real property, including but not limited to the developer's schedule of commencement and completion of all buildings, units, and amenities or, if completed, a statement that they have been completed;
- (4) a list of all *timeshare* units and *timeshare intervals* offered by the developer or promoter in the same project, including:
 - (a) the types, current prices, and number of units;
 - (b) the types and durations of the timeshares timeshare intervals;
- (c) the maximum number of units that may become part of the timeshare property;
- (d) a statement of the maximum number of timeshares timeshare units and timeshare intervals that may be created or a statement that there is no not a maximum;
- (5) a description of the types of financing offered by the promoter or developer;
- (6) a statement of ownership of all properties included in the timeshare offering, including any liens or encumbrances affecting the property;
- (7) copies of any agreements or leases to be signed by purchasers at closing and a copy of the timeshare instrument *or instruments*;
- (8) the identity of the managing entity and the name, address, and telephone number of the person or persons in charge; and the manner, if any, whereby the developer may change the managing entity;
- (9) a true copy of the current budget and or projected budget for the timeshare offering. of the owners' association along with a description of the nature and purpose of all charges, dues, maintenance fees, and other expenses that may be assessed, including the formula for payment of charges if all timeshares are not sold and a statement of who pays additional costs; The budget must include:
- (a) a statement of the amount included in the budget as a reserve for repairs, maintenance, and replacement of the timeshare units;
- (b) a detailed list of projected common expenses, liabilities, and expenditures for the timeshare units and timeshare intervals; and
- (c) a statement of any services or expenses not reflected in the budget that the developer provides or pays.
- (10) a statement in boldface type on the cover page of the disclosure document public offering statement that, within 3 7 days after receipt of a disclosure document the public offering statement or the signing of the timeshare purchase agreement, whichever is later, a purchaser may cancel any agreement for the purchase of a timeshare interval from a developer or salesperson and that the cancellation must be in writing and be delivered either in person or by certified mail to the developer or the developer's agent;
- (11) a prepared legal document that once executed will effectively cancel the agreement between the purchaser and the developer;
- (11)(12) any restrictions on transfers of a timeshare *interval* or portion thereof of the timeshare interval;

(12)(13) a description of any insurance coverage provided for the benefit of timeshare *interval* owners by the managing entity or the timeshare *interval* owners' association;

(13)(14) a full and accurate disclosure of whether the timeshare *interval* owners are permitted or required to become members of or participate in any program for the exchange of property rights among themselves or with the timeshare *interval* owners of other timeshare units, or both, and a complete description of the program; and

(14)(15) any additional information the board finds necessary to fully inform prospective purchasers, including but not limited to the financial and background information required by 37-53-202."

Section 10. Section 37-53-304, MCA, is amended to read:

"37-53-304. Disclosure to purchaser — cancellation of agreement. The developer or any person offering a timeshare interval shall provide a prospective purchaser with a copy of the disclosure document public offering statement described in 37-53-303 before the execution of any agreement for the purchase of a timeshare interval. A purchaser may, within 3 Within 7 days following receipt of a disclosure document public offering statement or signing of a timeshare purchase agreement, whichever is later, a purchaser may cancel the agreement and receive a refund of any consideration paid by providing written notice of the cancellation to the promoter or promoter's developer or developer's agent either by certified mail or personal delivery. If the purchaser does not receive the disclosure document public offering statement, the agreement is voidable by the purchaser until the purchaser receives the document public offering statement and for 3 7 days thereafter after receipt. The provisions of this section may not be waived."

Section 11. Section 37-53-307, MCA, is amended to read:

"37-53-307. Illegal practices. (1) It is unlawful for any person in connection with the offer, sale, or lease of a timeshare interest in this state to:

- (a) make any false or misleading statement of a material fact or to omit a material fact;
 - (b) employ any device, scheme, or artifice to defraud;
- (c) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;
- (d) file or cause to be filed with the board any document that contains false or misleading information; or
- (e) violate any provision of this chapter or a rule adopted under this chapter or any applicable provision of Title 37, chapter 51.
- (2) A violation of this section is a misdemeanor punishable as provided in 46-18-212."

Section 12. Section 37-53-308, MCA, is amended to read:

"37-53-308. Civil liability. Any person who offers, sells, or materially aids in the offer or sale of a timeshare *interval* in violation of this chapter is liable to the person buying the timeshare *interval*, who may sue to recover the consideration paid for the timeshare *interval*, together with interest at the current legal rate from date of payment and costs, upon the tender of the timeshare *interval* or for damages if the person no longer owns the timeshare *interval*."

Section 13. Repealer. Sections 37-53-211, 37-53-212, 37-53-214, 37-53-401, 37-53-402, 37-53-403, 37-53-504, and 37-53-505, MCA, are repealed.

Approved April 18, 2009

CHAPTER NO. 318

[SB 292]

AN ACT PROVIDING FOR A REDUCED SEVERANCE TAX RATE ON COAL RECOVERED FROM A STRIP MINE BY AUGER MINING; AMENDING SECTIONS 15-35-102 AND 15-35-103, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-102, MCA, is amended to read:

- "15-35-102. **Definitions.** As used in this chapter, the following definitions apply:
- (1) "Agreement" means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.
- (2) "Auger mining" means the method of recovering coal by boring with an auger into a coal bed prepared by strip-mining excavations or in naturally sloping terrain. Auger mining is used when the ratio of overburden to coal does not allow the economical recovery of coal.
- (2) (a) "Base consumption level" for a purchaser, except as provided in subsection (2)(b), applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:
- (i) the volume of coal purchased during calendar year 1986 from all Montana coal mine operators; or
 - (ii) the greater of:
- (A) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators; or
- (B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.
- (b) If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(ii).
- (3) (a) Except as provided in subsection (3)(b), "base production level" for a coal mine operator applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:
- (i) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984; or
 - (ii) the volume of coal produced in Montana and sold to a purchaser in 1986.
- (b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i).

- (4)(3) "Broker" means any person who resells Montana coal.
- (5)(4) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how the royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes 15 cents per ton.
 - (6) "Department" means the department of revenue.
- (7)(5) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electrical energy, or any other form of energy.
- (8) "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.
 - (9)(6) "Produced" means severed from the earth.
- (10)(7) "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.
- (11) "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed the purchaser's base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.
 - (12)(8) "Strip mining" is defined in 82-4-203 and includes "surface mining".
- (13)(9) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.
 - (14)(10) "Ton" means 2,000 pounds.
- (15)(11) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203."
 - **Section 2.** Section 15-35-103, MCA, is amended to read:
- **"15-35-103. Severance tax** rates imposed. (1) A severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

Heating quality (Btu per pound of coal):	Surface Mining	Auger Mining	Underground Mining
Under 7,000	10% of value	3.75% of value	3% of value
7,000 and over	15% of value	5% of value	4% of value

(2) "Value" means the contract sales price.

- (3) A person is not liable for any severance tax upon 50,000 tons of the coal that the person produces in a calendar year, except that if more than 50,000 tons of coal are produced in a calendar year, the producer is liable for severance tax upon all coal produced in excess of the first 20,000 tons.
- (4) The reduced tax rate on coal produced by auger mining applies only to coal recovered from a mining operation that would otherwise be uneconomical to recover by conventional strip-mining methods as specified in the coal conservation plan submitted to and approved by the department of environmental quality under the provisions of Title 82, chapter 4, part 2."
- **Section 3. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.
 - Section 4. Effective date. [This act] is effective July 1, 2009.
- **Section 5. Applicability.** [This act] applies to coal recovered from a strip mine by auger mining after June 30, 2009.

Approved April 18, 2009

CHAPTER NO. 319

[SB 299]

AN ACT REVISING THE APPOINTMENT, QUALIFICATIONS, AND DUTIES OF NOTARIES PUBLIC; REQUIRING TRAINING IN SPECIFIED CIRCUMSTANCES; REQUIRING THAT A JOURNAL BE KEPT; REQUIRING THE DESTRUCTION OF THE NOTARY PUBLIC'S STAMP AND SEAL UPON TERMINATION FROM OFFICE; AMENDING SECTIONS 1-5-401, 1-5-402, 1-5-416, 1-5-419, AND 1-5-610, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

- **Section 1.** Section 1-5-401, MCA, is amended to read:
- **"1-5-401. Appointment.** The secretary of state may appoint and commission as many *qualified* notaries public for the state of Montana as in the secretary of state's judgment may be deemed best is considered appropriate."
 - Section 2. Section 1-5-402, MCA, is amended to read:
- "1-5-402. Qualifications training residence. (1) A person may not be appointed as a notary public unless the person has satisfactorily completed a training program certified by the secretary of state.
- (2) A person may not be reappointed as a notary public if at any time during the notary's term a complaint has been filed against the notary or the secretary of state's office has received evidence of improperly notarized documents by the notary unless the person has satisfactorily completed a training program certified by the secretary of state.
- (3) A person appointed or reappointed as a notary public may not, at the time of appointment or reappointment, be a convicted felon. Each person appointed or reappointed as a notary public must be a resident of Montana for at least 1 year 30 days immediately preceding appointment or reappointment and must continue to reside within the state of Montana. Removal from the state or conviction of a felony vacates the office and is equivalent to resignation."

Section 3. Section 1-5-416, MCA, is amended to read:

"1-5-416. Powers and duties. (1) A notary public shall:

- (a) subject to subsection (2), take the acknowledgment or proof of any power of attorney, mortgage, deed, grant, transfer, or other instrument executed by any person and give a certificate of the proof or acknowledgment, endorsed on or attached to the instrument;
- (b) take depositions and affidavits, if the notary is knowledgeable of the applicable legal requirements, and administer oaths and affirmations in all matters incident to the duties of the notary public's office or to be used before any court, judge, officer, or board in this state;
- (c) whenever requested and upon payment of the required fees, make and give a certified copy of any record kept or that originated in the notary public's place of employment;
- (d) provide and keep an official erimper-type or ink stamp and seal prescribed by the secretary of state, upon which must be engraved the name of the state of Montana and the words "Notarial Seal" or "Notary Public", with the name of the notary public exactly as that name appears on the notary's certificate of commission issued by the secretary of state;
- (e) authenticate with the notary public's official seal, and the notary's original signature, which must be in blue or black ink, as it appears on the notary's certificate of commission, all official acts. Whenever the notary public signs officially as a notary public, the notary public shall add to the signature the words "Notary Public for the State of Montana, residing at.... (stating the name of the town or city of the notary public's post office)" and shall endorse upon the instrument the date, showing the month, day, and four-digit year, of the expiration of the notary public's commission.
- (f) on every document on which the notary's seal of office is used, type, stamp, or legibly print the notary's name, as shown on the notary's certificate of commission, after or below the original signature of the notary;
- (g) keep and maintain an official notary journal recording the details of each notarial act performed, including the date, the type of notarial act, the type of document, the date of the document, the name, address, and signature of the individual for whom the notarization was performed, the type of identification used, and any other information prescribed by the secretary of state.
 - (2) A notary public may not:
 - (a) notarize the notary's own signature;
- (b) notarize a document in which the notary is individually named or has an interest from which the notary will directly benefit by a transaction involving the document; or
- (c) certify a document issued by a public entity, such as a birth, death, or marriage certificate, unless the notary is employed by the entity issuing or holding the original version of that document."

Section 4. Section 1-5-419, MCA, is amended to read:

- "1-5-419. Transfer of records upon termination of office. (1) It is the duty of each A notary public, upon resignation or removal from office or at the expiration of the notary public's term and, if the notary public is not reappointed, or, in case of the notary public's death, of the notary public's legal representative shall:
- (a) to deposit transfer in a timely manner all the records journals kept by the notary public in to the office of the county clerk and recorder of the county in which the notary public was a resident; and
 - (b) destroy the notary's official stamp and seal.

(2) On failure to do so, the A knowing failure to take the actions prescribed in subsection (1) makes the offending person is liable for damages to any person injured by the failure."

Section 5. Section 1-5-610, MCA, is amended to read:

(1) For an acknowledgment in an individual capacity:

"1-5-610. Short forms. The following short-form certificates of notarial acts are sufficient for the purposes indicated if they are completed with the information required by 1-5-416(1)(e) and (1)(f) and 1-5-609(1):

State of	
(County) of	
This instrument was acknowleds person(s))	ged before me on (date) by (name(s) of
(Seal, if any)	(Signature of notarial officer)
	(Name - typed, stamped, or printed)
	Title (and Rank)
	(Residing at)
(2) For an acknowledgment in a r	
	ged before me on (date) by (name(s) of officer, trustee, etc.) of (name of party on ited).
(2.14.)	(Signature of notarial officer)
(Seal, if any)	
_	(Name - typed, stamped, or printed)
	Title (and Rank)
	(Residing at) [My commission expires:]
(3) For a verification upon oath or	r affirmation:
State of(County) of	

Signed and sworn to (or affin person(s) making statement)	rmed) before me on (date) by (name(s) of
	(Signature of notarial officer)
(Seal, if any)	(
	(Name - typed, stamped, or printed)
	Title (and Rank)
	(Residing at)
(4) For witnessing or attesting State of	_
(County) of	
` ',	n (date) by (name(s) of person(s))
(Seal, if any)	(Signature of notarial officer)
	(Name - typed, stamped, or printed)
	Title (and Rank)
	(Residing at) [My commission expires:]
(5) For attestation of a copy of State of	
(County) of	
	orrect copy of a document in the possession of
Dated	
(Seal, if any)	(Signature of notarial officer)
	(Name - typed, stamped, or printed)
	Title (and Rank)

(Residing at)
[My commission expires:]"
tion 2] is effective July 1, 2010.

CHAPTER NO. 320

[SB 330]

AN ACT STATING ACCOUNTABILITY AS A PURPOSE AND POLICY OF THE STATE FOR SERVICES FOR OLDER MONTANANS; PROVIDING A PROCESS TO ACHIEVE ACCOUNTABILITY AND REQUIRING REPORTS; AND AMENDING SECTION 52-3-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 6. Effective date. [Sec

Approved April 18, 2009

Section 1. Section 52-3-503, MCA, is amended to read:

- "52-3-503. Purpose and policy. (1) The legislature finds that older Montanans constitute a valuable resource of this state and that their competence, experience, and wisdom must be used more effectively for the benefit of all Montanans.
- (2) The legislature further finds that a complete range of services is not available in all areas of the state and that many Montanans lack access to the services that are available.
- (3) The legislature declares that it is the policy of this state, subject to available funding, to provide a wide range of coordinated services to enable older Montanans to maintain an independent lifestyle, avoid unnecessary institutional care, and live in dignity.
- (4) It is the intent of the legislature that available federal, state, regional, and local resources be used to strengthen the economic, social, and general well-being of older Montanans and that the state:
 - (a) develop appropriate programs for older Montanans;
- (b) coordinate and integrate all levels of service, with emphasis on the whole person; and $\,$
- (c) promote alternative forms of service that will create options for older Montanans.
- (5) The legislature declares that it is the policy of the state to ensure accountability, as provided in [section 2], in providing quality services in a cost-effective manner."
- **Section 2.** Achieving accountability. (1) The department shall achieve accountability in providing quality services in a cost-effective manner by:
- (a) establishing goals, responsibilities, and performance expectations for goals in providing services to the aged and to older Montanans as provided in Title 52, chapter 3, parts 1, 4, and 5;
- (b) requiring periodic reporting of performance or progress toward stated goals by departmental programs for aging services and area agencies on aging;
- (c) establishing a continual process for the evaluation of all functions, the review of the evaluations, and the followup required to correct any deficiencies; and

- (d) providing for feedback on the accountability process.
- (2) The department shall adopt rules only as necessary to implement the goals, responsibilities, performance expectations, reporting periods, and evaluation process to be followed.

Section 3. Reporting requirement. The department of public health and human services shall report to the children, families, health, and human services interim committee on a quarterly basis during the 2009-2010 interim on the department's progress in complying with [section 2].

Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 52, chapter 3, part 4, and the provisions of Title 52, chapter 3, part 4, apply to [section 2].

Approved April 18, 2009

CHAPTER NO. 321

[SB 351]

AN ACT GENERALLY REVISING MORTGAGE LENDING LAWS; EXPANDING THE MORTGAGE BROKER AND LOAN ORIGINATOR ACT TO INCLUDE MORTGAGE LENDERS: IMPLEMENTING PROVISIONS OF THE FEDERAL SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 WITH RESPECT TO MORTGAGE BROKERS, MORTGAGE LENDERS, AND MORTGAGE LOAN ORIGINATORS; PROVIDING FOR A REGISTERED AGENT FOR MORTGAGE BROKERS, MORTGAGE LENDERS, AND MORTGAGE LOAN ORIGINATORS WITHOUT AN IN-STATE OFFICE; REPEALING THE MONTANA RESIDENTIAL MORTGAGE LENDER LICENSING ACT; AMENDING SECTIONS 32-9-101, 32-9-102, 32-9-103, 32-9-104, 32-9-109, 32-9-110, 32-9-116, 32-9-117, 32-9-118, 32-9-121, 32-9-122, 32-9-123, 32-9-124, 32-9-125, 32-9-126, 32-9-130, AND 32-9-133, MCA; REPEALING SECTIONS 32-9-108, 32-9-115, 32-9-119, 32-10-101, 32-10-102, 32-10-103, 32-10-201, 32-10-202, 32-10-203, 32-10-204, 32-10-207, 32-10-208, 32-10-209, 32-10-301, 32-10-302, 32-10-303, 32-10-309, 32-10-310, 32-10-401, 32-10-402, 32-10-403, 32-10-404, 32-10-405, 32-10-406, 32-10-501, 32-10-502, 32-10-503, 32-10-504, 32-10-505, 32-10-506, 32-10-507, 32-10-512, 32-10-513, 32-10-514, AND 32-10-515, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-9-101, MCA, is amended to read:

"32-9-101. Short title and purpose. (1) This part may be cited as the "Montana Mortgage Broker, *Mortgage Lender*, and *Mortgage* Loan Originator Licensing Act".

(2) The legislature recognizes that buying or financing a home is one of the largest, most complicated, and vitally important decisions facing consumers in Montana. Therefore, the legislature finds it desirable to license *certain persons* in the residential mortgage industry that are outside of the traditional banking industry and that have a direct involvement in consumers' financial welfare, including residential mortgage brokers, mortgage lenders, and mortgage loan originators, to promote honesty, education, and professionalism, to ensure the availability and diversity of residential mortgage funding, and to protect Montana consumers and the stability of Montana's economy.

- (3) The legislature finds that it is necessary to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 and, together with the residential mortgage industry, recognizes the importance of statewide participation in the nationwide mortgage licensing system and registry."
 - Section 2. Section 32-9-102, MCA, is amended to read:
- "32-9-102. License requirement registration. (1) Unless exempt under 32-9-104, a A person or entity may not act as a residential mortgage broker, mortgage lender, or mortgage loan originator with respect to any residential real estate located in Montana unless licensed under the provisions of this part.
- (2) A mortgage banker who provides services for a fee as an intermediary between a borrower and a lender in obtaining financing for a borrower that is to be secured by a residential dwelling for between one and four families is acting as a mortgage broker and must be licensed as a mortgage broker.
- (2) Any person acting as a mortgage broker, mortgage lender, or mortgage loan originator under this part is required to be licensed and registered with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry by the date set forth in [section 6(4)]."
 - **Section 3.** Section 32-9-103, MCA, is amended to read:
- **"32-9-103. Definitions.** As used in this part, the following definitions apply:
- (1) "Administrative or clerical tasks" mean the receipt, collection, and distribution of information common for the processing or underwriting of a residential mortgage loan and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.
- (2) "Approved education course" means any course approved by the nationwide mortgage licensing system and registry.
- (3) "Approved test provider" means any test provider approved by the nationwide mortgage licensing system and registry.
- (1)(4) "Bona fide third party" means a person or entity that provides services relative to residential mortgage loan transactions. The term includes but is not limited to real estate appraisers and credit reporting agencies.
- (2)(5) "Borrower" means an individual who is solicited to purchase or who purchases the services of a mortgage broker for other than commercial mortgage lending a person seeking a residential mortgage loan.
- (3)(6) "Branch office" means a location other than a licensee's principal place of business.
- (7) (a) "Control" means the power, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise.
 - (b) A person is presumed to control an entity if that person:
 - (i) is a director, general partner, or executive officer;
- (ii) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

- (iii) in the case of a limited liability company, is a managing member; or
- (iv) in the case of a partnership, has the right to receive upon dissolution or has contributed 10% or more of the capital.
- (4)(8) "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.
- (9) "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c), and includes any credit union.
- (5)(10) "Designated manager" means a person located in this state and employed by a mortgage broker entity, other than a sole proprietorship, as the person responsible for operating the business at the location where the person is employed. A designated manager must be licensed as a mortgage broker a mortgage loan originator with at least 3 years of experience as a mortgage loan originator or registered mortgage loan originator who is designated by an entity as the individual responsible for the operation of a particular location that is under the designated manager's full management, supervision, and control.
- (6)(11) "Entity" means a business organization, other than including a sole proprietorship or an individual person, that provides mortgage broker services.
- (12) "Escrow account" means a depository account with a financial institution that provides deposit insurance and that is separate and distinct from any personal, business, or other account of the mortgage lender and is maintained solely for the holding and payment of escrow funds.
- (13) "Escrow funds" means funds entrusted to a mortgage lender by a borrower for payment of taxes, insurance, or other payments to be made in connection with the servicing of a loan.
- (14) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, or the federal deposit insurance corporation.
- (15) "Immediate family member" means a spouse, child, sibling, grandparent, grandchild, stepchild, stepbrother, or stepsister and includes parent, grandparent, child, grandchild, and sibling relationships based upon adoptive relationships.
 - (16) "Individual" means a natural person.
- (7) "Lender" means an entity that funds or services a residential mortgage loan.
- (17) "Licensee" means a person authorized pursuant to this part to engage in activities regulated by this part. The term does not include an individual who is a registered mortgage loan originator.
- (8) "Loan originator" means a licensed individual employed by a mortgage broker to assist borrowers by originating a residential loan.
- (18) "Loan commitment" means a statement transmitted in writing or electronically by a mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular residential mortgage loan to a particular borrower.
- (19) "Loan processor or underwriter" means an individual who performs administrative or clerical tasks as an employee, subsequent to the receipt of a residential mortgage loan application, at the direction of and subject to the supervision of a licensed mortgage loan originator or registered mortgage loan originator.

- (9)(20) "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.
- (10) "Mortgage banker" means a person or entity that makes, services, or buys and sells mortgage loans and that may be required to submit audited financial statements to the United States department of housing and urban development, the United States department of veterans affairs, the federal national mortgage association, the federal home loan mortgage corporation, or the government national mortgage association.
- (11)(21) (a) "Mortgage broker" means a person or entity that provides services for a fee as an intermediary between a borrower and a lender in obtaining financing for the borrower that is to be secured by a residential dwelling for between one and four families an entity that obtains, attempts to obtain, or assists in obtaining a mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration.
- (b) For purposes of this subsection (21), attempting to or assisting in obtaining a mortgage loan includes referring a borrower to a mortgage lender or mortgage broker, soliciting or offering to solicit a mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a mortgage lender on behalf of a borrower.
- (22) "Mortgage lender" means an entity that closes a residential mortgage loan, advances funds, offers to advance funds, or commits to advancing funds for a mortgage loan applicant.
- (23) (a) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain:
 - (i) takes a residential mortgage loan application; or
 - (ii) offers or negotiates terms of a residential mortgage loan.
 - (b) The term does not include an individual:
- (i) engaged solely as a loan processor or underwriter, except as provided in [section 5]; or
- (ii) involved solely in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).
- (24) "Mortgage servicer loss mitigation specialist" means a person who on behalf of the person making the residential mortgage loan works with a borrower who is in default or in a foreseeable likelihood of a default to modify or refinance either temporarily or permanently the borrower's obligations in order to avoid foreclosure or otherwise to finalize collection through the foreclosure process.
- (25) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the registration of state-licensed mortgage brokers, state-licensed mortgage lenders, state-licensed mortgage loan originators, and registered mortgage loan originators.
- (26) "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed-rate mortgage.
 - (12) "Originate" means:
- (a) to negotiate or arrange or to offer to negotiate or arrange a mortgage loan between a borrower and a person or entity that makes or funds mortgage loans;

- (b) to issue a commitment for a mortgage loan to a borrower; or
- (c) to place, assist in placing, or find a mortgage loan for a borrower.
- (27) "Person" means an individual, sole proprietorship, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.
- (28) "Real estate brokerage activities" means activities that involve offering or providing real estate brokerage services to the public, including:
- (a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property;
- (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
- (c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to the transaction;
- (d) engaging in any activity for which a person is required to be licensed as a real estate salesperson or real estate broker under Montana law; or
- (e) offering to engage in any activity or act in any capacity described in subsections (28)(a) through (28)(d).
 - (29) "Registered mortgage loan originator" means an individual who:
 - (a) meets the definition of mortgage loan originator and is an employee of:
 - (i) a depository institution;
- (ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or
 - (iii) an institution regulated by the farm credit administration; and
- (b) is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.
- (30) "Residential mortgage loan" means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in section 103(v) of the Truth in Lending Act, 15 U.S.C. 1602(v), or on residential real estate located in Montana.
- (31) "Residential real estate" means any real property located in the state of Montana upon which is constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR 3500.5(b)(4). The borrower's intent to construct a dwelling is presumed unless the borrower has submitted a written, signed statement to the contrary.
- (13)(32) "Trust account" means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage broker or the mortgage lender and that is maintained solely for the holding and payment of bona fide third-party fees.
- (33) "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether the individual owns or controls an ownership interest, individually or in any combination, through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.

(34) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry."

Section 4. Section 32-9-104, MCA, is amended to read:

- "32-9-104. Exemptions proof of exemption. (1) The provisions of this part do not apply to:
- (1) a person or entity that makes or collects loans, to the extent that those activities are subject to licensure or registration by this state under other provisions of Montana law unless the person or entity is also acting as a mortgage broker or loan originator;
- (2) (a) a bank or trust company chartered under Title 32, chapter 1, a bank or trust company chartered under the National Bank Acts in Title 12 of the United States Code, a building and loan association chartered under Title 32, chapter 2, a savings and loan association chartered under the Home Owners' Loan Act in Title 12 of the United States Code, a credit union chartered under Title 32, chapter 3, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code;
 - (b) any employee of an entity listed in subsection (2)(a); or
- (c) any subsidiary of an entity listed in subsection (2)(a) and any employee of the subsidiary if the subsidiary is subject to the examination and supervision of:
 - (i) the department;
 - (ii) the federal deposit insurance corporation;
 - (iii) the federal reserve system;
 - (iv) the national credit union administration; or
- (v) the department of the treasury through its office of the comptroller of the currency or office of thrift supervision;
 - (3) a person or entity engaged solely in commercial mortgage lending; or
- (4) a political subdivision or governmental entity of the United States or any state of the United States.
 - (a) an entity that is an agency of the federal, state, or municipal government;
 - (b) an entity described in 32-9-103(29)(a)(i) through (29)(a)(iii);
- (c) a registered mortgage loan originator when acting for an entity described in 32-9-103(29)(a)(i) through (29)(a)(ii);
- (d) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of that individual;
- (e) a person who offers, negotiates, or provides financing in conjunction with the sale of real property owned by that person and that is secured by a contract for deed, mortgage, deed of trust, or other equivalent security interest on the real property sold;
- (f) a loan that is made by an entity to an employee of the entity if the proceeds of the loan are used to assist the employee in meeting the employee's housing needs;
 - (g) an entity engaged solely in commercial real estate lending;
- (h) an entity qualified as a pension plan under 26 U.S.C. 401 if the plan makes residential mortgages only to the plan's participants;
- (i) the federal national mortgage association, the federal home loan mortgage corporation, and the government national mortgage association;

- (j) a 501(c)(3) corporation, which is not otherwise engaged in or holding itself out to the public as being engaged in the mortgage loan business, that makes mortgage loans to promote home ownership or improvements for bona fide low-income individuals;
- (k) a person that performs only real estate brokerage activities and is licensed or registered pursuant to 37-51-301 unless the person is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator;
- (l) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client unless the attorney is compensated by a mortgage lender, mortgage broker, or mortgage loan originator or any agent of the mortgage lender, mortgage broker, or mortgage loan originator; or
- (m) a licensed certified public accountant or a licensed public accountant who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to providing public accounting services to the client unless the accountant is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator.
- (2) The department or the secretary of housing and urban development may exempt from this part mortgage servicer loss mitigation specialists if the department or the secretary of housing and urban development determines by guideline, interpretation, or rule that an exemption of a mortgage servicer loss mitigation specialist is not in violation of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act, Public Law 110-289.
- (3) The burden of proving an exemption under this section is on the person claiming the exemption. The department shall create a form for requesting an exemption."
- **Section 5. Loan processors and underwriters.** (1) A person engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of communication, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the person can or will perform any of the activities pertaining to originating a residential mortgage loan.
- (2) A loan processor or underwriter who is an independent contractor may not engage in mortgage loan originator activities unless licensed as a mortgage loan originator under this part. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator shall maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.
- Section 6. Overall licensing requirements for mortgage brokers, mortgage lenders, and mortgage loan originators. (1) The department is authorized to participate in the nationwide mortgage licensing system and registry and shall require mortgage lenders, mortgage brokers, and mortgage loan originators to apply for state licensure on applications approved by the nationwide mortgage licensing system and registry by the dates set forth in subsection (4).
- (2) The department may establish requirements as necessary to comply with the nationwide mortgage licensing system and registry, including:

- (a) payment of nonrefundable fees to apply for, maintain, and renew licenses through the nationwide mortgage licensing system and registry;
 - (b) renewal or reporting dates;
 - (c) procedures for amending or surrendering a license; and
- (d) requirements pertaining to any other activity necessary for participation in the nationwide mortgage licensing system and registry.
- (3) The state portion of the licensing fees collected by the nationwide mortgage licensing system and registry under this section must be deposited into the department's account in the state special revenue fund to be used for administering this part.
- (4) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the implementation date of subsection (1) is:
- (a) April 1, 2010, for all new applicants applying after [the effective date of this act];
- (b) June 30, 2010, for all licensees with current licenses as of [the effective date of this act]; and
- (c) for mortgage servicer loss mitigation specialists, if not exempt under 32-9-104(2), a date as set by the department by rule.
- (5) The provisions of this part apply to the activities of retail sellers of manufactured homes and recreational vehicles to the extent determined by the United States department of housing and urban development through guidelines, regulations, or interpretive letters.
- **Section 7. Dual licensure.** An entity may be simultaneously licensed as a mortgage lender and a mortgage broker provided that the entity meets all requirements for licensure as a mortgage lender and a mortgage broker.
- Section 8. Prelicensing education requirements for mortgage loan originators. (1) An individual seeking a mortgage loan originator's license shall complete at least 20 hours of approved education courses, which must include:
 - (a) at least 3 hours of training on federal law and regulations;
- (b) 3 hours of training in ethics, including instruction on fraud, consumer protection, and fair lending issues; and
- (c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.
- (2) The prelicensing education courses that comply with the requirements of subsection (1) and that are approved by the nationwide mortgage licensing system and registry for any other state must be accepted with respect to the completion of prelicensing education requirements in Montana.
- (3) If allowed by the nationwide mortgage licensing system and registry, the department is authorized to certify to the nationwide mortgage licensing system and registry that continuing education hours that were previously approved by the department have been completed by a mortgage loan originator.
 - Section 9. Section 32-9-109, MCA, is amended to read:
- "32-9-109. Experience requirements. (1) (a) An individual applying for a license as a mortgage broker may not act as a designated manager must have without a minimum of 3 years of experience working as a mortgage loan originator, as a mortgage banker, or in a related field.

- (b) An individual applying for a license as a *mortgage* loan originator must have a minimum of 6 months of experience working in a related field.
- (2) The department shall by rule establish what constitutes work in a related field."

Section 10. Section 32-9-110, MCA, is amended to read:

- "32-9-110. Examination requirements for mortgage loan originators. (1) Individuals An individual seeking a mortgage broker's license and individuals seeking a mortgage loan originator's license shall submit to an examination provided for by the department. The department may use a third party to perform examination and grading services.
- (2) The examination must be designed to demonstrate that the applicant possesses competency to originate loans. The test may cover subject matter areas including but not limited to:
 - (a) knowledge of this part;
- (b) knowledge of disclosures and protections that borrowers are entitled to by state and federal law;
- (c) the ability to read, understand, and explain appraisal basics, credit reports, and title commitments; and
- (d) the ability to evaluate credit, calculate a basic debt-to-income ratio, calculate loan-to-value ratios, and complete a basic loan application.
- (2) In order to meet the examination requirement referred to in subsection (1), an individual shall pass, in accordance with the standards established under this section, a qualified written exam developed by the nationwide mortgage licensing system and registry that is administered by an approved test provider.
- (3) A written examination may not be treated as a qualified written examination for purposes of this section unless the exam adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including but not limited to:
 - (a) ethics;
- (b) federal and state laws and regulations pertaining to mortgage origination; and
- (c) federal and state laws and regulations pertaining to fraud, consumer protection, the nontraditional mortgage product marketplace, and fair lending issues.
- (4) An individual may not be considered to have passed a qualified examination unless the individual achieves an exam score of at least 75%.
- (5) An individual may retake a test three consecutive times with each consecutive test being taken at least 30 days after the previous testing date.
- (6) An individual who fails three consecutive tests may not take the test for at least 6 months from the date of failing the third test.
- (7) A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years shall retake the test. The 5-year period may not take into account any time during which the person is a registered mortgage loan originator."
- Section 11. Application for mortgage broker, mortgage lender, and mortgage loan originator license. (1) An applicant under this part shall apply for a state license in a form prescribed by the department that complies with the requirements of the nationwide mortgage licensing system and

- registry. Each form must contain content as set forth by the nationwide mortgage licensing system and registry and may be changed or updated by the department as necessary to comply with the nationwide mortgage licensing system and registry.
- (2) The department may establish a relationship or contract with the nationwide mortgage licensing system and registry or another entity designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this part.
- (3) An applicant shall furnish information to the nationwide mortgage licensing system and registry concerning the applicant's identity, including but not limited to:
- (a) fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive information for a state, national, and international criminal history background check;
- (b) legal name, birth date, and social security number for submission to the criminal investigation bureau of the Montana department of justice as authorized for a state criminal history background check; and
- (c) personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including submission of authorization for the nationwide mortgage licensing system and registry and the department to obtain:
- (i) an independent credit report from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p); and
- (ii) information related to administrative, civil, or criminal findings by a governmental jurisdiction.
- (4) To reduce the points of contact that the federal bureau of investigation may be required to maintain for purposes of subsection (3), the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the United States department of justice or other governmental agencies.
- (5) To reduce the points of contact that the department may be required to maintain for purposes of subsection (3), the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source directed by the department.
- (6) The department shall issue a license to an applicant that has met all the requirements of this section, has paid the fee required under 32-9-117, and is not determined ineligible under [section 17].
- **Section 12. Application for licensure.** In order for an entity to be considered for state licensure, each of the following is required to independently meet the requirements established in [section 17(1)(a) through (1)(d)]:
- (1) ultimate equity owners of 25% or more of the applicant if the equity owners are individuals;
- (2) control persons of the applicant if the control persons are individuals; and
- (3) individuals that control, directly or indirectly, the election of 25% or more of the members of the board of directors of the entity.
 - **Section 13.** Section 32-9-116, MCA, is amended to read:

- "32-9-116. Application for loan originator license employment Employment of mortgage loan originator. (1) An application for a loan originator license must include:
 - (a) the name and address of the applicant;
- (b) evidence of the applicant's experience and knowledge of the mortgage industry; and
- (c) a statement as to whether the applicant is under investigation, has been convicted of or pleaded guilty to any felony or criminal offense involving fraud or dishonesty, or has been subject to any adverse civil judgment for any conduct involving fraudulent or dishonest dealing.
- (2) The department shall investigate each applicant. The investigation shall include a criminal records check based on the fingerprints of the applicant and a civil records check. The department shall require each applicant to file a set of the applicant's fingerprints, taken by a law enforcement agency, and any other information necessary to complete a statewide and nationwide criminal check with the criminal investigation bureau of the department of justice for state processing and with the federal bureau of investigation for federal processing. All costs associated with the criminal history check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential and the department may use the records only to determine if the applicant is eligible for licensure. If an investigation outside this state is necessary, the department may require the applicant to advance sufficient funds to pay the actual expenses of the investigation. The department may deny the application if the applicant's criminal history demonstrates any felony criminal convictions or other convictions involving fraud or dishonesty or if the applicant has had any adverse civil judgments involving fraudulent or dishonest dealings.
- (3)(1) A mortgage loan originator may transact business only for an employing mortgage broker or one employing mortgage lender licensed in accordance with the provisions of this part. Each original license issued to a mortgage loan originator must be provided to and maintained by the employing mortgage broker or employing mortgage lender at the mortgage broker's employing licensee's main office. A copy of the mortgage loan originator's license must be displayed at the office where that mortgage loan originator principally transacts business.
- (4)(2) If the employment of a mortgage loan originator is terminated, the mortgage broker or the mortgage lender shall return the mortgage loan originator's license to the department within 5 business days after the termination and remove sponsorship of the mortgage loan originator on the nationwide mortgage licensing system and registry within 5 business days of the termination. For a period of 6 months after the termination of employment, the mortgage loan originator may request the transfer of the license to another mortgage broker or mortgage lender by submitting a relocation application to the department, along with complying with the nationwide mortgage licensing system and registry procedures and paying a fee established by the department by rule. The return removal of sponsorship of the license of any mortgage loan originator to the department that is not transferred to another mortgage broker or mortgage lender terminates the right of the mortgage loan originator to engage in any residential mortgage loan origination activity until department nationwide mortgage licensing system and registry procedures have been followed to reinstate sponsor the license. The license of any mortgage loan originator that has been returned to the department removed from sponsorship

and not transferred within 6 months of termination of employment must be canceled."

Section 14. Provisional licenses and previously licensed persons. The department may establish by rule licensing requirements, fees, and interim procedures for licensing and acceptance of applications for the purposes of implementing an orderly and efficient licensing process. The department may by rule establish expedited review and licensing procedures for a previously licensed person.

Section 15. Section 32-9-117, MCA, is amended to read:

- "32-9-117. Fees—license renewal—disposition of fees. (1) (a) Except as provided in subsection (1)(b), an individual mortgage broker or an entity seeking licensure as a mortgage broker shall pay an initial nonrefundable license application fee of \$500 and an additional application fee of \$250 for any branch location. A mortgage loan originator shall pay an initial nonrefundable license application fee of \$400 \$400. An entity seeking licensure as a mortgage lender shall pay an initial nonrefundable license application fee of \$750 and an additional application fee of \$250 for any branch location. An applicant shall pay one-half of these initial nonrefundable license application fees for any license period of less than 6 months.
- (b) An individual who is seeking licensure as a mortgage broker loan originator and who is the sole owner of an entity that is seeking licensure as a mortgage broker shall pay a single initial nonrefundable license application fee of \$500.
- (2) The license of a mortgage broker, mortgage lender, or mortgage loan originator is valid for a 1-year period and expires on June 30. Every A state licensee shall, on or before May 31 of the year, submit a renewal application and pay to the department nationwide mortgage licensing system and registry a renewal fee in an amount set by the department by rule. The department shall establish by rule the requirements for renewal applications. The department shall establish a single renewal fee for individuals and entities described in subsection subsection (1)(b) that are licensed as mortgage brokers. An individual described in subsection (1)(b) may act as a designated manager under 32-9-122 and is not subject to any additional license fees for acting in the capacity of a designated manager. The fees set by the department must be commensurate with the costs of the program. Failure to submit required information or fees within the time prescribed means the license automatically revokes the license expires. The department may adopt procedures for reinstatement of expired licenses that are consistent with the standards established by the nationwide mortgage licensing system and registry.
- (3) An application for renewal must be accompanied by evidence that the continuing education requirements provided for in 32-9-118 have been met and that there has not been a material change in the status of the licensee in the preceding 12 months. An application for renewal also must demonstrate that the licensee continues to meet the standards for licensure under this part and that the licensee has paid all fees for renewal of the license.
- (4) All The state portion of the fees collected under this section must be deposited in the department's state special revenue fund to be used by the department in administering the provisions of this part.
- (5) An applicant for a mortgage broker, mortgage lender, or mortgage loan originator license renewal shall apply for state licensure on an application form approved by the nationwide mortgage licensing system and registry."

- Section 16. Compliance of current mortgage brokers, mortgage lenders, and mortgage loan originator licensees with background check and minimum standards renewals. (1) Upon application to the nationwide mortgage licensing system and registry by a current licensee for renewal of a mortgage broker, a mortgage lender, or a mortgage loan originator license, the applicant shall furnish information concerning the applicant to the nationwide mortgage and licensing system and registry regarding the following:
- (a) fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive information for a criminal history background check at the state, federal, and international levels;
- (b) legal name, birth date, and social security number for submission to the criminal investigation bureau of the Montana department of justice as authorized for a state criminal history background check; and
- (c) a written statement of personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including authorization for the nationwide mortgage licensing system and registry to obtain:
- (i) a current independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p); and
- (ii) information related to any administrative, civil, or criminal findings by any governmental jurisdiction.
- (2) To reduce the points of contact that the federal bureau of investigation may be required to maintain for purposes of subsection (1), the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the United States department of justice or other governmental agencies.
- (3) To reduce the points of contact that the department may be required to maintain for purposes of subsection (1), the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source directed by the department.
- (4) Upon application to the nationwide mortgage licensing system and registry by a current licensee for renewal of a mortgage broker, mortgage lender, or mortgage loan originator license, the department shall commence a supplemental investigation of the applicant and may not renew any license if any of the following facts are found:
- (a) the applicant has ever had a mortgage broker, mortgage lender, or mortgage loan originator license or the equivalent revoked in any governmental jurisdiction. A subsequent formal vacation of a revocation means that the revocation may not be considered a revocation. The department may by order vacate a revocation of a license and enter an appropriate order.
- (b) the applicant has been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court during the 7-year period preceding the date of the application for renewal or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. The pardon of a conviction is not a conviction for the purposes of this subsection (2)(b).

- (c) the applicant has failed to demonstrate financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage broker, mortgage lender, or mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this section;
- (d) the applicant has not met the surety bond or net worth requirement as required pursuant to 32-9-123;
- (e) the applicant has not completed the prelicensing education requirement described in [section 8];
- (f) the applicant has not passed a written test that meets the test requirements described in 32-9-110;
- (g) the applicant made a material misstatement of fact or material omission of fact in the application.
- (5) The department shall determine that the applicant has demonstrated the qualities of financial responsibility, character, and general fitness referred to in subsection (2)(c) if all other requirements for licensure under this section have been satisfied and the department's investigation does not reveal a specific problem on the applicant's part with respect to subsection (2)(c).
- Section 17. Denial of mortgage broker, mortgage lender, or mortgage loan originator license application or license renewal. (1) The department may not issue or renew any mortgage broker, mortgage lender, or mortgage loan originator license if any of the following facts are found during the application procedure:
- (a) the applicant has ever had a mortgage broker, mortgage lender, or mortgage loan originator license or their equivalent revoked in any governmental jurisdiction. A subsequent formal vacation of a revocation means that the revocation may not be considered a revocation. The department may by order vacate a revocation of a license and enter an appropriate order.
- (b) the applicant has been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court during the 7-year period preceding the date of the application for licensing or renewal or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. The pardon of a conviction is not a conviction for the purposes of this subsection (1)(b).
- (c) the applicant has failed to demonstrate financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage broker, mortgage lender, or mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this section;
- (d) the applicant has not met the surety bond or net worth requirement as required pursuant to 32-9-123;
- (e) the applicant has not completed the prelicensing education requirement described in [section 8];
- (f) the applicant has not passed a written test that meets the test requirements described in 32-9-110;
- (g) the applicant made a material misstatement of fact or material omission of fact in the application.
- (2) The department shall determine that the applicant has demonstrated the qualities of financial responsibility, character, and general fitness referred

to in subsection (1)(c) if all other requirements for licensure under this section have been satisfied and the department's investigation does not reveal a specific problem on the applicant's part with respect to subsection (1)(c).

Section 18. Section 32-9-118, MCA, is amended to read:

- "32-9-118. Continuing education requirements for mortgage loan originators. (1) All mortgage loan originators and all individual mortgage brokers shall complete and submit to the department nationwide mortgage licensing system and registry evidence of at least 12 hours of continuing education every year at the time they submit their license renewal applications. The 12 hours of continuing education must be obtained in courses or programs of study approved by the department and in areas established by the department by rule an approved education course.
 - (2) The 12 hours of education must include at least:
 - (a) 3 hours of training on federal laws and regulations;
- (b) 2 hours of training in ethics, including instruction on fraud prevention, consumer protection, and fair lending issues; and
- (c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.
- (3) A person who has successfully completed the education requirements that comply with the requirements of subsection (1) and that are approved by the nationwide mortgage licensing system and registry for any other state must be given credit toward completion of continuing education requirements in Montana.
- (4) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license."

Section 19. Section 32-9-121, MCA, is amended to read:

- "32-9-121. In-state office requirement records Records maintenance — advertising requirement. (1) Except for an individual mortgage broker working as an employee of a licensed mortgage broker, a person or entity licensed as a mortgage broker shall maintain at least one physical office located in this state either on its own accord or in conjunction with another licensed mortgage broker or regulated lender located in this state. Licensees shall maintain books, accounts, records, and copies of residential mortgage loan files and trust account or escrow account records that are necessary to enable the department to determine whether a licensee is in compliance with the applicable laws and rules. The required materials must be maintained at the Montana office location where services are provided, and the materials must be maintained in accordance with generally accepted accounting principles and good business practices. Each office location must have at least one phone line. Licensees shall pay state income tax on all income earned in Montana. Whenever a licensee's usual business location is outside of this state the licensee shall, at its election, either maintain its books and records at a location in this state or reimburse the department for expenses incurred, including but not limited to staff time, transportation, food, and lodging expenses, relating to an examination or investigation under this part.
- (2) A mortgage broker or mortgage lender shall maintain a residential mortgage file for a minimum of 5 years from the date of the last activity pertaining to the file. A mortgage broker or mortgage lender shall maintain trust account or escrow account records for a minimum of 5 years.

- (3) (a) In any printed, published, televised, e-mail, or internet advertisement for the provision of services, the following information must be included:
- (i) a name, address, and license number for each mortgage broker, mortgage lender, or mortgage loan originator advertising as an individual; or
- (ii) the name, address, and license number only of the licensed entity when the licensed entity is advertising on its own behalf or as an entity with one or more mortgage brokers, mortgage lenders, or mortgage loan originators also listed.
- (b) For the purposes of this subsection (3), advertising does not include stationery or business forms but does include business cards. A business card must include a mortgage broker's or, a mortgage lender's, or a mortgage loan originator's license number but is not required to list the entity's license number if the entity's name is listed."

Section 20. Section 32-9-122, MCA, is amended to read:

- "32-9-122. Requirement for designated Designated manager and branch license requirements. (1) A mortgage broker or mortgage lender entity shall apply for a license for a main office and for every branch office through the nationwide mortgage licensing system and registry and maintain a unique identifier.
- (1)(2) A mortgage broker that is not a sole proprietorship entity shall designate to the department nationwide mortgage licensing system and registry an individual within its organization who is located in this state and who is licensed by this state as a mortgage broker loan originator to serve as the designated manager of the organization main office and a separate designated manager to serve at each branch location.
- (3) A mortgage lender entity shall designate to the nationwide mortgage licensing system and registry for each office that originates a residential mortgage loan an individual who is licensed as a mortgage loan originator as the designated manager of the main office and shall designate a separate designated manager to serve each branch location.
- (4) A designated manager must have 3 years of experience as either a mortgage loan originator or a registered mortgage loan originator.
- (5) A designated manager is responsible for the operation of the business at the location under the designated manager's full charge, supervision, and control.
- (6) A mortgage broker or mortgage lender entity is responsible for the conduct of a designated manager or mortgage loan originator while the designated manager or mortgage loan originator is employed by the mortgage broker or mortgage lender entity, including for violations of federal laws that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part.
- (7) A designated manager is responsible for conduct that violates federal laws that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part. The designated manager's responsibility includes conduct by the designated manager and each mortgage loan originator employed by the entity while the designated manager is employed at the location that the designated manager manages.

- (2)(8) If the designated manager ceases to act in that capacity, within 15 days the mortgage broker or mortgage loan originator shall designate another individual licensed as a mortgage broker as designated manager and shall submit information in writing to the department to the nationwide mortgage licensing system and registry establishing that the subsequent designated manager is in compliance with the provisions of this part.
- (3)(9) If the employment of a designated manager is terminated, the mortgage broker or mortgage lender shall return the designated manager's license to the department within 5 business days of the termination and remove the sponsorship of the designated manager on the nationwide mortgage licensing system and registry within 5 business days of the termination."
- Section 21. Registered agent for mortgage broker, mortgage lender, or mortgage loan originator licensee without physical office in state—venue. (1) An applicant for a mortgage broker, mortgage lender, or mortgage loan originator license under [section 12] who does not maintain a physical office within the state shall file, in a form prescribed by the department, an irrevocable consent appointing the department as the registered agent of the applicant for the purpose of receiving service of any lawful process in a noncriminal suit, action, or proceeding against the applicant or its successors, executor, or administrator that is based on an alleged violation of this part or any administrative rule adopted pursuant to this part. Service on the department has the same force and validity as if served personally on the applicant or the person filing the consent.
- (2) Service must be made by leaving a copy of the process in the office of the department and is effective only if:
- (a) notice of the service and a copy of the process are sent by certified mail to the defendant or respondent at the last-known address on file with the department by the plaintiff, which may be the department, in an action, suit, or proceeding; and
- (b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within a time the court allows
- (3) In a judicial action, suit, or proceeding arising under this part or any administrative rule adopted pursuant to this part between the department and a licensee who does not maintain a physical office in this state, venue must be exclusively in Lewis and Clark County.
- (4) A notice, hearing schedule, or order must be mailed to the person or licensee by certified mail at the last-known address for which the license was issued or, in the case of an unlicensed person, at the last-known address of the person.

Section 22. Section 32-9-123, MCA, is amended to read:

- "32-9-123. Irrevocable letter of credit or surety Surety bond or net worth requirement notice of legal action. (1) Each mortgage broker, other than an individual mortgage broker working as an employee of a mortgage broker, shall maintain at all times an irrevocable letter of credit or surety bond, naming the department as a beneficiary, in the amount of \$25,000 for each principal location and branch office identified in the application for licensure.
- (1) (a) A mortgage loan originator must be covered by a surety bond in accordance with this section. If a mortgage loan originator is an employee of or exclusive agent for a licensed mortgage lender or mortgage broker, the surety

bond of the licensed mortgage lender or mortgage broker may be used in lieu of a mortgage loan originator's surety bond.

- (b) The department shall use the proceeds of the letters of credit or surety bonds to reimburse borrowers or bona fide third parties who successfully demonstrate a financial loss because of an act of a licensee mortgage broker, mortgage lender, or mortgage loan originator that violates the provisions of this part.
- (2) (a) A mortgage broker or mortgage lender is required to maintain one surety bond for each entity license.
- (b) The amount of the required surety bond must be calculated by combining the annual loan production amounts for all persons originating residential mortgage loans and for all business locations of the mortgage broker or mortgage lender and must be in the following amount:
- (i) \$25,000 for a combined annual loan production that does not exceed \$50 million a year;
- (ii) \$50,000 for annual loan production of \$50 million but not exceeding \$100 million a year; or
 - $(iii) \,\$100,000 \, for \, annual \, loan \, production \, of \, more \, than \, \$100 \, million \, a \, year.$
- (3) (a) In lieu of a surety bond, a mortgage broker may meet a minimum net worth requirement.
- (b) Minimum net worth must be maintained in an amount determined by the department that reflects the dollar amount of loans originated.
- (c) The department shall adopt rules with respect to the requirements for minimum net worth as are necessary to accomplish the purposes of this part.
- (4) Evidence that a mortgage broker is approved by the department of housing and urban development to originate loans insured by the federal housing administration must be considered as satisfying the net worth requirement provided that the actual net worth determined in the department of housing and urban development's approval is equivalent to the bond amount set forth for the corresponding dollar amount range set forth in subsections (2)(b)(i) through (2)(b)(iii).
- (2)(5) A mortgage broker, mortgage lender, or mortgage loan originator shall give notice to the department by certified mail within 15 days of the mortgage broker's, mortgage lender's, or mortgage loan originator's obtaining knowledge of the initiation of an investigation or the entry of a judgment in a criminal or civil action. The notice must be given if the investigation or the legal action is in any state and involves a mortgage broker, mortgage lender, anyone having an ownership interest in a mortgage broker entity or mortgage lender entity, or a mortgage loan originator. In the case of a legal action, the notice must include a copy of the criminal or civil judgment."
- **Section 23. Escrow fund.** (1) An escrow fund authorized for any purpose by a mortgage loan contract is subject to applicable state and federal requirements. Money received from a borrower by a mortgage lender licensed under this part must be considered as held in trust immediately upon receipt. The mortgage lender shall place escrow funds in a depository institution prior to the end of the third business day following their receipt.
- (2) An escrow fund account must be a separate account established to hold only borrowers' funds. The account must be designated and maintained for the benefit of borrowers. Escrow funds may not be commingled with any other funds.

- (3) Escrow funds must be kept in the segregated account until disbursement. Money maintained in an escrow fund account is exempt from execution, attachment, or garnishment.
- (4) A licensee may not encumber the corpus of an escrow fund account or commingle other operating funds with account funds.
 - (5) An escrow fund account may be used only for:
- (a) a payment authorized by the borrower or the mortgage loan contract or required by federal or state law;
 - (b) a refund to the borrower;
 - (c) transfer to a depository institution;
- (d) transfer to the appropriate mortgage lender or mortgage servicer in the case of a transfer of servicing;
 - (e) a purpose authorized by the mortgage loan contract; or
- (f) purposes of complying with an order issued by the commissioner or a court.
- (6) Accounting for escrow funds must be performed in compliance with the aggregate accounting rules established in regulation X, 24 CFR 3500, and in compliance with 71-1-115.
- Section 24. Disclosure of mortgage costs by mortgage lender. (1) Within 3 business days of taking a mortgage loan application and prior to receiving any consideration from the borrower, the mortgage lender shall disclose the terms of the loan to the borrower in compliance with the disclosure requirements of the federal Real Estate Settlement Procedures Act, 12 U.S.C. 2601, et seq., the federal Truth in Lending Act, 15 U.S.C. 1601, et seq., and any regulations promulgated under those acts.
- (2) A mortgage lender shall disclose the terms of any prepayment penalty on the mortgage loan, including the amount of the prepayment penalty or the formula for calculating the prepayment penalty. If the initial mortgage loan offer does not include a prepayment penalty, but a prepayment penalty is later included in the mortgage loan offer, disclosure of the terms of the prepayment penalty must be made within 3 business days of the prepayment penalty being added to the mortgage loan offer.
- (3) A licensed mortgage lender may not require a borrower to pay any fees or charges prior to the mortgage loan closing, except:
- (a) charges to be incurred by the mortgage lender on behalf of the borrower for services from third parties necessary to process the application, such as credit reports and appraisals;
 - (b) an application fee;
- (c) an interest rate lock-in fee if the borrower is provided an interest rate lock-in agreement, the terms of which must include but are not limited to:
 - (i) the expiration date of the interest rate lock-in agreement;
- (ii) the principal amount of the mortgage loan, the term of the mortgage loan, and identification of the residential real estate;
 - (iii) the initial interest rate and the discount points to be paid; and
- (iv) the amounts and payment terms of the interest rate lock-in, along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund; and

- (d) a loan commitment fee, upon approval of the mortgage loan application, if the borrower is provided with a loan commitment in writing that it is signed by the mortgage lender and the borrower and the terms include the terms and conditions of the mortgage loan as well as the terms and conditions of the loan commitment, including but not limited to:
- (i) the time period during which the loan commitment is irrevocable and may be accepted by the borrower, which may not be less than 7 calendar days from the date of the loan commitment or the date of mailing, whichever is later;
- (ii) the amount and payment terms of the loan commitment fee, along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund;
 - (iii) the expiration date of the loan commitment;
 - (iv) conditions precedent to closing; and
- (v) the terms and conditions, if any, for obtaining a refund of fees for third-party services or arranging for the transfer of third-party service work products to another mortgage lender.
- (4) Any amount collected under subsection (3) in excess of the actual costs must be returned to the borrower within 60 days after rejection, withdrawal, or closing.
- (5) (a) Except as provided in subsection (5)(b), fees or charges collected pursuant to this section, other than fees for third-party services collected pursuant to subsection (3)(a), must be refunded if a valid loan commitment is not produced or if closing does not occur.
- (b) Applicable fees may be retained by the licensee in accordance with the terms of the loan commitment upon the licensee's ability to demonstrate any of the following:
- (i) the borrower withdraws the mortgage loan application after the lender has issued a loan commitment on the same terms and conditions disclosed to the borrower on the most recent good faith estimate;
- (ii) the borrower has made a material misrepresentation or omission on the mortgage loan application; or
- (iii) the borrower has failed to provide documentation necessary to the processing or closing of the mortgage loan application and closing does not occur without fault of the lender.

Section 25. Section 32-9-124, MCA, is amended to read:

- "32-9-124. Prohibitions required disclosure. (1) A mortgage broker, mortgage lender, or mortgage loan originator may not do any of the following:
- (a) retain original documents owned by the borrower and submitted in connection with the loan application;
- (b) directly or indirectly employ any scheme to defraud or mislead a borrower, a *mortgage* lender, or any other person;
- (c) make any misrepresentation or deceptive statement in connection with a residential mortgage loan, including but not limited to interest rates, points, costs at closing, or other financing terms or conditions;
- (d) fail to pay a bona fide third party later than 30 days after recording of the loan closing documents or 90 days after completion of the bona fide third-party service, whichever is earlier, unless otherwise agreed by the parties;

- (e) accept any fees or compensation at closing that were not disclosed as required by state or federal law;
- (f) accept any fees or compensation in excess of those allowed by state or federal law; Θ
- (g) sign a borrower's application or related documents on behalf of or in lieu of another mortgage broker, *mortgage lender*, or *mortgage* loan originator-;
- (h) (i) assist or aid and abet any person in the conduct of business under this part without a valid license as required under this part; or
- (ii) conduct any business covered by the provisions of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, without holding a valid license as required under this part;
- (i) fail to comply with this part or rules promulgated under this part or fail to comply with any other state or federal laws, including the rules and regulations adopted pursuant to those laws, applicable to any business authorized by or conducted under this part;
- (j) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a government agency or the nationwide mortgage licensing system and registry or in connection with any investigation conducted by the department or another governmental agency.
 - (2) A mortgage lender may not do any of the following:
- (a) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;
- (b) disburse the mortgage loan proceeds to a closing agent in any form other than, as applicable:
 - (i) direct deposit to a borrower's account;
 - (ii) wire;
 - (iii) bank or certified check;
 - (iv) attorney's check drawn on a trust account; or
 - (v) other form as specifically authorized by applicable law;
- (c) disburse the proceeds of a mortgage loan without sufficient collected funds on hand at the time of the disbursement in the account upon which the funds are drawn;
- (d) fail to disburse funds in accordance with a loan commitment to make a mortgage loan that was accepted by the borrower;
- (e) fail to take the actions required to affect a release of the lender's security interest in the property as described in 71-1-212;
- (f) advertise that a mortgage applicant will have unqualified access to credit without disclosing what material limitations on the availability of credit exist, such as the percentage of down payment required, that a higher rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan offered could apply;
- (g) advertise a mortgage loan for which a prevailing rate is indicated in the advertisement unless the advertisement specifically states that the expressed rate could change or not be available at commitment or closing;

- (h) advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on mortgage loans, unless the person is able to make advertised mortgage loans to a reasonable number of qualified applicants; or
 - (i) falsely advertise or misuse names in violation of 18 U.S.C. 709.
- (2)(3) Prior to providing residential mortgage broker services to a borrower, the mortgage loan originator licensee working for a mortgage broker, in addition to other disclosures required by this part, subsection (3) of this section, and other state and federal laws, shall provide to the borrower at the time of application a written disclosure containing substantially the following language, which must be signed by the borrower:

"MORTGAGE LOAN ORIGINATION DISCLOSURE

(Name of licensee) is a licensed mortgage broker loan originator in Montana authorized to provide mortgage brokerage loan origination services to you in connection with your real estate loan. Lenders whose loan products we distribute generally provide their loan products to us at a wholesale rate. The rate you pay may be higher.

SECTION 1. NATURE OF RELATIONSHIP. In connection with this mortgage loan:

- (1) (name of licensee) is acting as an independent contractor and not as your agent;
- (2) (name of licensee) enters into separate independent contractor agreements with various lenders; and
- (3) while (name of licensee) seeks to assist you in meeting your financial needs, (name of licensee) does not distribute products of all lenders or investors in the market and cannot guarantee the lowest price or best terms available.

SECTION 2. OUR COMPENSATION.

- (1) The retail price (name of licensee) offers you, including the interest rate, total points, and fees, will include (name of licensee's) compensation.
- (2) In some cases, (name of licensee) may be paid all of (name of licensee's) compensation by either you or the lender.
- (3) Alternatively, (name of licensee) may be paid a portion of (name of licensee's) compensation by both you and the lender. For example, in some cases, if you would rather pay a lower interest rate, you may pay more money in upfront points and fees. Also, in some cases, if you would rather pay less money up front, you may be able to pay some or all of our compensation indirectly through a higher interest rate, in which case (name of licensee) will be paid directly by the lender.
- (4) (Name of licensee) may also be paid by the lender based on the value of the mortgage loan or related servicing rights in the market place or based on other services, goods, or facilities performed or provided by (name of licensee) to the lender.

By signing below, you acknowledge that you have received a copy of this disclosure."

(3)(4) The disclosure must include the address of the department's division of banking and financial institutions, the division's phone number and website, and a statement informing borrowers that the division can provide information about whether a mortgage broker or *mortgage* loan originator is licensed as well as other legally available information.

(5) The disclosure must include the state license number and the unique identifier issued by the nationwide mortgage licensing system and registry for the mortgage loan originator."

Section 26. Section 32-9-125, MCA, is amended to read:

- "32-9-125. Trust accounts bona fide third-party fees. (1) Every mortgage broker and mortgage lender doing business in this state shall:
- (a) maintain a trust account at a *federally insured* financial institution located in this state whose deposits or shares are insured, and the trust account funds may not be commingled with any other funds of the mortgage broker *or mortgage lender*;
- (b) deposit into the trust account any bona fide third-party fee that the mortgage broker or mortgage lender receives; and
- (c) pay third-party fees to a bona fide third party from the mortgage broker's trust account unless the borrower, the seller, or another person involved in the transaction pays the bona fide third party directly.
- (2) A mortgage broker or mortgage lender may not charge or receive, directly or indirectly, fees for assisting a borrower in obtaining a mortgage until all of the services that the mortgage broker or mortgage lender has agreed to perform for the borrower are completed. A mortgage broker or mortgage lender may not charge a residential loan application fee in excess of the amount allowed by federal law. Prior to completion of services, the fees provided for in subsection (3) incurred by a bona fide third party in assisting the borrower to obtain a mortgage must be paid.
- (3) The following fees must be paid by the borrower, the seller, or another person involved in the transaction directly to the bona fide third party providing the services or must be paid by the borrower, the seller, or another person involved in the transaction to the mortgage broker or mortgage lender for payment of services performed by the bona fide third party:
 - (a) credit report fees;
 - (b) notary fees;
 - (c) title search, appraisal, or survey fees;
 - (d) rate-lock fees not exceeding 3% of the mortgage loan amount; and
- (e) fees paid directly by the borrower, the seller, or another person involved in the transaction to a state or federal government agency or instrumentality for purposes of processing a mortgage application relating to a government-sponsored or guaranteed mortgage program.
- (4) The department shall by rule define the meaning of "another person involved in the transaction"."

Section 27. Section 32-9-126, MCA, is amended to read:

- "32-9-126. Revocation, suspension, conditioning, and reinstatement of licenses. (1) The department, upon giving the a mortgage broker, mortgage lender, or mortgage loan originator licensee 10 days' written notice, which includes a statement of the grounds for the proposed suspension, conditioning, or revocation, and informing the licensee that the licensee has the right to be heard at an administrative hearing if requested by the licensee, may suspend, condition, or revoke a license if it finds that the licensee has violated any provision of this part.
- (2) All notices, hearing schedules, and orders must be mailed to the licensee by certified mail to the address for which the license was issued.

- (3) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.
- (4) The department may reinstate any suspended or revoked license if there is not a fact or condition existing at the time of reinstatement that would have justified the department's refusal to originally issue the license. If a license has been revoked for cause, an application may not be made for the issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation.
- (5) The department may by order vacate a revocation of a license and enter an appropriate order."
- Section 28. Unique identifier for mortgage brokers, mortgage lenders, mortgage loan originators, and registered mortgage loan originators. (1) Each licensed mortgage broker, mortgage lender, and mortgage loan originator shall post the mortgage broker's, mortgage lender's, or mortgage loan originator's unique identifier in a conspicuous place within the office where the licensee principally transacts business.
- (2) The department shall post on its website the names of all licensees, together with their license numbers. In conjunction with that posting, the department shall also provide the unique identifier of all licensed mortgage brokers, mortgage lenders, and mortgage loan originators so that consumers, borrowers, and the public may access that information for use in conjunction with the nationwide mortgage licensing system and registry.
- (3) The department shall also post on its website the names and unique identifiers of all registered mortgage loan originators conducting business in the state.
- Section 29. Mortgage call reports. Each mortgage broker and mortgage lender entity shall submit to the nationwide mortgage licensing system and registry reports of condition, which must be in the form and must contain information that the nationwide mortgage licensing system and registry may require.
- Section 30. Nationwide mortgage licensing system and registry information challenge process. The department shall establish a process under which mortgage brokers, mortgage lenders, and mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the department.
 - **Section 31.** Section 32-9-130, MCA, is amended to read:
- **"32-9-130. Department authority rulemaking.** (1) The department shall adopt rules necessary to carry out the intent and purposes of this part. The rules adopted are binding on all licensees and enforceable through the power of suspension or revocation of licenses.
 - (2) The rules must address:
 - (a) revocation or suspension of licenses for cause;
- (b) investigation of applicants, licensees, and unlicensed persons alleged to have violated a provision of this part and handling of complaints made by any person in connection with any business transacted by a licensee;
- (c) (i) ensuring that all persons are informed of their right to contest a decision by the department under the Montana Administrative Procedure Act; and

- (ii) holding contested case hearings pursuant to the Montana Administrative Procedure Act and issuing cease and desist orders, orders of restitution, and orders for the recovery of administrative costs;
 - (d) prescribing forms for applications; and
 - (e) developing or approving tests to be given as a prerequisite for licensure;
 - (f) approval of programs for continuing education; and
- (g)(e) establishing fees for testing, continuing education programs, and license renewals.
- (3) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part.
- (4) (a) The department may at any time examine any mortgage broker transaction and may examine the residential mortgage loan files, trust account records, and other information related to mortgage loan transactions of a licensee.
- (4) (a) For the purposes of investigating violations or complaints arising under this part or for the purposes of examination, the department may review, investigate, or examine any licensee or person subject to this part as often as necessary in order to carry out the purposes of this part.
- (b) The commissioner may direct, subpoena, or order the attendance of and may examine under oath any person whose testimony may be required about the subject matter of any examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the commissioner considers relevant to the inquiry.
- (5) Each licensee or person subject to this part shall make available to the department upon request the documents and records relating to the operations of the licensee or person. The department may access the documents and records and may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, customers of the licensee or person concerning the business of the licensee or person, or any other person having knowledge the department considers relevant.
- (6) (a) The department may conduct investigations and examinations for the purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation, or license termination or to determine compliance with this part.
- (b) The department has the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including but not limited to:
- (i) criminal, civil, and administrative history information, including confidential criminal justice information as defined in 44-5-103;
- (ii) personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.; and
- (iii) any other documents, information, or evidence the department considers relevant to an inquiry or investigation regardless of the location, possession, control, or custody of the documents, information, or evidence.
- (b) When conducting a financial examination or an audit of a licensee, the department may require the licensee to pay a fee of \$300 per day for each examiner performing the financial examination or audit.

- (7) (a) The total cost for any examination or investigation must be in accordance with fees determined by the department by rule pursuant to this section and may include expenses for necessary travel outside the state for the purposes of conducting the examination or investigation. The fees set by the department must be commensurate with the cost of the examination or investigation. All fees collected under this section must be deposited in the department's account in the state special revenue fund to be used by the department to cover the department's cost of conducting examinations and investigations.
- (c) If any examination fees are not paid within 30 days of the department's mailing of an invoice, the license of the mortgage broker or designated manager for the mortgage broker entity may be suspended or revoked.
- (b) The cost of an examination or investigation must be paid by the licensee or person within 30 days after the date of the invoice. Failure to pay the cost of an examination or investigation when due must result in the suspension or revocation of a licensee's license.
 - (5) (a)(8) (a) The department may:
- (i) exchange information with federal and state regulatory agencies, the attorney general, the consumer protection office of the department, and the legislative auditor;
- (ii) exchange information other than confidential information with the mortgage asset research institute, inc., and other similar organizations; and
- (iii) refer any matter to the appropriate law enforcement agency for prosecution of a violation of this part.
 - (b) To carry out the purposes of this section, the department may:
- (i) enter into agreements or relationships with other government officials or regulatory associations to improve efficiencies and reduce the regulatory burden by sharing resources, adopting standardized or uniform methods or procedures, and sharing documents, records, information, or evidence obtained under this section;
- (ii) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
- (iii) use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee or person subject to this part;
- (iv) accept and rely on examination or investigation reports by other government officials, within or outside of this state;
- (v) accept audit reports made by an independent certified public accountant for the licensee or person subject to this part if the examination or investigation covers at least in part the same general subject matter as the audit report and may incorporate the audit report in the report of the examination, report of the investigation, or other writing of the department under this part; and
- (vi) assess against the licensee or person subject to this part the costs incurred by the department in conducting the examination or investigation.
- (b)(c) Except as provided in subsection (5)(a)(i) (8)(a)(i) and [section 33], the department shall treat all confidential criminal justice information as confidential unless otherwise required by law.

- (6)(9) The department shall prepare, at least once each calendar year, a roster listing the name and locations for each mortgage broker and mortgage lender and a roster of all mortgage loan originators and designated managers and the name of their employing mortgage brokers or employing mortgage lenders. The roster must be available to interested persons and to the general public.
- (10) Pursuant to section 1508(d) of the of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the department is authorized to:
- (a) supervise and enforce the provisions of this part, including the suspension, termination, revocation, or nonrenewal of a license for violation of state or federal law;
 - (b) participate in the nationwide mortgage licensing system and registry;
- (c) ensure that all mortgage broker, mortgage lender, and mortgage loan originator applicants under this part apply for state licensure and pay any required nonrefundable fees to and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry; and
- (d) regularly report violations of state or federal law and enforcement actions to the nationwide mortgage licensing system and registry.
- (11) (a) The department may, if the U.S. department of housing and urban development determines that a provision of this part does not meet the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, or that additional persons are subject to this part, refrain from enforcing the provision that is determined to be noncompliant and shall by rule invalidate any noncompliant exemption to this part or require that additional persons be temporarily subject to this part to be compliant with federal law, including the provisions for licensure and registration with and maintenance of a valid unique identifier with the nationwide mortgage licensing system and registry.
- (b) The department shall propose to the regular session of the legislature that follows the determination by the U.S. department of housing and urban development legislation to address the incompatibility with federal law. The provisions that the United States department of housing and urban development determine to not be in compliance with the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, Public Law 110-289, must be amended in the correcting legislation."

Section 32. Section 32-9-133, MCA, is amended to read:

- "32-9-133. Penalties restitution. (1) If the department finds, after providing a 10-day written notice that includes a statement of alleged violations and a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person, licensee, or officer, agent, employee, or representative of the person or licensee, whether licensed or unlicensed, has violated any of the provisions of this part, has failed to comply with the rules, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a required license, the department may impose a civil penalty not to exceed \$5,000 for the first violation and not to exceed \$10,000 for each subsequent violation.
- (2) The department may issue an order requiring restitution to borrowers and reimbursement of the department's cost in bringing the administrative

action. In addition, the department may issue an order revoking, conditioning, or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee or to engage in the mortgage broker, mortgage lender business, or mortgage loan origination business.

- (3) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or in the case of an unlicensed business to the last-known address of record.
- (4) The fines must be deposited in the state general fund department's account in the state special revenue fund and used to administer the provisions of this part.
- (5) In addition to the penalties in subsection (1), a person practicing as a mortgage broker, *mortgage lender*, or *mortgage* loan originator without being licensed as required under subsection (1) is guilty of a misdemeanor and may be punished by a fine of not less than \$250 or more than \$1,000, by imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of subsection (1) constitutes a separate offense."
- Section 33. Confidentiality. (1) (a) Except as otherwise provided in section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the requirements under federal law, the Montana constitution, or Montana law regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry and any privilege arising under federal or state law, including the rules of a federal or state court, pertaining to the information or material continue to apply to the information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry.
- (b) Information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority and with the board of governors of the federal reserve system without the loss of confidentiality protections or the loss of privilege provided by federal law, the Montana constitution, or Montana law.
- (2) The department may enter into agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or associations representing governmental agencies as established by rule of the department.
- (3) Information or material subject to confidentiality or a privilege under subsection (1) is not subject to:
- (a) disclosure under a federal or state law governing disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or
- (b) subpoena, discovery, or admission into evidence in any private civil action or administrative process unless, with respect to any privilege held by the nationwide mortgage licensing system and registry concerning the information or material, the person to whom the information or material pertains waives, in whole or in part, that privilege.
- (4) Montana law relating to the disclosure of confidential supervisory information or information or material described in subsection (1) that is inconsistent with subsection (1) is superseded by the requirements of section

1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289.

- (5) Examination reports, information contained in examination reports, and examiners' work papers are confidential, subject to the licensee's and any uninvolved person's reasonable expectation of privacy and, although filed with the department as provided in this part, are not subject to public inspection.
- (6) This section does not apply to information or material relating to the employment history of and publicly adjudicated disciplinary and enforcement actions against mortgage lenders, mortgage brokers, and mortgage loan originators included in the nationwide mortgage licensing system and registry that is available for public access.

Section 34. Repealer. Sections 32-9-108, 32-9-115, 32-9-119, 32-10-101, 32-10-102, 32-10-103, 32-10-201, 32-10-202, 32-10-203, 32-10-204, 32-10-207, 32-10-208, 32-10-209, 32-10-301, 32-10-302, 32-10-303, 32-10-309, 32-10-310, 32-10-401, 32-10-402, 32-10-403, 32-10-404, 32-10-405, 32-10-406, 32-10-501, 32-10-502, 32-10-503, 32-10-504, 32-10-505, 32-10-506, 32-10-507, 32-10-512, 32-10-513, 32-10-514, and 32-10-515, MCA, are repealed.

Section 35. Codification instruction. [Sections 5 through 8, 11, 12, 14, 16, 17, 21, 23, 24, 28 through 30, and 33] are intended to be codified as an integral part of Title 32, chapter 9, part 1, and the provisions of Title 32, chapter 9, part 1, apply to [sections 5 through 8, 11, 12, 14, 16, 17, 21, 23, 24, 28 through 30, and 331.

Section 36. Severability. If a part of [this act] is invalid, including a determination that any part of [this act] is out of compliance with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 37. Contingent suspension. If the secretary of housing and urban development determines by guideline, interpretation, or rule that any part of [this act] is out of compliance with the Secure and Fair Enforcement for Mortgage Licensing Act, Public Law 110-289, the operation and effect of that part is suspended.

Section 38. Effective date. [This act] is effective July 1, 2009.

Approved April 19, 2009

CHAPTER NO. 322

[SB 353]

AN ACT ELIMINATING THE LICENSE TAX RATE REDUCTION FOR ETHANOL; AMENDING SECTION 15-70-204, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-204, MCA, is amended to read:

"15-70-204. (Temporary) Gasoline license tax — rate. (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

- (a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and
- (b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.
- (2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.
- (3) Ethanol-blended gasoline, as defined in 15-70-201, is subject to 85% of the tax imposed in subsection (1)(b).
- (4) Beginning on the date that the requirement for use of ethanol-blended gasoline contained in 82-15-121 occurs, ethanol-blended gasoline is subject to the tax imposed in subsection (1)(b). (Terminates on occurrence of contingency—sec. 21, Ch. 452, L. 2005.)
- 15-70-204. (Effective on occurrence of contingency) Gasoline license tax rate. (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:
- (a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and
- (b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.
- (2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.
- (3) Ethanol-blended gasoline is subject to 85% of the tax imposed in subsection (1)(b)."

Section 2. Effective date. [This act] is effective July 1, 2009.

Approved April 19, 2009

CHAPTER NO. 323

[SB 361]

AN ACT REVISING LAWS RELATING TO TAX LIENS; PROVIDING THAT A COUNTY TREASURER MAY ALLOW A PURCHASER OF A PROPERTY TAX LIEN TO USE AN AFFIDAVIT OF COSTS IN LIEU OF PRODUCING THE RECEIPTS OF COSTS; PROVIDING THAT THE NOTICE OF PAYMENT FOR A TAX LIEN SALE CERTIFICATE MAY NOT BE MADE MORE THAN 60 DAYS PRIOR TO THE DATE OF PAYMENT; AND AMENDING SECTIONS 15-17-121 AND 15-17-212, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-17-121, MCA, is amended to read:

"15-17-121. Definitions. Except as otherwise specifically provided, when terms mentioned in Title 15, chapters 17 and 18, are used in connection with taxation, they are defined in the following manner:

- (1) "Certificate" or "tax lien sale certificate" means the document described in 15-17-212.
- (2) (a) "Cost" means the cost incurred by the county as a result of a taxpayer's failure to pay taxes when due. It includes but is not limited to any actual out-of-pocket expenses incurred by the county plus the administrative cost of:
 - (i) preparing the list of delinquent taxes;
 - (ii) preparing the notice of pending tax lien sale;
 - (iii) conducting the tax lien sale;
 - (iv) assigning the county's interest in a tax lien to a third party;
- (v) identifying interested persons entitled to notice of the pending issuance of a tax deed;
 - (vi) notifying interested persons;
 - (vii) issuing the tax deed; and
- (viii) any other administrative task associated with accounting for or collecting delinquent taxes.
- (b) The term includes receipted costs that are required by law and incurred by the purchaser of a property tax lien other than the county. The county treasurer may require the purchaser of the property tax lien shall to provide receipts or may allow the purchaser of the property tax lien to provide a notarized affidavit of costs to the county treasurer upon issuance of a tax lien sale certificate as required in 15-17-212 and notification that a tax deed may be issued as required by 15-18-212 and 15-18-216. A county treasurer may at any time require a purchaser who provided an affidavit of costs to submit the receipted costs upon which the affidavit was based.
 - (c) The term does not include interest for payments for the following:
- (i) postage for certified mailings and certified mailings with return receipt requested;
- (ii) a title search, to the extent necessary to identify interested persons entitled to notice of the pending issuance of a tax deed;
 - (iii) publishing costs for required publications; and
 - (iv) filing costs for proof of notice.
- (3) "County" means any county government and includes those classified as consolidated governments.
- (4) "Property tax lien" means a lien acquired by the payment at a tax lien sale of all outstanding delinquent taxes, including penalties, interest, and costs.
- (5) "Purchaser" means any person, other than the person to whom the property is assessed, who pays at the tax lien sale the delinquent taxes, including penalties, interest, and costs, and receives a certificate representing a lien on the property or who is otherwise listed as the purchaser. An assignee is a purchaser.
- (6) "Tax", "taxes", or "property taxes" means all ad valorem property taxes, property assessments, fees related to property, and assessments for special improvement districts and rural special improvement districts.
 - (7) "Tax lien sale" means:
- (a) with respect to real property and improvements, the offering for sale by the county treasurer of a property tax lien representing delinquent taxes, including penalties, interest, and costs; and

(b) with respect to personal property, the offering for sale by the county treasurer of personal property on which the taxes are delinquent or other personal property on which the delinquent taxes are a lien."

Section 2. Section 15-17-212, MCA, is amended to read:

- "15-17-212. Tax lien sale certificate. (1) After receiving proof of mail notice to the person to whom the property was assessed, as required by subsection (3), and upon receipt of all delinquent taxes, penalties, interest, and costs, the county treasurer shall prepare a tax lien sale certificate that must contain:
 - (a) the date on which the property taxes became delinquent;
 - (b) the date on which a property tax lien was sold at a tax lien sale;
- (c) the name and address of record of the person to whom the taxes were assessed;
 - (d) a description of the property on which the taxes were assessed;
 - (e) the name and mailing address of the purchaser;
- (f) the amount paid to liquidate the delinquency, including a separate listing of the amount of the delinquent taxes, penalties, interest, and costs;
- (g) a statement that the certificate represents a lien on the property that may lead to the issuance of a tax deed for the property;
- (h) a statement specifying the date on which the purchaser will be entitled to a tax deed; and
- (i) an identification number corresponding to the tax lien sale certificate number recorded by the county treasurer as required in 15-17-213.
- (2) The certificate must be signed by the county treasurer and delivered to the purchaser. A copy of the certificate must be filed by the treasurer in the office of the county clerk. A copy of the certificate must also be mailed to the person to whom the taxes were assessed, at the address of record, together with a notice that the person may contact the county treasurer for further information on property tax lien sales.
- (3) Prior to paying delinquent taxes, penalties, interests, and costs received by the county treasurer under subsection (1), a person shall send notice of the proposed payment, by certified mail, to the person to whom the property was assessed. The form of the notice must be adopted by the department by rule. The notice must have been mailed at least 2 weeks prior to the date of the payment but may not be mailed earlier than 60 days prior to the date of the payment. The person making the payment shall provide proof of the mailing."

Approved April 19, 2009

CHAPTER NO. 324

[SB 375]

AN ACT PROVIDING THAT A STATE BANK, CREDIT UNION, OR MORTGAGE LENDER MAY NOT REQUIRE A BORROWER, AS A CONDITION OF OBTAINING OR MAINTAINING A LOAN SECURED BY REAL PROPERTY, TO PROVIDE INSURANCE ON IMPROVEMENTS TO REAL PROPERTY IN AN AMOUNT THAT EXCEEDS THE REASONABLE REPLACEMENT VALUE OF THE IMPROVEMENTS; AND AMENDING SECTIONS 32-1-430, 32-3-604, AND 32-10-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-430, MCA, is amended to read:

- "32-1-430. Authority of state banks to make real estate loans borrower insurance requirements. (1) A bank in this state has from time to time the same authority to make loans upon real estate which may be that is given by acts of congress or the federal reserve system to national banks or bank members of the federal reserve system.
- (2) A bank that is subject to this section may not require a borrower, as a condition of obtaining or maintaining a loan secured by real property, to provide insurance on improvements to real property in an amount that exceeds the reasonable replacement value of the improvements."
 - **Section 2.** Section 32-3-604, MCA, is amended to read:
- "32-3-604. Security real property loans. (1) In addition to generally accepted types of security, the endorsement of a note by a surety, comaker, or guarantor or pledge of shares, in a manner consistent with the laws of this state, must be considered security within the meaning of this chapter. The adequacy of any security is subject to the lending policies established by the board of directors.
- (2) A credit union that is subject to the provisions of this part may not require a borrower, as a condition of obtaining or maintaining a loan secured by real property, to provide insurance on improvements to real property in an amount that exceeds the reasonable replacement value of the improvements."

Section 3. Section 32-10-401, MCA, is amended to read:

"32-10-401. Prohibited practices. It is unlawful for any person to:

- (1) provide or offer to provide any service requiring a license unless the person has been issued the appropriate license or is exempt from licensure;
- (2) disburse the mortgage loan proceeds to a closing agent in any form other than, as applicable:
 - (a) direct deposit to a borrower's account:
 - (b) wire;
 - (c) bank or certified check;
 - (d) attorney's check drawn on a trust account; or
 - (e) other form as specifically authorized by applicable law;
- (3) disburse the proceeds of a mortgage loan without sufficient collected funds on hand at the time of the disbursement in the account upon which the funds are drawn;
- (4) fail to disburse funds in accordance with a loan commitment to make a mortgage loan that was accepted by the borrower;
 - (5) accept any fees at closing that were not disclosed as required by law;
- (6) retain third-party fees at closing in excess of the actual cost of third-party services;
- (7) require the borrower to be represented by a third-party service provider except under the terms permitted by applicable federal law;
- (8) fail to take the actions required to effect a release of the lender's security interest in the property as described in 71-1-212;
- (9) obtain any agreement or instrument in which blanks are left to be filled in after execution;

- (10) obtain any exclusive dealing or exclusive agency agreement from any borrower:
- (11) delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;
 - (12) engage in unfair, deceptive, or fraudulent mortgage loan practices;
- (13) make payment of any kind, whether directly or indirectly, to any appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of any residential real property that is to be mortgaged;
- (14) make any misrepresentations or false promises likely to influence or persuade or pursue a course of misrepresentation and false promises through officers, directors, partners, trustees, independent contractors, employees, agents, advertising, or otherwise;
- (15) misrepresent, circumvent, or conceal, through any subterfuge or device, any of the material facts or terms of a mortgage loan;
- (16) act as a mortgage lender in this state without a license issued by the department;
- (17) advertise that a mortgage applicant will have unqualified access to credit without disclosing what material limitations on the availability of credit exist, such as the percentage of down payment required, that a higher rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan offered could apply;
- (18) advertise a mortgage loan for which a prevailing rate is indicated in the advertisement unless the advertisement specifically states that the expressed rate could change or not be available at commitment or closing;
- (19) advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on mortgage loans, unless the person is able to make advertised mortgage loans to a reasonable number of qualified applicants;
 - (20) falsely advertise or misuse names in violation of 18 U.S.C. 709; or
- (21) make any untrue statement of a material fact in any document filed with the department or to omit any material fact that is required to be stated in any document; or
- (22) require a borrower, as a condition of obtaining or maintaining a loan secured by real property, to provide insurance on improvements to real property in an amount that exceeds the reasonable replacement value of the improvements."

Approved April 19, 2009

CHAPTER NO. 325

[SB 388]

AN ACT CREATING AN INCUMBENT WORKER TRAINING PROGRAM; PROVIDING CRITERIA FOR PARTICIPATION AND FOR AWARDS; AND PROVIDING RULEMAKING AUTHORITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Incumbent worker training program — purpose. There is an incumbent worker training program, administered by the department, the purpose of which is to:

- (1) meet the training needs of incumbent workers in businesses employing 20 or fewer workers in this state at any one location but not more than 50 workers statewide; and
 - (2) assist local businesses in preserving existing jobs for Montana residents.
- **Section 2. Definitions.** As used in [sections 1 through 6], the following definitions apply:
- (1) "BEAR program" means a business expansion and retention program implemented by local communities that uses assessments, interviews, and surveys to assist employers and that has been recognized as a BEAR program for the purposes of [sections 1 through 6] by the governor's office of economic development, the department of commerce, and the department.
- (2) "Department" means the department of labor and industry provided for in 2-15-1701.
 - (3) "Eligible training provider" means:
 - (a) a unit of the university system, as defined in 20-25-201;
 - (b) a community college district, as defined in 20-15-101;
- (c) an accredited, tribally controlled community college located in the state of Montana;
- (d) an apprenticeship program that is in compliance with Title 39, chapter 6; or
- (e) an entity approved to provide workforce training that is approved by representatives of the BEAR program, the small business development centers, or the Montana manufacturing extension center at Montana state university-Bozeman.
- (4) "Employee" or "worker" means an individual currently employed in a full-time job or a permanent part-time job.
- (5) "Employer" means a business entity that employs 20 or fewer employees in this state in one location but not more than 50 employees statewide and that is registered with the secretary of state to conduct business as a sole proprietor, if required, or as a corporation, a partnership, a limited liability company, or an association.
- (6) "Full-time job" means a predominantly year-round position requiring an average of 35 hours or more of work each week.
- (7) "Incumbent worker" means an employee who has completed a probationary period as defined by the employer's policy or as described in 39-2-904, whichever period is shorter.
- (8) "Incumbent worker training program grant" or "grant" means the grant awarded to employers to hire eligible training providers to provide incumbent workers with education and training required to improve productivity, efficiency, or wages in existing jobs.
- (9) "Permanent part-time job" means a predominantly year-round position requiring an average of 20 to 34 hours of work each week.
- Section 3. Incumbent worker training program criteria for applicants. (1) An employer applying for an incumbent worker training program grant must:
 - (a) have been in business in this state for a minimum of 1 year;
 - (b) have a need for training incumbent workers; and

- (c) be an existing client of a BEAR program recognized by the department, of a small business development center, or of the Montana manufacturing extension center at Montana state university-Bozeman.
- (2) An applicant for an incumbent worker training program grant shall agree to:
- (a) provide certified education or skills-based training for incumbent workers in existing full-time jobs and permanent part-time jobs through an eligible training provider;
- (b) match every \$4 requested with at least \$1 of employer funds. The same match applies for in-state training and for out-of-state training. Matching funds may include wages and benefits paid for the day that the actual training takes place and for appropriate travel and lodging charges associated with the approved training. For out-of-state training the employer is responsible for at least 50% of the actual costs of appropriate travel and lodging.
 - (c) provide evidence to the department that training was completed.
- (3) An incumbent worker training program grant application must contain at a minimum:
- (a) a cover letter describing the goals of the training for the incumbent workers, the anticipated economic benefits from the training, and the amount of funding requested;
- (b) information that provides an adequate understanding of the applicant's business and the training objective;
- (c) a description of the eligible training provider's proposed curriculum, resources, methods, and duration of training;
- (d) a list of incumbent workers to be trained and their current job descriptions and base wage rates plus the expected wage rates after training;
- (e) the total number of the employer's employees at the location of the proposed training and within the state;
 - (f) the sources of matching funds to be provided; and
- (g) any other information required by rule by the department that is similar to information required for other employment-related grants.
- Section 4. Incumbent worker training program grant award criteria. (1) Subject to appropriation by the legislature, the department shall award grants based on recommendations from BEAR programs, small business development centers, or the Montana manufacturing extension center at Montana state university-Bozeman as provided in subsection (2). The distribution of funding must be reviewed annually by the department, and funds that are not being used or for which there are no qualified applications, as determined by the department, may be transferred to other programs as provided in 17-7-138 and 17-7-139.
- (2) A BEAR program, a small business development center, or the Montana manufacturing extension center at Montana state university-Bozeman participating in the incumbent worker training program shall review applications and make recommendations for awards to the department regarding qualified applicants based on the criteria in subsection (3).
- (3) The following criteria must be used in determining whether to award an incumbent worker training program grant:

- (a) prospects for enhancing the incumbent worker's productivity, efficiency, or wages;
 - (b) prospects for reducing incumbent worker turnover;
 - (c) ability to provide matching funds;
- (d) a demonstrated need by the employer for upgrading skills of incumbent workers through training as a way to improve the employer's ability to remain competitive in the industry or in the economy;
- (e) a direct relationship between the training and an added benefit to the incumbent worker's occupation or craft; and
- (f) a demonstration that the training is not normally provided or required by the employer and, as far as may be determined, by the employer's competitors.
 - (4) An incumbent worker training program grant award is limited to:
- (a) \$2,000 or less annually for each full-time job for which an incumbent worker is being trained; or
- (b) \$1,000 or less for each permanent part-time job for which an incumbent worker is being trained.
 - (5) Subject to funding, the department may:
 - (a) limit the number of applicants that receive grant awards;
 - (b) award less than the amount provided in subsection (4); or
- (c) award a higher amount than that provided in subsection (4) if a full-time job for which an incumbent worker is being trained under an incumbent worker training program grant award pays significantly higher wages and benefits than the incumbent worker's current job. Before making an award for a higher amount as provided in this subsection (5)(c), the department must receive a recommendation for the higher amount from a BEAR program, a small business development center, or the Montana manufacturing extension center at Montana state university-Bozeman working with the employer and documentation from the employer regarding the need for the higher amount.
 - (6) The recipient of a grant shall provide the department with:
- (a) a properly executed agreement, signed by the employer's authorized representative, that outlines terms of the grant;
- (b) documentation upon completion of training that the training was provided and to whom the training was provided, including copies of certificates or statements of completion; and
- (c) all receipts or copies of receipts associated with the training and the application.
- **Section 5. Special revenue account.** There is a federal special revenue account to the credit of the department for use in the incumbent worker training program that may be spent subject to appropriation by the legislature. Money must be deposited in the account from federal funds that are available for incumbent worker training.
- **Section 6. Rulemaking.** The department may adopt rules to further define information for applications, distribution of grants, and the use of the special revenue account provided for in [section 5].
- Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 53, chapter 2, and the provisions of Title 53, chapter 2, apply to [sections 1 through 6].

Section 8. Contingent voidness. If House Bill No. 2 or [LC 2314] is passed and approved but does not contain funding for an incumbent worker training program, then [this act] is void.

Approved April 18, 2009

CHAPTER NO. 326

[SB 401]

AN ACT REQUIRING THE BOARD OF MEDICAL EXAMINERS TO ENSURE THAT A LICENSEE WHO IS REQUIRED TO PARTICIPATE IN A REHABILITATION PROGRAM MUST BE ALLOWED TO ENROLL IN A QUALIFIED PROGRAM WITHIN MONTANA IF ONE IS AVAILABLE; AMENDING SECTIONS 37-3-203, 37-3-208, AND 37-3-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-3-203, MCA, is amended to read:

"37-3-203. Powers and duties. (1) The board may:

- (1)(a) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter. The rules must be fair, impartial, and nondiscriminatory.
- (2)(b) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;
- (3)(c) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;
- (4)(d) establish a program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness:
- (5)(e) review certifications of disability and determinations of eligibility for a permit to hunt from a vehicle as provided in 87-2-803(11); and
- (6)(f) fund additional staff, hired by the department, to administer the provisions of this chapter, by increasing license fees as necessary.
- (2) If the board establishes a program pursuant to subsection (1)(d), the board shall ensure that a licensee who is required or volunteers to participate in the program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified program within this state and may not require a licensee to enroll in a qualified program outside the state unless the board finds that there is no qualified program in this state."

Section 2. Section 37-3-208, MCA, is amended to read:

"37-3-208. Confidentiality of information — physician assistance program. (1) The proceedings and records of the program created by the board pursuant to 37-3-203(4)(1)(d) relating to a physician who has received assistance from the program are considered to be proceedings and records of a professional standards review committee under 37-2-201 and are not subject to discovery or introduction into evidence in any administrative or judicial proceeding, except that the proceedings and records of the program as they

pertain to a physician are subject to discovery or introduction into evidence in a disciplinary proceeding before the board against the physician.

(2) Proceedings and records of the program created by the board pursuant to 37-3-203(4)(1)(d) do not include health care information, as defined in 50-16-803, maintained by a health care provider in the provision of health care services to a physician who is receiving or has received assistance from the program. The health care information is subject to discovery from the physician or health care provider and to introduction into evidence in an administrative or judicial proceeding as may otherwise be allowed by law."

Section 3. Section 37-3-401, MCA, is amended to read:

- "37-3-401. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensed physician, professional standards review organization, and the Montana medical association or any component society of the association shall and any other person may report to the board any information that the physician, organization, association, society, or person has that appears to show that a physician is:
 - (a) medically incompetent;
- (b) mentally or physically unable to safely engage in the practice of medicine; or
 - (c) guilty of unprofessional conduct.
- (2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the program established by the board under 37-3-203(4)(1)(d), in lieu of reporting directly to the board.
- (b) The program personnel referred to in subsection (2)(a) shall report to the board the identity of a licensee and all facts and documentation in their possession if:
- (i) the licensee fails or refuses to comply with a reasonable request that the licensee undergo a mental, physical, or chemical dependency evaluation or a combination of evaluations:
- (ii) the licensee fails or refuses to undergo a reasonable course of treatment that they recommend, including reasonable aftercare;
- (iii) the licensee fails or refuses to satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare;
- (iv) the licensee's condition creates a risk of harm to the licensee, a patient, or others; or
- (v) they are in possession of information that appears to show that the licensee has or is otherwise engaged in unprofessional conduct.
- (3) This section applies to professional standards review organizations only to the extent that the organizations are not prohibited from disclosing information under federal law."

Section 4. Effective date. [This act] is effective on passage and approval. Approved April 18, 2009

CHAPTER NO. 327

[SB 441]

AN ACT GENERALLY REVISING LAWS RELATING TO JUDGMENTS AND COLLECTIONS; CLARIFYING THE STATUTE OF LIMITATIONS FOR BRINGING AN ACTION TO COLLECT EXPENSES INCURRED BY EITHER SPOUSE FOR FAMILY EXPENSES OR CHILDREN'S EDUCATION; PROVIDING THAT WHEN A JUDGMENT IS FOR A FINE AND IMPRISONMENT, THE COURT MAY ORDER EXECUTION ON THE FINE PORTION OF THE JUDGMENT; AND AMENDING SECTIONS 40-2-106 AND 46-19-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-2-106, MCA, is amended to read:

- **"40-2-106.** Liability for acts or debts of spouse. (1) Neither A husband nor or wife, as such solely on the basis of being a spouse, is not answerable for the acts of the other spouse or liable for the debts contracted by the other spouse,; provided, however, except that the expenses for necessaries necessities of the family and of the education of the spouses' children are chargeable upon the property of both the husband and wife, or either of them, and in relation thereto to those expenses they the husband and wife may be sued jointly or separately.
- (2) The period prescribed for commencing an action to recover expenses described in subsection (1) incurred by either spouse is governed by the provisions of 27-2-202."
 - **Section 2.** Section 46-19-102, MCA, is amended to read:
- **"46-19-102. Execution of judgment.** (1) If the *a* judgment is for a fine alone *or for a fine and imprisonment*, execution may issue on the *fine portion of the* judgment, any unpaid interest accrued on the *fine portion of the* judgment, and costs and fees incurred in collecting the *fine portion of the* judgment as on a judgment in a civil case.
- (2) If the judgment is for a fine and imprisonment until the fine is paid, the defendant must be committed to the custody of the proper officer and detained and allowed a credit for each day of incarceration as provided in 46-18-403.
- (3) (a) The court may contract with a private person or entity for the collection of any fine portion of a judgment.
- (b) In the event that a private person or entity is retained to collect a *the fine portion of a* judgment, the court may assign the *fine portion of the* judgment to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedures and postjudgment remedies in the private person's or entity's own name.
- (c) The court, after deducting the charges provided for in 46-18-236, may pay the private person or entity a reasonable fee for collecting the *fine portion of a* judgment. The fee incurred by the court must be added to the *fine portion of the* judgment amount."

Approved April 18, 2009

CHAPTER NO. 328

[SB 444]

AN ACT CLARIFYING THE APPLICATION OF THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT TO PROPERTY CONTRIBUTED PRIOR TO OCTOBER 1, 2007; AMENDING SECTIONS 72-30-102, 72-30-207, 72-30-208, 72-30-209, AND 72-30-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-30-102, MCA, is amended to read:

"72-30-102. Definitions. In this chapter, the following definitions apply:

- (1) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.
- (2) (a) "Endowment fund" means an institutional fund or any part of the fund that under the terms of a gift instrument *or instrument of donor intent* is not wholly expendable by the institution on a current basis.
- (b) The term does not include assets that an institution designates as an endowment fund for its own use.
- (3) "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.
 - (4) "Institution" means:
- (a) a person, other than an individual, organized and operated exclusively for charitable purposes;
- (b) a government or governmental subdivision, agency, or instrumentality to the extent that it holds funds exclusively for a charitable purpose; and
- (c) a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.
- (5) (a) "Institutional fund" means a fund held by an institution exclusively for charitable purposes.
 - (b) The term does not include:
 - (i) program-related assets;
 - (ii) a fund held for an institution by a trustee that is not an institution; or
- (iii) a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.
- (6) "Instrument of donor intent" means a record by a person that contributed property, pursuant to the provisions of this chapter that were in effect prior to October 1, 2007, setting forth the person's intention regarding investment or retention of the contributed property.
- (6)(7) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

- (7)(8) "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.
- (8)(9) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form."
 - **Section 2.** Section 72-30-207, MCA, is amended to read:
- "72-30-207. Release or modification of restrictions on management, investment, or purpose. (1) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument or instrument of donor intent on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.
- (2) The court, upon application of an institution, may modify a restriction contained in a gift instrument or instrument of donor intent regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.
- (3) If a particular charitable purpose or a restriction contained in a gift instrument *or instrument of donor intent* on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument *or instrument of donor intent*. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard.
- (4) If an institution determines that a restriction contained in a gift instrument or instrument of donor intent on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after notification to the attorney general, may release or modify the restriction, in whole or part, if:
- (a) the institutional fund subject to the restriction has a total value of less than \$25,000; or
 - (b) more than 20 years have elapsed since the fund was established; and
- (c) the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument or instrument of donor intent."
 - Section 3. Section 72-30-208, MCA, is amended to read:
- "72-30-208. Standard of conduct in managing and investing institutional fund. (1) Subject to the intent of a donor expressed in a gift instrument or instrument of donor intent, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.
- (2) In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the

care an ordinarily prudent person in a like position would exercise under similar circumstances.

- (3) In managing and investing an institutional fund, an institution:
- (a) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and
- (b) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.
- (4) An institution may pool two or more institutional funds for purposes of management and investment.
- (5) Except as otherwise provided by a gift instrument or instrument of donor intent, the following rules apply:
- (a) In managing and investing an institutional fund, the following factors, if relevant, must be considered:
 - (i) general economic conditions;
 - (ii) the possible effect of inflation or deflation;
- (iii) the expected tax consequences, if any, of investment decisions or strategies;
- (iv) the role that each investment or course of action plays within the overall investment portfolio of the fund;
- (v) the expected total return from income and the appreciation of investments;
 - (vi) other resources of the institution;
- (vii) the needs of the institution and the fund to make distributions and to preserve capital; and
- (viii) an asset's special relationship or special value, if any, to the charitable purposes of the institution.
- (b) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.
- (c) Except as otherwise provided by law other than this chapter, an institution may invest in any kind of property or type of investment consistent with this section.
- (d) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification or unless the gift instrument or instrument of donor intent provides otherwise.
- (e) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this chapter.

(f) A person that has special skills or expertise or is selected in reliance upon the person's representation that the person has special skills or expertise has a duty to use those skills or that expertise in managing and investing institutional funds."

Section 4. Section 72-30-209, MCA, is amended to read:

"72-30-209. Appropriation for expenditure or accumulation of endowment fund — rules of construction. (1) Subject to the intent of a donor expressed in the gift instrument or instrument of donor intent and to subsection (4), an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument or instrument of donor intent, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall, in addition to considering the gift instrument or instrument of donor intent, consider, if relevant, the following factors:

- (a) the duration and preservation of the endowment fund;
- (b) the purposes of the institution and the endowment fund;
- (c) general economic conditions;
- (d) the possible effect of inflation or deflation;
- (e) the expected total return from income and the appreciation of investments:
 - (f) other resources of the institution; and
 - (g) the investment policy of the institution.
- (2) To limit the authority to appropriate for expenditure or accumulate under subsection (1), a gift instrument or instrument of donor intent must specifically state the limitation.
- (3) Terms in a gift instrument or instrument of donor intent designating a gift as an endowment or a direction or authorization in the gift instrument or instrument of donor intent to use only "income", "interest", "dividends", or "rents, issues, or profits" or "to preserve the principal intact" or words of similar import:
- (a) create an endowment fund of permanent duration unless other language in the gift instrument *or instrument of donor intent* limits the duration or purpose of the fund; and
- (b) do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (1).
- (4) The appropriation for expenditure in any year of an amount greater than 7% of the fair market value of an endowment fund, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than 3 years immediately preceding the year in which the appropriation for expenditure was made, creates a rebuttable presumption of imprudence. For an endowment fund in existence for fewer than 3 years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not:
- (a) apply to an appropriation for expenditure permitted under law other than this chapter or by the gift instrument or instrument of donor intent; or

(b) create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to 7% of the fair market value of the endowment

Section 5. Section 72-30-210, MCA, is amended to read:

"72-30-210. Delegation of management and investment functions. (1) Subject to any specific limitation set forth in a gift instrument, in an instrument of donor intent, or in law other than this chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

- (a) selecting an agent;
- (b) establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and
- (c) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.
- (2) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.
- (3) An institution that complies with subsection (1) is not liable for the decisions or actions of an agent to which the function was delegated.
- (4) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.
- (5) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than this chapter."

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 18, 2009

CHAPTER NO. 329

[SB 449]

AN ACT AUTHORIZING THE BOARD OF OIL AND GAS CONSERVATION TO PROMOTE THE STATE'S OIL AND GAS INDUSTRY, TO ENCOURAGE EFFICIENT ENERGY USE, TO PROMOTE ENVIRONMENTALLY SOUND EXPLORATION AND PRODUCTION METHODS AND TECHNOLOGIES, TO DEVELOP THE STATE'S OIL AND GAS RESOURCES, AND TO SUPPORT RESEARCH AND EDUCATIONAL ACTIVITIES CONCERNING THE OIL AND NATURAL GAS EXPLORATION AND PRODUCTION INDUSTRY; ALLOWING COORDINATION WITH MONTANA TECH OF THE UNIVERSITY OF MONTANA; AUTHORIZING THE BOARD TO MAKE LOANS OR GRANTS, ENTER INTO CONTRACTS OR AGREEMENTS, ACCEPT FUNDS, AND DISTRIBUTE MONEY; AND AMENDING SECTION 82-11-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-11-111, MCA, is amended to read:

- **"82-11-111. Powers and duties of board.** (1) The board shall make such investigations as *that* it considers proper to determine whether waste exists or is imminent or whether other facts exist which *that* justify any action by the board under the authority granted by this chapter with respect thereto.
- (2) Subject to the administrative control of the department under 2-15-121, the board shall:
- (a) require measures to be taken to prevent contamination of or damage to surrounding land or underground strata caused by drilling operations and production, including but not limited to regulating the disposal or injection of water and disposal of oil field wastes;
- (b) classify wells as oil or gas wells or class II injection wells for purposes material to the interpretation or enforcement of this chapter;
- (c) adopt and enforce rules and orders to effectuate the purposes and the intent of implement this chapter.
- (3) The board shall determine and prescribe what which producing wells shall be are defined as "stripper wells" and what which wells shall be are defined as "wildcat wells" and make such orders as that in its judgment are required to protect those wells and provide that stripper wells may be produced to capacity if it that is considered necessary in the interest of conservation to do so.
- (4) With respect to any pool from which gas was being produced by a gas well on or prior to April 1, 1953, this chapter does not authorize the board to limit or restrain the rate, (daily or otherwise), of production of gas from that pool by any existing well then or thereafter a well drilled after that date and producing from that pool to less than the rate at which the well can be produced without adversely affecting the quantity of gas ultimately recoverable by the well.
- (5) The board has exclusive jurisdiction over all class II injection wells and all pits and ponds in relation to those injection wells. The board may:
- (a) issue, suspend, revoke, modify, or deny permits to operate class II injection wells, consistent with rules made by it;
- (b) examine plans and other information needed to determine whether a permit should be issued or require changes in plans as a condition to the issuance of a permit;
- (c) clearly specify in a permit any limitations imposed as to the volume and characteristics of the fluids to be injected and the operation of the well;
- (d) authorize its staff to enter upon any public or private property at reasonable times to:
 - (i) investigate conditions relating to violations of permit conditions;
 - (ii) have access to and copy records required under this chapter;
 - (iii) inspect monitoring equipment or methods; and
 - (iv) sample fluids which that the operator is required to sample; and
- (e) adopt standards for the design, construction, testing, and operation of class II injection wells.
- (6) The board shall determine, for the purposes of using the oil and gas production damage mitigation account established in 82-11-161:
- (a) when the person responsible for an abandoned well, sump, or hole cannot be identified or located, or if the person is identified or located, when the person

does not have sufficient financial resources to properly plug the well, sump, or hole: or

- (b) when a previously abandoned well, sump, or hole is the cause of potential environmental problems and no responsible party can be identified or located or, if a responsible party can be identified and located, the person does not have sufficient financial resources to correct the problems.
- (7) The board may take measures to demonstrate to the general public the importance of the state's oil and gas exploration and production industry, to encourage and promote the wise and efficient use of energy, to promote environmentally sound exploration and production methods and technologies, to develop the state's oil and gas resources, and to support research and educational activities concerning the oil and natural gas exploration and production industry. The board may:
- (a) make grants or loans and provide other forms of financial assistance as necessary or appropriate from available funds to qualified persons for research, development, marketing, educational projects, and processes or activities directly related to the state's oil and gas exploration and production industry;
- (b) enter into contracts or agreements to carry out the purposes of this subsection (7), including the authority to contract for the administration of an oil and gas research, development, marketing, and educational program;
- (c) cooperate with any private, local, state, or national commission, organization, agent, or group and enter into contracts and agreements for programs benefiting the oil and gas exploration and production industry;
- (d) coordinate with the Montana university system, including Montana tech of the university of Montana or any of its affiliated research programs;
- (e) accept donations, grants, contributions, and gifts from any public or private source for deposit in the oil and gas education and research account established in [section 2];
- (f) distribute funds from the oil and gas education and research account to carry out the provisions of this subsection (7); and
 - (g) make orders and rules to implement the provisions of this subsection (7)."
- Section 2. Oil and gas education and research account. There is an oil and gas education and research account within the state special revenue fund established in 17-2-102. Interest or other income earned on money in the oil and gas education and research account accrues to that account.
- **Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to [section 2].

Approved April 18, 2009

CHAPTER NO. 330

[HB 42]

AN ACT REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ADDRESS FIRE MITIGATION, PINE BEETLE INFESTATION, AND WILDLIFE HABITAT ENHANCEMENT FOR CERTAIN LANDS UNDER DEPARTMENT JURISDICTION; ESTABLISHING A FOREST MANAGEMENT SPECIAL REVENUE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502,

 $87\text{-}1\text{-}201, \text{AND}\,87\text{-}1\text{-}601, \text{MCA}; \text{AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.}$

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

- "17-7-502. Statutory appropriations definition requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.
- (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:
- (a) The law containing the statutory authority must be listed in subsection (3).
- (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.
- (3) The following laws are the only laws containing statutory appropriations: $2 \cdot 17 \cdot 105$; $5 \cdot 11 \cdot 120$; $5 \cdot 11 \cdot 407$; $5 \cdot 13 \cdot 403$; $7 \cdot 4 \cdot 2502$; $10 \cdot 1 \cdot 1202$; $10 \cdot 1 \cdot 1303$; $10 \cdot 2 \cdot 603$; $10 \cdot 3 \cdot 203$; $10 \cdot 3 \cdot 310$; $10 \cdot 3 \cdot 312$; $10 \cdot 3 \cdot 314$; $10 \cdot 4 \cdot 301$; $15 \cdot 1 \cdot 121$; $15 \cdot 1 \cdot 218$; $15 \cdot 23 \cdot 706$; $15 \cdot 31 \cdot 906$; $15 \cdot 35 \cdot 108$; $15 \cdot 36 \cdot 332$; $15 \cdot 37 \cdot 117$; $15 \cdot 39 \cdot 110$; $15 \cdot 65 \cdot 121$; $15 \cdot 70 \cdot 101$; $15 \cdot 70 \cdot 369$; $15 \cdot 70 \cdot 601$; $16 \cdot 11 \cdot 509$; $17 \cdot 3 \cdot 106$; $17 \cdot 3 \cdot 212$; $17 \cdot 3 \cdot 222$; $17 \cdot 3 \cdot 241$; $17 \cdot 6 \cdot 101$; $17 \cdot 7 \cdot 304$; $18 \cdot 11 \cdot 112$; $19 \cdot 3 \cdot 319$; $19 \cdot 6 \cdot 404$; $19 \cdot 6 \cdot 410$; $19 \cdot 9 \cdot 702$; $19 \cdot 13 \cdot 604$; $19 \cdot 17 \cdot 301$; $19 \cdot 18 \cdot 512$; $19 \cdot 19 \cdot 305$; $19 \cdot 19 \cdot 506$; $19 \cdot 20 \cdot 604$; $19 \cdot 20 \cdot 607$; $19 \cdot 21 \cdot 203$; $20 \cdot 8 \cdot 107$; $20 \cdot 9 \cdot 534$; $20 \cdot 9 \cdot 622$; $20 \cdot 26 \cdot 1503$; $22 \cdot 3 \cdot 1004$; $23 \cdot 4 \cdot 105$; $23 \cdot 4 \cdot 204$; $23 \cdot 4 \cdot 204$; $23 \cdot 4 \cdot 302$; $23 \cdot 4 \cdot 304$; $23 \cdot 5 \cdot 306$; $23 \cdot 5 \cdot 409$; $23 \cdot 5 \cdot 612$; $23 \cdot 7 \cdot 402$; $37 \cdot 43 \cdot 204$; $37 \cdot 51 \cdot 501$; $39 \cdot 71 \cdot 503$; $41 \cdot 5 \cdot 2011$; $42 \cdot 2 \cdot 105$; $44 \cdot 1 \cdot 504$; $44 \cdot 12 \cdot 206$; $44 \cdot 13 \cdot 102$; $50 \cdot 4 \cdot 623$; $53 \cdot 1 \cdot 109$; $53 \cdot 6 \cdot 703$; $53 \cdot 24 \cdot 108$; $53 \cdot 24 \cdot 206$; $60 \cdot 11 \cdot 115$; $61 \cdot 3 \cdot 415$; $69 \cdot 3 \cdot 870$; $75 \cdot 1 \cdot 1101$; $75 \cdot 5 \cdot 1108$; $75 \cdot 6 \cdot 214$; $75 \cdot 11 \cdot 313$; $76 \cdot 13 \cdot 150$; $77 \cdot 1 \cdot 108$; $77 \cdot 2 \cdot 362$; $80 \cdot 2 \cdot 222$; $80 \cdot 4 \cdot 416$; $80 \cdot 5 \cdot 510$; $80 \cdot 11 \cdot 518$; $82 \cdot 11 \cdot 161$; $87 \cdot 1 \cdot 513$; [section 3]; $90 \cdot 1 \cdot 115$; $90 \cdot 1 \cdot 205$; $90 \cdot 3 \cdot 1003$; and $90 \cdot 9 \cdot 306$.
- (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)"

Section 2. Section 87-1-201, MCA, is amended to read:

- "87-1-201. Powers and duties. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.
- (2) The department shall enforce all the laws of the state respecting the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.
- (3) The department has the exclusive power to spend for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is appropriated to and under control of the department.
- (4) The department may discharge any appointee or employee of the department for cause at any time.
- (5) The department may dispose of all property owned by the state used for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.
- (6) The department may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.
- (7) The department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of chapter 2 that in its judgment will accomplish the purpose of chapter 2.
- (8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or outside of the state.
 - (9) (a) The department shall implement programs that:
- (i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;
- (ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species; and
- (iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In implementing an elk management plan, the department shall, as necessary to achieve harvest and population objectives, request that land management agencies open public lands and public roads to public access during the big game hunting season.

- (iv) address fire mitigation, pine beetle infestation, and wildlife habitat enhancement giving priority to forested lands in excess of 50 contiguous acres in any state park, fishing access site, or wildlife management area under the department's jurisdiction.
- (b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.
- (c) Any management plan developed by the department pursuant to this subsection (9) is subject to the requirements of Title 75, chapter 1, part 1.
- (d) This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.
- (10) The department shall publish an annual game count, estimating to the department's best ability the numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative regions of the state. In preparing the publication, the department may incorporate field observations, hunter reporting statistics, or any other suitable method of determining game numbers. The publication must include an explanation of the basis used in determining the game count."
- **Section 3. Forest management account.** (1) There is a special revenue account called the forest management account to the credit of the department of fish, wildlife, and parks.
- (2) The forest management account consists of money deposited into the account from forest management projects undertaken pursuant to 87-1-201(9)(a)(iv) and from any other source. Any interest earned by the account must be deposited into the account.
- (3) Except as otherwise directed by state or federal law, funds from the forest management account are statutorily appropriated, as provided in 17-7-502, to the department and must be used by the department to implement forest management projects that may result pursuant to the provisions of 87-1-201(9)(a)(iv).
- **Section 4. Forest management account.** (1) There is a special revenue account called the forest management account to the credit of the department of fish, wildlife, and parks.
- (2) The forest management account consists of money deposited into the account from forest management projects undertaken pursuant to 87-1-201(9)(a)(iv) and from any other source. Any interest earned by the account must be deposited into the account.
- (3) Except as otherwise directed by state or federal law, funds from the forest management account must be used by the department to implement forest management projects that may result pursuant to the provisions of 87-1-201(9)(a)(iv).
 - **Section 5.** Section 87-1-601, MCA, is amended to read:
- **"87-1-601. Use of fish and game money.** (1) (a) Except as provided in subsections (7) and (9), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must

be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

- (b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.
- (c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:
 - (i) the general license account;
 - (ii) the license drawing account;
- (iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and
 - (iv) money received from the sale of any other hunting and fishing license.
- (2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.
- (3) Any reference to the fish and game fund in Title 87 means fish and game money in the state special revenue fund and the federal special revenue fund.
- (4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.
- (5) (a) Except as provided in *[section 2] and* section 2(3), Chapter 560, Laws of 2005, money must be deposited in an account in the permanent fund if it is received by the department from:
 - (i) the sale of surplus real property;
- (ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department, except royalties or other compensation based on production; and
- (iii) leases of interests in department real property not contemplated at the time of acquisition.
- (b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.
- (6) Money received from the collection of license drawing applications is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

- (7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.
- (8) The department of revenue shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102.
- (9) (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.
- (b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.
- (c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.
- (d) Any money deposited in the special revenue account is available for reimbursement of search and rescue missions and to provide matching funds to reimburse counties for search and rescue training and equipment costs."
- **Section 6. Codification instruction.** [Sections 3 and 4] are intended to be codified as an integral part of Title 87, chapter 1, and the provisions of Title 87, chapter 1, apply to [sections 3 and 4].
- **Section 7.** Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2009.
 - (2) [Section 4] is effective July 1, 2013.

Section 8. Termination. [Section 3] terminates June 30, 2013.

Approved April 24, 2009

CHAPTER NO. 331

[HB 150]

AN ACT CREATING THE MONTANA RECREATION RESPONSIBILITY ACT; PROVIDING THAT A PERSON WHO ENGAGES IN A SPORT OR RECREATIONAL OPPORTUNITY ASSUMES THE INHERENT RISKS IN THAT SPORT OR RECREATIONAL OPPORTUNITY AND IS RESPONSIBLE FOR INJURIES AND DAMAGES RESULTING FROM THOSE INHERENT RISKS; LIMITING THE LIABILITY OF THE PROVIDERS OF A SPORT OR RECREATIONAL OPPORTUNITY; PROVIDING GOVERNMENTAL IMMUNITY; CLARIFYING THAT A PROVIDER IS NOT REQUIRED TO ELIMINATE, ALTER, OR CONTROL THE INHERENT RISKS WITHIN A PARTICULAR SPORT OR RECREATIONAL OPPORTUNITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, all sports and recreational activities involve inherent risks that provide the challenge and excitement that entice recreationists to participate in those activities; and

WHEREAS, recreationists should accept the risks inherent in sports and recreational activities and be responsible for injury or damage resulting from those inherent risks; and

WHEREAS, the state has a legitimate interest in maintaining the economic viability of the sports and recreational industries by discouraging claims based on damages resulting from risks inherent in a sport or recreational activity; and

WHEREAS, providers of recreational opportunities should not be required to alter the challenge and excitement of recreational activities by controlling risks inherent in the activities; and

WHEREAS, the liability of providers of recreational opportunities should be limited to negligence that is not associated with the inherent risks of a sport or recreational activity.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 4] may be cited as the "Montana Recreation Responsibility Act".

Section 2. Definitions. As used in [sections 1 through 4], the following definitions apply:

- (1) "Inherent risks" means those dangers or conditions that are characteristic of, intrinsic to, or an integral part of any sport or recreational activity and that cannot be prevented by the use of reasonable care.
- (2) "Provider" means a person, corporation, partnership, or other business entity, including a governmental entity as defined in 2-9-111, that promotes, offers, or conducts a sport or recreational opportunity, for profit or otherwise.
- (3) "Sport or recreational opportunity" means any sporting activity, whether undertaken with or without permission, including but not limited to baseball, softball, football, soccer, basketball, bicycling, hiking, swimming, boating, hockey, dude ranching, nordic or alpine skiing, snow boarding, snow sliding, mountain climbing, river floating, whitewater rafting, canoeing, kayaking, target shooting, hunting, fishing, backcountry trips, horseback riding and other equine activity, snowmobiling, off-highway vehicle use, and any similar recreational activity.
- Section 3. Limitation on liability in sport or recreational opportunity. (1) A person who participates in any sport or recreational opportunity assumes the inherent risks in that sport or recreational opportunity, whether those risks are known or unknown, and is legally responsible for all injury or death to the person and for all damage to the person's property that result from the inherent risks in that sport or recreational opportunity.
- (2) A provider is not required to eliminate, alter, or control the inherent risks within the particular sport or recreational opportunity that is provided.
- (3) [Sections 1 through 4] do not preclude an action based on the negligence of the provider if the injury, death, or damage is not the result of an inherent risk of the sport or recreational opportunity.
- (4) [Sections 1 through 4] do not apply to a cause of action based on the design, manufacture, provision, or maintenance of sports or recreational

equipment or products or safety equipment used incidental to or required by the sport or recreational activity.

Section 4. Recreational activity — applicability exceptions. [Sections 1 through 3] do not apply to duties, responsibilities, liability, or immunity related to:

- (1) recreational use of waters or land, as provided in 23-2-321;
- (2) snowmobiling, as provided in 23-2-653 and 23-2-654;
- (3) skiing, as provided in Title 23, chapter 2, part 7;
- (4) off-highway vehicle operation, as provided in 23-2-822;
- (5) instruction in firearms and hunter safety or hunter education, as provided in 27-1-721;
 - (6) equine activity, as provided in 27-1-727;
 - (7) sponsored rodeo and similar events, as provided in 27-1-733;
 - (8) amusement rides, as provided in 27-1-743 and 27-1-744;
- (9) recreational use of land, as provided in 23-2-907, 70-16-302, 77-1-805, 87-1-266, 87-1-267, and 87-1-286;
 - (10) wildcrafting, as provided in 76-10-106; and
- (11) placement of a sign or marker warning of a hazard in water legally accessible to the public, as provided in 87-1-287.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27, chapter 1, part 7, apply to [sections 1 through 4].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Two-thirds vote required. Because [section 3] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 8. Effective date. [This act] is effective on passage and approval.

Section 9. Applicability. [This act] applies to injuries and deaths that occur on or after [the effective date of this act].

Approved April 27, 2009

CHAPTER NO. 332

[HB 228]

AN ACT PRESERVING AND CLARIFYING LAWS RELATING TO THE RIGHT OF SELF-DEFENSE AND THE RIGHT TO BEAR ARMS; AMENDING SECTIONS 45-3-103, 45-8-321, AND 46-6-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature declares that:

(1) the right of Montanans to defend their lives and liberties, as provided in Article II, section 3, of the Montana Constitution, and their right to keep or bear arms in defense of their homes, persons, and property, as provided in Article II,

section 12, of the Montana Constitution, are fundamental and may not be called into question;

- (2) the use of firearms for self-defense is recognized within the right reserved to the individual people of Montana in Article II, section 12, of the Montana Constitution;
- (3) self-defense is a natural right under section 1-2-104, MCA, and is included in sections 49-1-101 and 49-1-103, MCA;
- (4) the lawful use of firearms for self-defense is not a crime or an offense against the people of the state;
- (5) in a criminal case in which self-defense is asserted, the burden of proof is as provided in [section 10];
- (6) in self-defense, the use of justifiable force discourages violent crime and prevents victimization; and
- (7) the purpose of [sections 1 through 3] is to clarify and secure the ability of the people to protect themselves.

Be it enacted by the Legislature of the State of Montana:

- **Section 1.** No duty to summon help or flee. Except as provided in 45-3-105, a person who is lawfully in a place or location and who is threatened with bodily injury or loss of life has no duty to retreat from a threat or summon law enforcement assistance prior to using force. The provisions of this section apply to a person offering evidence of justifiable use of force under 45-3-102, 45-3-103, or 45-3-104.
- **Section 2. Openly carrying weapon display exemption.** (1) Any person who is not otherwise prohibited from doing so by federal or state law may openly carry a weapon and may communicate to another person the fact that the person has a weapon.
- (2) If a person reasonably believes that the person or another person is threatened with bodily harm, the person may warn or threaten the use of force, including deadly force, against the aggressor, including drawing or presenting a weapon.
- (3) This section does not limit the authority of the board of regents or other postsecondary institutions to regulate the carrying of weapons, as defined in 45-8-361(5)(b), on their campuses.
- Section 3. Investigation of alleged offense involving claim of justifiable use of force. When an investigation is conducted by a peace officer of an incident that appears to have or is alleged to have involved justifiable use of force, the investigation must be conducted so as to disclose all evidence, including testimony concerning the alleged offense and that might support the apparent or alleged justifiable use of force.
 - **Section 4.** Section 45-3-103, MCA, is amended to read:
- **"45-3-103.** Use of force in defense of occupied structure. (1) A person is justified in the use of force or threat to use force against another when and to the extent that he *the person* reasonably believes that such conduct the use of force is necessary to prevent or terminate such the other's unlawful entry into or attack upon an occupied structure. However, he
- (2) A person justified in the use of force pursuant to subsection (1) is justified in the use of force likely to cause death or serious bodily harm only if:

- (1)(a) the entry is made or attempted in violent, riotous, or tumultuous manner and he the person reasonably believes that such the force is necessary to prevent an assault upon or offer of personal violence to him the person or another then in the occupied structure; or
- (2)(b) he the person reasonably believes that such the force is necessary to prevent the commission of a forcible felony in the occupied structure."
- **Section 5. Firearm not to be destroyed.** If a firearm possessed by a law enforcement agency was not purchased by the agency for agency use, if it is legal for a private person to own and possess the firearm, and if the legal owner cannot be determined by the agency, the agency may not destroy the firearm and shall sell the firearm to a licensed dealer. The proceeds of the sale must be deposited in the general fund of the governmental entity of which the agency is a part.
- Section 6. Landlords and tenants no firearm prohibition allowed. A landlord or operator of a hotel or motel may not, by contract or otherwise, prevent a tenant or a guest of a tenant from possessing on the premises a firearm that it is legal for the tenant or guest to possess. A landlord or operator of a hotel or motel may prohibit the discharge of a firearm on the premises except in self-defense.
 - Section 7. Section 45-8-321, MCA, is amended to read:
- "45-8-321. Permit to carry concealed weapon. (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen who is 18 years of age or older and who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:
- (a) is ineligible under Montana or federal law to own, possess, or receive a firearm.
- (b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable by incarceration for 1 year or more;
- (c) subject to the provisions of subsection (6), has been convicted in any state or federal court of:
 - (i) a crime punishable by more than 1 year of incarceration or; or
- (ii) regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, violence, bodily or serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;
- (d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years have elapsed since the date of the conviction;
- (e) has a warrant of any state or the federal government out for the applicant's arrest;
- (f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;

- (g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill, mentally defective, or mentally disabled and is still subject to a disposition order of that court; or
 - (h) was dishonorably discharged from the United States armed forces.
- (2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the applicant is the subject of an active criminal investigation, give the applicant a written statement of the reasonable cause upon which the denial is based.
- (3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:
- (a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;
- (b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;
- (c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency;
- (d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (3)(a) through (3)(c); or
- (e) evidence that the applicant, during military service, was found to be qualified to operate firearms, including handguns.
- (4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in subsection (3).
- (5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with a firearm may be satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or entity to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the applicant's familiarity with a firearm.
- (6) A person, except a person referred to in subsection (1)(c)(ii), who has been convicted of a felony and whose rights have been restored pursuant to Article II, section 28, of the Montana constitution is entitled to issuance of a concealed weapons permit if otherwise eligible."

Section 8. Section 46-6-502, MCA, is amended to read:

"46-6-502. Arrest by private person. (1) A private person may arrest another when there is probable cause to believe that the person is committing or

has committed an offense and the existing circumstances require the person's immediate arrest. The private person may use reasonable force to detain the arrested person.

- (2) A private person making an arrest shall immediately notify the nearest available law enforcement agency or peace officer and give custody of the person arrested to the officer or agency."
- Section 9. Justifiable use of force burden of proof. In a criminal trial, when the defendant has offered evidence of justifiable use of force, the state has the burden of proving beyond a reasonable doubt that the defendant's actions were not justified.
- **Section 10. Codification instruction.** (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 45, chapter 3, part 1, and the provisions of Title 45, chapter 3, part 1, apply to [sections 1 through 3].
- (2) [Section 5] is intended to be codified as an integral part of Title 46, chapter 5, part 3, and the provisions of Title 46, chapter 5, part 3, apply to [section 5].
- (3) [Section 6] is intended to be codified as an integral part of Title 70, chapter 24, part 1, and the provisions of Title 70, chapter 24, part 1, apply to [section 6].
- (4) [Section 9] is intended to be codified as an integral part of Title 46, chapter 16, part 1, and the provisions of Title 46, chapter 16, part 1, apply to [section 9].

Section 11. Effective date. [This act] is effective on passage and approval. Approved April 27, 2009

CHAPTER NO. 333

[HB 238]

AN ACT ESTABLISHING A STATE TEEN DRIVER SAFETY DAY AS AN OFFICIAL DAY OF OBSERVANCE IN MONTANA TO PROMOTE TEEN DRIVER EDUCATION AND SAFETY.

WHEREAS, Congressman Charlie Dent (R-PA) and Senator Bob Casey (D-PA) introduced a resolution creating a National Teen Driver Safety Week in response to several tragic crashes involving Pennsylvania high school students and the first annual National Teen Driver Safety Week was held October 15 through 20, 2007; and

WHEREAS, many people, especially teenagers, do not realize the consequences of driving while distracted and education is needed in order for teenagers to become more aware of the dangers they face while driving; and

WHEREAS, a national survey shows that two out of three teenagers use cell phone text messaging while driving, which has been found to increase the chances of a car accident by 50%; and

WHEREAS, other distractions while driving include talking on a cell phone, eating, dealing with personal hygiene, and adjusting music and, according to the federal government, more than 30% of all car crashes in the United States involve a distracted driver; and

WHEREAS, because 77% of fatal crashes involving 16-year-olds behind the wheel are caused by driver error, it is apparent that education could significantly lower the number of fatal car accidents; and

WHEREAS, car crashes are the leading cause of death for teenagers in the United States, about 10 teenagers between 16 and 19 years of age die in teen driver car accidents every day, and teens make up only 6.7% of all motorists even though they account for 14% of fatal car crashes in the United States; and

WHEREAS, officials say that teens' inexperience and recklessness on the road have a lot to do with the deadly statistics; and

WHEREAS, 18 states, not including Montana, have focused on the specific problem of teen driving and cell phone text messaging while driving and have made text messaging while driving illegal; and

WHEREAS, since 2007, approximately 21 states have recognized National Teen Driver Safety Week and planned specific activities targeting teen drivers; and

WHEREAS, establishing a state Teen Driver Safety Day is an important tool for raising awareness about the tragedy of teen driver car crashes, will spark communication among teenagers, their parents, and civic leaders about the causes of and solutions to teen driver car crashes, and will encourage self-reflection by teen drivers.

Be it enacted by the Legislature of the State of Montana:

Section 1. State teen driver safety day. (1) To increase public awareness and promote teen driver safety, the third Tuesday in October is designated teen driver safety day and is an official day of observance.

(2) All Montanans are encouraged to participate in special observances and exercises throughout the state on this day in order to educate teens about the fatal consequences of distractions while driving and to promote teen driver safety. The governor and the office of public instruction may officially recognize and encourage the observances and exercises described in this section.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 2, and the provisions of Title 1, chapter 1, part 2, apply to [section 1].

Approved April 24, 2009

CHAPTER NO. 334

[HB 262]

AN ACT REVISING THE DEFINITION OF "LOW-EMISSION WOOD OR BIOMASS COMBUSTION DEVICE" TO INCLUDE A MASONRY HEATER AND AN OUTDOOR HYDRONIC HEATER FOR THE PURPOSE OF CLAIMING THE TAX CREDIT FOR INSTALLING AN ALTERNATIVE ENERGY SYSTEM; AMENDING SECTIONS 15-32-102 AND 15-32-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-32-102, MCA, is amended to read:

"15-32-102. Definitions. As used in this part, the following definitions apply:

- (1) "Alternative energy system" means the generation system or equipment used to convert energy sources into usable sources using fuel cells that do not require hydrocarbon fuel, geothermal systems, low-emission wood or biomass, wind, photovoltaics, geothermal, small hydropower plants under 1 megawatt, and other recognized nonfossil forms of energy generation.
 - (2) "Building" means:
- (a) a single or multiple dwelling, including a mobile home or manufactured home; or
- (b) a building used for commercial, industrial, or agricultural purposes that is enclosed with walls and a roof.
- (3) "Capital investment" means any material or equipment purchased and installed in a building or land with or without improvements.
- (4) "Energy conservation purpose" means one or both of the following results of an investment:
 - (a) reducing the waste or dissipation of energy; or
- (b) reducing the amount of energy required to accomplish a given quantity of work.
- (5) "Geothermal system" means a system that transfers energy either from the ground, by way of a closed loop, or from ground water, by way of an open loop, for the purpose of heating or cooling a residential building.
- (6) "Low-emission wood or biomass combustion device" means a wood-burning appliance:
 - (a) a wood burning appliance that is:
- (i) certified by the U.S. environmental protection agency pursuant to 40 CFR 60.533; Θ or
- (ii) qualified for the phase 2 white tag under the U.S. environmental protection agency method 28 OWHH for outdoor hydronic heaters;
 - (b) an appliance that uses wood pellets as its primary source of fuel; or
- (c) a masonry heater constructed or installed in compliance with the requirements for masonry heaters in the International Residential Code for Oneand Two-Family Dwellings.
- (7)(7) "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. It *The term* includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building.
 - (8)(8) "Recognized nonfossil forms of energy generation" means:
- (a) a system that captures energy or converts energy sources into usable sources, including electricity, by using:
 - (i) solar energy, including passive solar systems;
 - (ii) wind;
 - (iii) solid waste;
 - (iv) the decomposition of organic wastes;
 - (v) geothermal;

- (vi) fuel cells that do not require hydrocarbon fuel; or
- (vii) an alternative energy system;
- (b) a system that produces electric power from biomass or solid wood wastes; or
- (c) a small system that uses water power by means of an impoundment that is not over 20 acres in surface area."

Section 2. Section 15-32-201, MCA, is amended to read:

- "15-32-201. Amount of credit to whom available. (1) A resident individual taxpayer who completes installation of an energy system using a recognized nonfossil form of energy generation, as defined in 15-32-102, in to provide heat for the taxpayer's principal dwelling after December 31, 2001, is entitled allowed to claim a tax credit in an amount equal to the cost of the system, including installation costs, less grants received, not to exceed \$500, against the income tax liability imposed against the taxpayer pursuant to chapter 30.
- (2) A A resident individual taxpayer who completes installation of an energy system using a low-emission wood or biomass combustion device, as defined in 15-32-102, in to provide heat for the taxpayer's principal dwelling after December 31, 2001, is entitled allowed to claim a tax credit in an amount equal to the cost of the system, including the installation costs, not to exceed \$500, against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30."
 - Section 3. Effective date. [This act] is effective on passage and approval.
- **Section 4. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to masonry heaters installed after December 31, 2008, and to tax years beginning after December 31, 2008.

Approved April 24, 2009

CHAPTER NO. 335

[HB 269]

AN ACT REVISING THE DOLLAR RATE AT WHICH FINES FOR CERTAIN CRIMINAL OFFENSES WILL BE SATISFIED BASED ON EACH DAY OF IMPRISONMENT; AMENDING SECTIONS 46-17-302 AND 61-7-118, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-17-302, MCA, is amended to read:

- **"46-17-302. Execution of judgment.** (1) The judgment must be executed by the sheriff, constable, marshal, or policeman police officer of the jurisdiction in which the conviction was had offender was convicted.
- (2) When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the sheriff or other officer, which is a sufficient warrant for its execution.
- (3) If a judgment is rendered imposing a fine only without imprisonment for nonpayment and the defendant offender is not detained for any other legal cause, he the offender must be discharged as soon as the judgment is given.
- (4) A judgment that the defendant offender pay a fine may also direct that he the offender be imprisoned until the fine be is satisfied in the proportion of 1

day's imprisonment for every \$25 every \$75 of the fine. When the judgment is rendered, the defendant offender must be held in custody the time specified in the judgment unless the fine is paid.

(5) Any officer charged with the collection of fines under the provisions of this chapter must shall return the execution to the judge within 30 days from its delivery to him the officer and pay over to the judge the money collected to the judge after, deducting his the officer's fees for the collection."

Section 2. Section 61-7-118, MCA, is amended to read:

- "61-7-118. Penalty for violation. (1) A person violating any provision of 61-7-104 through 61-7-110 or 61-7-112 through 61-7-114 is guilty of a misdemeanor. Upon a first conviction, the offender shall be punished by a fine of not less than \$200 or more than \$300 or by imprisonment for not more than 20 days. For a second conviction within 1 year of the first conviction, the offender shall be punished by a fine of not less than \$300 or more than \$400, by imprisonment for not more than 30 days, or both. Upon a third or subsequent conviction within 1 year of the first conviction, an offender shall be punished by a fine of not less than \$400 or more than \$500, by imprisonment for not more than 6 months, or both.
- (2) Subject to the limitations of 46-18-231(3), an offender who fails to pay a fine shall be imprisoned in the county jail in the county in which the offense was committed, and the punishment shall must be commuted at the rate of 1 day's incarceration for each \$20 each \$75 of the fine."

Section 3. Effective date. [This act] is effective July 1, 2009.

Approved April 24, 2009

CHAPTER NO. 336

[HB 280]

AN ACT SPECIFYING THAT NEW COMMUNITY HEALTH CENTERS MAY RECEIVE STATE FUNDING FOR A MAXIMUM OF 6 YEARS; AMENDING SECTION 50-4-805, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-4-805, MCA, is amended to read:

- "50-4-805. Program expenditures report to legislature. (1) Subject to appropriation by the legislature, the department shall provide competitive grants in accordance with 50-4-806 and this section to community or tribal boards operating as a nonprofit entity in accordance with the Public Health Service Act, 42 U.S.C. 254b, to increase access to primary care and preventive health services for uninsured, underinsured, low-income, or underserved Montanans.
 - (2) Grants must be made each year to accomplish any of the following goals:
- (a) to create and support new nonfederally funded community health centers with state funding for a maximum of 6 years or until federal funds are granted. Successful applicants for the state grants shall also apply for federally qualified health center look-alike status and federal community health center grants at the first available opportunity.
- (b) to expand the medical, mental health, or dental services offered by existing federally qualified community health centers or other facilities that have received federally qualified health center look-alike status; and

- (c) to provide one-time grants for capital expenditures to existing federally qualified community health centers and facilities with federally qualified health center look-alike status.
 - (3) The department shall contract with an entity that is able to:
- (a) provide technical assistance to new and existing federally qualified community health centers in their efforts to apply for federal funds;
 - (b) assist new and existing centers in their efforts to expand services; and
- (c) collect standardized data on the provision of services to low-income and uninsured Montanans.
- (4) The department shall require the contractor to provide an annual report on the services it has provided, the data it has collected, and the status of applications for federal community health center funding.
- (5) (a) The department shall provide regular interim reports on the status of the program and program expenditures to the legislative finance committee and the children, families, health, and human services interim committee.
- (b) The department shall report to the legislature, as provided for in 5-11-210, the following information for each year of the biennium:
 - (i) the status of the expenditures made pursuant to this part;
 - (ii) the number of people served by the expenditure of funds; and
 - (iii) the costs to the state of the services provided pursuant to this part."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 3. Effective date. [This act] is effective July 1, 2009.

Approved April 27, 2009

CHAPTER NO. 337

[HB 306]

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO DESIGN AND ISSUE SPECIAL MOTORCYCLE LICENSE PLATES FOR MILITARY PERSONNEL, VETERANS, AND SPOUSES; REQUIRING THE DONATION FOR A PLATE TO BE DEPOSITED INTO THE SPECIAL REVENUE ACCOUNT FOR THE STATE VETERANS' CEMETERIES; AMENDING SECTIONS 61-3-455 AND 61-3-458, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Special motorcycle license plates for military personnel, veterans, and spouses department to design fees disposition. (1) The department shall design and issue motorcycle license plates for all special military and veteran license plates provided for in 61-3-458(2)(d) and (3).
- (2) A person requesting a special military or veteran motorcycle license plate under this section:
- (a) is subject to the eligibility requirements for the license plate as provided in 61-3-458; and
 - (b) shall pay to the county treasurer:

- (i) an administrative fee of \$5 upon issuance of the motorcycle license plate, to be deposited in the county general fund;
 - (ii) a \$5 license plate fee, to be deposited in the state general fund; and
 - (iii) a \$10 veterans' cemetery fee, to be deposited as provided in 61-3-459(2).
- (3) Upon request, after paying the fees imposed under subsection (2)(b) and any applicable vehicle registration fees under this chapter, the surviving spouse of an eligible veteran, if the spouse has not remarried, may retain the special license plates issued to the deceased veteran, subject to the eligibility requirements for the plate as provided in 61-3-458(4).
 - Section 2. Section 61-3-455, MCA, is amended to read:
- **"61-3-455. Violation a misdemeanor.** A person who violates 61-3-458, or 61-3-460, or [section 1] or who knowingly and wrongfully attempts to secure license plates under 61-3-332, 61-3-458, or 61-3-460, or [section 1] is guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or imprisonment for not more than 30 days, or both."
 - **Section 3.** Section 61-3-458, MCA, is amended to read:
- "61-3-458. Special plates for military personnel, veterans, and spouses. (1) (a) Active military personnel, veterans, or the surviving spouse of an eligible veteran, if the spouse has not remarried, may be issued special military or veteran license plates as provided in this section.
- (b) Subject to the provisions of 61-3-332 and except as otherwise provided in this chapter, special license plates issued pursuant to this section must be numbered in sets of two with a different number on each set and must be properly displayed as provided in 61-3-301. Special military or veteran license plates may not be issued for a motorcycle, quadricycle, semitrailer, or pole trailer. Special military or veteran license plates bearing a wheelchair as the symbol of a person with a disability may be issued to a person who meets the qualifications under 61-3-332(9) and this section. Special military or veteran license plates may be issued for a motorcycle pursuant to [section 1].
- (2) (a) Upon application, after paying all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees and special license plate fees and providing an official certificate from the applicant's unit commander verifying the individual's eligibility and authorizing the department to issue the plates to the individual, eligible military personnel may be issued one set of special military license plates as provided in this subsection (2).
- (b) A member of the Montana national guard who is a state resident may be issued special license plates with a design or decal displaying the letters "NG". However, the member shall surrender the plates to the department when the member becomes ineligible.
- (c) A member of the reserve armed forces of the United States who is a state resident may be issued special license plates according to the member's branch of service verified in the application with a design or decal displaying one of the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); or United States marine corps reserve, MCR (globe and anchor). However, the member shall surrender the plates to the department when the member becomes ineligible.
- (d) An active member of the regular armed forces of the United States who is a state resident may be issued special license plates inscribed with a symbol signifying the United States army, United States navy, United States air force,

United States marine corps, or United States coast guard, according to the member's branch of service verified in the application. However, the member shall surrender the plates to the department upon becoming ineligible.

- (3) (a) Upon application, after presenting proper identification and a department of defense form 214 (DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment verifying the applicant's eligibility and paying the veterans' cemetery fee specified in 61-3-459 and all applicable motor vehicle, trailer, semitrailer, or pole trailer registration fees under this chapter, subject to the provisions of 61-3-460, an eligible veteran must be issued any set and more than one set of the special license plates provided for in this subsection (3) that the member requests and is eligible to receive.
- (b) A veteran may be issued special license plates displaying the letters "DV", which entitles the veteran to the parking privileges allowed to a person with a special parking permit issued under Title 49, chapter 4, part 3, if the veteran:
- (i) has been awarded the purple heart and has been rated by the U.S. department of veterans affairs as 50% or more disabled because of a service-connected injury; or
- (ii) is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability.
- (c) A veteran who has been awarded the purple heart may be issued special license plates with the purple heart decal displaying the words "combat wounded".
- (d) A veteran who was captured and held prisoner by the military force of a foreign nation may be issued special license plates with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.
- (e) If the veteran was a member of the United States armed forces on December 7, 1941, and during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) was on station at Pearl Harbor on the island of Oahu or was offshore from Pearl Harbor at a distance of not more than 3 miles, the veteran may be issued special license plates designed to show that the veteran is a survivor of the Pearl Harbor attack.
- (f) A person who is a member of the legion of valor may be issued special plates displaying a design or decal depicting the recognized legion of valor medallion.
- (g) A veteran may be issued special license plates displaying the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the veteran's service record verified in the application.
- (h) A member or a former member of the Montana national guard eligible to receive a military retirement may be issued special license plates displaying the Montana national guard insignia and the words "National Guard veteran".
- (i) A veteran who qualifies under subsections (3)(b) and (3)(c) may be issued special combination license plates displaying the letters "DV" and displaying a purple heart decal with the words "combat wounded". A person who receives the combination plates is entitled to the same parking privileges as provided in subsection (3)(b).

- (4) Upon request, after paying the veterans' cemetery fee provided in 61-3-459 and all applicable vehicle registration fees under this chapter, subject to the provisions of 61-3-460, the surviving spouse of an eligible veteran, if the spouse has not remarried, may retain the special license plates issued to the deceased veteran, except the special "DV" plates provided for under subsection (3)(b) or the combination plates provided for in subsection (3)(i).
- (5) For purposes of this section, "veteran" has the meaning provided in 10-2-101."
- **Section 4. No appropriation.** It is the intent of the legislature that the requirements of [this act] be conducted within existing levels of funding.
- Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, and the provisions of Title 61, chapter 3, apply to [section 1].

Section 6. Effective date. [This act] is effective January 1, 2010.

Approved April 24, 2009

CHAPTER NO. 338

[HB 318]

AN ACT REGULATING DEBT SETTLEMENT PROVIDERS; PROVIDING DEFINITIONS; PROVIDING INSURANCE AND ACCOUNTING REQUIREMENTS FOR DEBT SETTLEMENT PROVIDERS; ESTABLISHING PROHIBITED PRACTICES FOR DEBT SETTLEMENT PROVIDERS; AND PROVIDING REMEDIES.

Be it enacted by the Legislature of the State of Montana:

- **Section 1. Definitions.** As used in [sections 1 through 4], the following definitions apply:
- (1) (a) "Debt settlement provider" means any person or entity engaging in or holding itself out as engaging in the business of debt settlement for compensation that does not in the usual and regular course of business hold, receive, or disburse a debtor's funds in connection with debt settlement services.
 - (b) The term does not include any of the following:
- (i) attorneys, escrow agents, accountants, broker dealers in securities, or investment advisors in securities, when acting in the ordinary practice of their professions:
- (ii) any bank, agent of a bank, trust company, savings and loan association, savings bank, credit union, crop credit association, development credit corporation, industrial development corporation, title insurance company, or insurance company operating or organized under the laws of this state, another state, or the United States, or any other person authorized to make loans under Montana law;
- (iii) persons who perform credit services for their employer while receiving a regular salary or wage when the employer is not engaged in the business of debt settlement;
- (iv) public officers while acting in their official capacities and persons acting under court order;

- (v) any person while performing services incidental to the dissolution, winding up, or liquidating of a partnership, corporation, or other business enterprise; or
- (vi) any for-profit or nonprofit entity that is subject to the provisions of Title 30, chapter 14, part 20, the Montana Consumer Debt Management Services Act.
- (2) "Debt settlement service" is the negotiation, adjustment, or settlement of a consumer's debt without holding, receiving, or disbursing the debtor's funds.
- (3) "Principal amount of the debt" means the total amount of debt of an individual at the time the individual is accepted into a debt settlement program.
- Section 2. Requirements for debt settlement providers. (1) (a) A debt settlement provider shall maintain insurance coverage for dishonesty, fraud, theft, and other misconduct on the part of directors, officers, employees, or agents that is issued by an insurer rated at least A- or its equivalent by a nationally recognized rating organization. The debt settlement provider shall, at the request of the attorney general, make available to the attorney general proof of the insurance coverage required by this subsection (1)(a).
- (b) The insurance coverage must be in a minimum amount of \$100,000 with a deductible of not more than \$10,000. A debt settlement provider is required to give at least 30 days' advance written notice to the attorney general if the coverage is being replaced.
- (2) (a) A debt settlement provider is required to maintain books and records in accordance with generally accepted accounting principles and file a financial statement annually with the attorney general. The attorney general may require an audit or review of the financial statement by an independent certified public accountant.
- (b) The annual filing by the debt settlement provider must be accompanied by a filing fee of \$250 and must include, in addition to the financial statement, the following:
 - (i) the name of the debt settlement provider;
 - (ii) the date of formation if the debt settlement provider is an entity;
- (iii) the physical address of each location to be operated by the debt settlement provider;
- (iv) the name and resident address of the owners or partners or, if the debt settlement provider is a corporation, limited liability company, or association, the name and resident address of officers, directors, trustees, and managers; and
 - (v) any other pertinent information required by the attorney general.
- (c) Fees received pursuant to this section and any civil fines, fees, costs, or penalties received or recovered by the department of justice pursuant to [section 4] must be deposited into a state special revenue account to the credit of the department of justice and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to [sections 1 through 4]. Civil penalties, costs, or settlements received by a county attorney must be paid to the general fund of the county in which any enforcement action was commenced.
- (3) (a) A debt settlement provider shall disclose in writing to a debtor, prior to entering into an agreement to provide services to the debtor, that:
- (i) there will be fees charged by the debt settlement provider and shall disclose the type and amount of all of those fees;

- (ii) the settlement of debts through a debt settlement program might have an impact on the debtor's credit history;
- (iii) there may be tax consequences for the debtor as a result of a debt settlement:
- (iv) collection activity by the creditor for a debt may continue until the creditor accepts a settlement for that debt;
- (v) any settlement amount is an estimate based on the experience of prior customers and is not guaranteed to be accepted by the creditor;
 - (vi) a creditor may not be forced to accept a proposed settlement;
- (vii) the debtor is required to meet certain savings goals in order to maximize settlement opportunities;
- (viii) the debt settlement provider does not provide legal, accounting, tax, or bankruptcy advice or assistance;
- (ix) the debt settlement provider will not use a payment made by the debtor to make a payment to a creditor; and
 - (x) debt settlement may not be the only option available to the debtor.
 - (b) The written disclosure must be in a minimum size of 12-point type.
- Section 3. Prohibitions contract cancellation. (1) A debt settlement provider may not do any of the following:
- (a) provide debt settlement services without a written contract signed by the debtor;
- (b) receive or charge fees, other than setup fees, in an aggregate amount that is in excess of 20% of the principal amount of the debt. No more than 5% of the principal amount of the debt may be charged as a setup fee.
 - (c) make loans or offer credit;
- (d) take any confession of judgment or power of attorney to confess judgment against the debtor or appear as the debtor or on behalf of the debtor in any judicial proceedings;
- (e) take as part of any agreement to provide debt settlement services a release of any obligation to be performed on the part of the debt settlement provider;
- (f) advertise, display, distribute, broadcast, or televise services or permit services to be displayed, advertised, distributed, broadcasted, or televised, in any manner whatsoever, that contains any false, misleading, or deceptive statements or representations with regard to the services to be performed or the fees to be charged by the debt settlement provider;
- (g) receive any cash, fee, gift, bonus, premium, reward, or other compensation from any person other than the debtor or a person on the debtor's behalf for performing debt settlement services;
- (h) disclose to anyone the name or any personal information of a debtor for whom the debt settlement provider has provided or is providing debt settlement service other than a debtor's own creditors or the debt settlement provider's agents, affiliates, or contractors;
- (i) disclose the name of a debtor's creditor to anyone other than the debtor, a company acting on behalf of the debtor or the debtor's debt settlement provider, or another creditor of the debtor and then only to the extent necessary to secure the cooperation of a creditor in a debt settlement plan;

- (j) enter into a contract with a debtor without first providing the disclosure required in [section 2(3)];
- (k) collect fees until a written debt settlement services contract has been executed by the debtor containing a schedule of fees in the actual amount to be charged the debtor and stating when those fees will be charged;
- (l) advertise services in any manner in this state without first filing a financial statement with the attorney general;
- (m) misrepresent any material fact or make a false promise intended to convince a debtor to enter into a debt settlement plan; or
- (n) violate the provisions of any applicable state or federal do-not-call registry or Title 30, chapter 14, part 5.
- (2) If a debt settlement service contract is canceled by the debtor before the contract is completed, the debt settlement provider shall, on request of the debtor, refund 50% of any collected but unrefunded service fee on a pro rata basis for those accounts that have not received a settlement offer by the time of the cancellation. Fees associated with the setup of a debt settlement service contract are not required to be refunded.
- **Section 4. Remedies.** (1) The attorney general or the county attorney of any county in which a debt settlement provider is doing business or a debtor resides may bring an action for a violation of [section 2 or 3]. Upon finding that a person has violated or is violating a provision of [section 2 or 3], a court may make any necessary order or judgment, including an injunction, restitution, and an award of reasonable attorney fees and costs for the investigation and litigation of the violations.
- (2) The attorney general or county attorney may accept an assurance of discontinuance of any method, act, or practice that is in violation of the provisions of [section 2 or 3] from any person alleged to be engaged in the unlawful act. The assurance may include a stipulation for the voluntary payment of the costs of investigation or of an amount to be held in escrow pending the outcome of any action or as restitution for any aggrieved person, or both. The court may award to the state a civil penalty not exceeding \$10,000 for any violation of an assurance of discontinuance. Any matter closed by the acceptance of an assurance may be reopened at any time.
- (3) A violation of a provision of [section 2 or 3] is a violation of 30-14-103, and a debtor is entitled to any remedy available under the provisions of Title 30, chapter 14, part 1, or other applicable state law.
- **Section 5.** Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 4].

Approved April 24, 2009

CHAPTER NO. 339

[HB 322]

AN ACT REQUIRING A PERSON PROPOSED, NOMINATED, OR APPOINTED AS A NEUTRAL ARBITRATOR TO DISCLOSE A CONFLICT OF INTEREST; PROVIDING FOR VACATING AN AWARD BECAUSE OF A FAILURE TO DISCLOSE A CONFLICT OF INTEREST; AND AMENDING SECTIONS 27-5-211 AND 27-5-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title — neutral arbitrator's disclosure required. (1) This section may be cited as the "Fairness in Arbitration Act".

- (2) Beginning October 1, 2009, a person who has been proposed, nominated, or appointed as a neutral arbitrator pursuant to an arbitration agreement, other than one contained in a collective bargaining agreement, must comply with the requirements of this section.
- (3) A person who has been proposed, nominated, or appointed as a neutral arbitrator for an arbitration proceeding shall disclose to each party all matters that could cause a person aware of the facts underlying a potential conflict of interest to have a reasonable doubt that the person would be able to act as a neutral or impartial arbitrator.
- (4) In addition to any matters disclosed pursuant to subsection (3), the person proposed, nominated, or appointed shall disclose:
- (a) the existence, regarding the person, of any ground specified in 3-1-803 for disqualification of a judge;
- (b) whether the person has been employed by a party to the arbitration proceeding within the last 5 years;
- (c) (i) (A) the names of the parties to arbitration proceedings commenced after October 1, 2009, other than the pending proceeding, in which the person served or is serving as a party arbitrator and not a neutral arbitrator for any party to that proceeding or as an attorney for a party to that proceeding and the results of each of those proceedings that were arbitrated to conclusion; or
- (B) beginning October 1, 2014, the names of the parties to all prior or current arbitration proceedings, other than the pending proceeding, within the last 5 years in which the person served or is serving as a party arbitrator and not a neutral arbitrator for any party to that proceeding or as an attorney for a party to that proceeding and the results of each of those proceedings that were arbitrated to conclusion;
- (ii) regarding the information disclosed pursuant to subsection (4)(c)(i), as appropriate, the:
 - (A) date of the arbitration award;
 - (B) identification of the prevailing party;
 - (C) names of the parties' attorneys; and
 - (D) amount of monetary damages awarded, if any;
- (d) (i) (A) the names of the parties to arbitration proceedings commenced after October 1, 2009, other than the pending proceeding, in which the person served or is serving as a neutral arbitrator and the results of each of those proceedings that were arbitrated to conclusion; or
- (B) beginning October 1, 2014, the names of the parties to all prior or current arbitration proceedings, other than the pending proceeding, within the last 5 years in which the person served or is serving as a neutral arbitrator and the results of each of those proceedings that were arbitrated to conclusion;
- (ii) regarding the information disclosed pursuant to subsection (4)(d)(i), as appropriate, the:
 - (A) date of the arbitration award;
 - (B) identification of the prevailing party;

- (C) identification of the person and the party who selected the person to serve as a neutral arbitrator, if any;
 - (D) names of the parties' attorneys; and
 - (E) amount of monetary damages awarded, if any; and
- (e) any attorney-client relationship the person has or has had with a party or an attorney for a party to the arbitration proceeding within the last 5 years.
- (5) In order to preserve confidentiality, it is sufficient for the purposes of subsections (4)(c) and (4)(d) for the person to identify any party who is not a party to the pending arbitration proceeding as "claimant" or "respondent" if that party is or was an individual and not a business or corporate entity.
- (6) The person proposed, nominated, or appointed as a neutral arbitrator shall make the disclosure required by this section in writing to all parties by serving a disclosure upon the parties within 10 days of any notice of the person's proposal, nomination, or appointment. The disclosure must be served in accordance with Title 25, chapter 3, part 2.
- (7) An arbitration proceeding does not include an arbitration proceeding pursuant to a collective bargaining agreement.
 - (8) This section does not apply to:
- (a) arbitration agreements that have been approved by the United States security and exchange commission pursuant to the Securities and Exchange Act of 1934; or
- (b) arbitrations conducted by the Montana bar association's voluntary fee arbitration program.

Section 2. Section 27-5-211, MCA, is amended to read:

"27-5-211. Appointment of arbitrators — conflict of interest provisions applicable. If Except as provided in [section 1], if the arbitration agreement provides a method of appointment of arbitrators, this method shall must be followed. If no a method is not provided, the agreed method fails or for any reason cannot be followed, or an appointed arbitrator fails or is unable to act and his a successor has not been duly appointed, the district court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement. A neutral arbitrator appointed by the district court on or after October 1, 2009, shall comply with the provisions of [section 1]."

Section 3. Section 27-5-312, MCA, is amended to read:

"27-5-312. Vacating an award. (1) Upon the application of a party, the district court shall vacate an award if:

- (a) the award was procured by corruption, fraud, or other undue means;
- (b) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
 - (c) the arbitrators exceeded their powers;
- (d) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of 27-5-213, as to prejudice in a manner that substantially prejudiced the rights of a party; or
- (e) there was no arbitration agreement and the issue was not adversely determined in proceedings under 27-5-115 and the party did not participate in the arbitration hearing without raising the objection; or

- (f) a neutral arbitrator failed to make a material disclosure required by [section 1]. An award may be vacated because of a material noncompliance with [section 1] no later than 90 days following discovery of the failure to disclose.
- (2) The fact that the relief was such that it could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.
- (3) An application under this section must be made within 90 days after delivery of a copy of the award to the applicant, except that if it is predicated upon corruption, fraud, or other undue means, it must be made within 90 days after such the grounds are known or should have been known.
- (4) In vacating the award on grounds other than those stated in subsection (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or, if the agreement does not provide a method of selection, by the court in accordance with 27-5-211 or, if the award is vacated on grounds set forth in subsection (1)(c) or (1)(d), the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with 27-5-211. The time within which the agreement requires the award to be made is applicable to the rehearing and commences on the date of the order for rehearing.
- (5) If the application to vacate is denied and no a motion to modify or correct the award is *not* pending, the court shall confirm the award."
- **Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 27, chapter 5, part 1, and the provisions of Title 27, chapter 5, part 1, apply to [section 1].

Approved April 24, 2009

CHAPTER NO. 340

[HB 356]

AN ACT REVISING THE USE OF PORTABLE SCALES; REQUIRING PORTABLE SCALES TO BE USED ON ENGINEERED SITES; DEFINING "ENGINEERED SITE"; AND AMENDING SECTIONS 61-10-141 AND 61-10-144, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-141, MCA, is amended to read:

- "61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads definition. (1) (a) A peace officer, officer of the highway patrol, or employee of the department of transportation may weigh any vehicle regulated by 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110, except recreational vehicles, travel trailers, or motor homes, by means of either portable scales used on an engineered site or stationary scales. and The peace officer, officer of the highway patrol, or employee of the department of transportation may require that the vehicle be driven to the nearest stationary scales or engineered site for use of portable scales if those stationary scales or an engineered site are is within 2 miles.
- (b) If it is determined in the weighing process that the maximum allowable weights specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 have been exceeded, the peace officer, officer of the highway patrol, or employee of the department of transportation may then require the driver to

unload at a designated facility that portion of the load necessary to decrease the weight of the vehicle to conform to the maximum allowable weights specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110. If the excess weight does not exceed 10,000 pounds, an excess weight permit may be issued in accordance with 61-10-121. The permit authorizes the driver of the excess weight load to proceed to a designated facility where the load can be safely reduced to legal limits.

- (2) Commodities and material unloaded as required by this section must be cared for by the owner or operator of the vehicle at the risk of that owner or operator. Commodities or material unloaded as required by this section may not be left on the highway right-of-way.
- (3) The department of transportation may establish, maintain, and operate weigh stations, either intermittently or on a continuous schedule, and may require vehicles, except passenger cars and pickup trucks under 14,000 pounds GVW and recreational vehicles that are not new or used recreational vehicles traveling into or through Montana for delivery to a distributor or a dealer, to enter for the purpose of weighing and inspection for compliance with all laws pertaining to their operation and safety requirements. The department may require vehicles over 10,000 pounds to be inspected and weighed by portable scale crews when the portable scales are used on an engineered site.
 - (4) For the purposes of this section, "engineered site" means:
- (a) a turnout designed and constructed by the department of transportation that has indents in the pavement to level portable scales; or
- (b) a site where leveling pads can be used in strict accordance with all of the manufacturer's manuals and specifications."
 - Section 2. Section 61-10-144, MCA, is amended to read:
- **"61-10-144. Violation of standards tolerance.** (1) It is a misdemeanor for a person, firm, or corporation to violate any provision of 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110.
- (2) The operator of a vehicle or combination of vehicles may move over the highways to the first open state stationary scale, permanent or portable scale on an engineered site, as defined in 61-10-141(4), without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable total gross weight limitations by more than 10% and if the weight carried by any axle or combination of axles does not exceed the allowable axle weight limitations by more than 10%. If the vehicle or combination of vehicles is not in excess of the allowable total gross or axle weight limitations by more than 10%, the department may issue a single trip permit for the fee of \$10, allowing the vehicle or combination of vehicles to move over the highways to the first facility where its load can be safely adjusted or to its destination. Violations of total gross or axle weight limitations in excess of 10% are subject to the fines provided in 61-10-145, and all loads in excess of 10% of the total gross or axle weight limitations:
- (a) may be required to be adjusted or reduced to conform to the size and weight limitations before the vehicle or combination of vehicles is moved from the point of weighing; or
 - (b) may be issued a permit as authorized by 61-10-141.
- (3) Farm vehicles transporting agricultural products from a harvesting combine or other harvesting machinery may be operated on any highway, except a highway that is part of the federal-aid interstate system, within a

100-mile radius of the harvested field to the point of first unloading without incurring excess weight penalties under 61-10-145 if the total gross weight of the farm vehicle or combination of vehicles does not exceed allowable weight limitations by more than 20% for each axle and the maximum load for each inch of tire width does not exceed 670 pounds. A single trip permit, as required in subsection (2), is not applicable to the farm vehicle or combination of vehicles. When a farm vehicle or combination of vehicles violates any of the provisions of this subsection, the fine or penalty imposed applies to that portion of the load above the legal limit."

Approved April 24, 2009

CHAPTER NO. 341

[HB 384]

AN ACT GENERALLY REVISING THE MONTANA UNIFIED VOLUME CAP BOND ALLOCATION PLAN ACT; INCREASING THE FEE FOR ISSUANCE OF THE BONDS; PROVIDING THAT AS A CONDITION TO ISSUING BONDS EACH ISSUER IS REQUIRED TO PROVIDE THE LEGISLATIVE AUDITOR WITH FULL ACCESS TO ITS FINANCIAL RECORDS; PROVIDING THAT AS A CONDITION OF ISSUING BONDS THE MONTANA HIGHER EDUCATION STUDENT ASSISTANCE CORPORATION IS REQUIRED TO COMPLY WITH OPEN MEETING LAWS AND PROVIDE THE LEGISLATIVE AUDITOR WITH FULL ACCESS TO ANY MANAGEMENT OR LOAN SERVICING CONTRACTS; AMENDING SECTIONS 17-5-1302, 17-5-1312, AND 17-5-2201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-1302, MCA, is amended to read:

- **"17-5-1302. Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:
- (1) "Allocation" means an allocation of a part of the state's volume cap to an issuer pursuant to this part.
 - (2) "Board" means the board of examiners.
- (3) "Bonds" means bonds, notes, or other interest-bearing obligations of an issuer.
- (4) "Cap bonds" means those private activity bonds and that portion of governmental bonds for which a part of the volume cap is required to be allocated pursuant to the tax act.
 - (5) "Department" means the department of administration.
 - (6) "Governmental bonds" means bonds other than private activity bonds.
 - (7) "Issuer" means a state issuer or local issuer.
- (8) "Local issuer" means a city, town, county, or other political subdivision of the state authorized to issue private activity bonds or governmental bonds.
- (9) "Local portion" means that portion of the state's volume cap reserved for local issuers.
- (10) "Montana board of housing" (MBH) means the board created in 2-15-1814.

- (11) "Montana board of investments" (MBI) means the board provided for in 2-15-1808.
- (12) "Montana facility finance authority" (MFFA) means the authority provided for in 2-15-1815.
- (13) "Montana higher education student assistance corporation" (MHESAC) means the nonprofit corporation established to provide student loan capital to the student loan program established by the board of regents of higher education under Title 20, chapter 26, part 11.
- (14) "Private activity bonds" (PABs) has the meaning prescribed under section 141 of the Internal Revenue Code, 26 U.S.C. 141.
- (15) "State issuer" means the state and any agency of the state authorized to issue private activity bonds. For this part only, the Montana higher education student assistance corporation, to the extent authorized under federal law to issue private activity bonds, is considered an agency of the a state issuer.
- (16) "State portion" means that portion of the state's volume cap reserved for state issuers.
- (17) "State's volume cap" means that amount of the volume cap specified by the department pursuant to 17-5-1311(2).
- (18) "Tax act" means the latest limitation enacted by the United States congress on the amount of cap bonds that may be issued by a state or local issuer.
- (19) "Volume cap" means, with respect to each calendar year, the principal amount of cap bonds that may be issued in the state in a calendar year as determined under the provisions of the tax act."
 - Section 2. Section 17-5-1312, MCA, is amended to read:
- **"17-5-1312.** Allocation to state issuers. (1) Except as provided in subsection (5), the state portion must be allocated to state issuers pursuant to 17-5-1316.
 - (2) As a condition of receiving an allocation, each state issuer,:
- (a) upon issuance of the bonds, shall pay $30\,35\,\mathrm{cents}$ per thousand of bonds to be deposited in the state general fund for the purpose of funding a portion of the comprehensive annual financial report audit; and
- (b) shall provide the legislative auditor with full access to its financial records.
- (3) As long as the Montana higher education student assistance corporation requests and receives authority to issue bonds under this part, the corporation shall:
- (a) comply with the provisions of Title 2, chapter 3, in all meetings of the corporation's board of directors or other governing body unless compliance would conflict with federal or state security disclosure laws; and
- $(b)\ provide\ the\ legislative\ auditor\ with\ full\ access\ to\ any\ management\ or\ loan\ servicing\ contracts.$
- (3)(4) The following set-aside percentages of the state's volume cap must be made in each calendar year for the following state issuers:

StateIssuer	Percentage
Board	4
MBH	41
MBI	25

MHESAC 26
MFFA 4
Total 100%

- (4)(5) Each set-aside expires on the first Monday in September.
- (5)(6) Prior to the set-aside expiration date, allocations may be made by the department to each state issuer only from its respective set-aside pursuant to 17-5-1316 and a state issuer is not entitled to an allocation except from its set-aside unless otherwise provided by the governor.
- (6)(7) After the expiration date, the amount of the set-aside remaining unallocated is available for allocation by the department to issuers pursuant to 17-5-1316 without preference or priority."

Section 3. Section 17-5-2201, MCA, is amended to read:

"17-5-2201. Fee for issuance of bonds. Except for issuers of general obligation bonds which that are payable solely by general fund revenues and as provided in 17-5-1312(2)(a), each state bond issuer shall, upon issuance of the bonds, pay 30 cents per thousand of bonds to unless another fee is specifically provided for a type of bonds. The fee must be deposited in the state general fund for the purpose of funding a portion of the comprehensive annual financial report audit."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 24, 2009

CHAPTER NO. 342

[HB 449]

AN ACT GENERALLY REVISING STATE AND LOCAL GOVERNMENT LAWS RELATED TO FINANCE; REVISING NOTICE INFORMATION IN CONNECTION WITH INTENTION TO CREATE A RURAL SPECIAL IMPROVEMENT DISTRICT; REVISING PROTEST PROVISIONS FOR THE CREATION OR EXTENSION OF A RURAL SPECIAL IMPROVEMENT DISTRICT; ALTERING THE TIME FOR CANVASSING OF VOTES FOR WATER AND SEWER DISTRICT ELECTIONS; CLARIFYING CHARGES FOR SERVICES: CLARIFYING THE LEVY OF DISTRICT WATER OR SEWER TAX TO PAY EXPENSES OF OR CLAIMS AGAINST THE DISTRICT; REMOVING CONDITIONS PLACED ON STATE REFUNDING BONDS; CLARIFYING THE ACCOUNTS FOR DEPOSIT OF PROCEEDS OF, AND THE USE OF BOND PREMIUMS ON, STATE GENERAL OBLIGATION BONDS; REMOVING THE REQUIREMENT THAT REVISED MUNICIPAL UTILITY RATE SCHEDULES BE FILED WITH THE PUBLIC SERVICE COMMISSION; EXTENDING THE MAXIMUM TERM OF LOAN UNDER WATER POLLUTION CONTROL STATE REVOLVING FUND PROGRAM IN CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 7-12-2103, 7-12-2105, 7-12-2109, 7-12-2112, 7-13-2256, 7-13-2301, 7-13-2302, 17-5-305, 17-5-803, 69-7-112, AND 75-5-1113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2103, MCA, is amended to read:

"7-12-2103. Resolution of intention to create rural improvement district. (1) Before creating a special improvement district for the purpose of

making any of the improvements or acquiring any private property for any purpose authorized by this part, the board of county commissioners shall pass a resolution of intention.

- (2) The resolution must:
- (a) designate the number of the district;
- (b) describe the boundaries of the district;
- (c) state in the resolution the general character of the improvements that are to be made;
- (d) designate the name of the engineer who is to have charge of the work and an approximate estimate of the cost of the work; and
- (e) specify the method or methods by which the costs of the improvements will be assessed against property in the district; and
- (f) if applicable, provide any additional information required to be included in the notice under 7-12-2105(3)(a).
- (3) The board of county commissioners may include, in one proceeding under one resolution of intention and in one contract, any of the different kinds of improvements or work provided for in this part and may include any number of streets and rights-of-way or portions of streets and rights-of-way, and it may exempt any of the work already done upon a street to the official grade."

Section 2. Section 7-12-2105, MCA, is amended to read:

- "7-12-2105. Notice of resolution of intention to create district—hearing—exception. (1) Upon having passed the passage of a resolution of intention pursuant to 7-12-2103, the board of county commissioners shall publish notice of the passage of the resolution of intention as provided in 7-1-2121.
- (2) A copy of the notice must be mailed, as provided in 7-1-2122, to each person, firm, or corporation or the agent of the person, firm, or corporation owning real property within the proposed district listed in the owner's name upon the last-completed assessment roll for state, county, and school district taxes.
- (3) (a) The notice must describe the general character of the improvement or improvements proposed to be made or acquired by purchase, state the estimated cost of the improvements, describe generally the method or methods by which the costs of the improvements will be assessed, and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of the improvements or the creation of the district. If one or more of the improvements proposed to be made or acquired by purchase are related to each other or are part of a larger project, the notice must describe the entire scope of the related or larger project, including the estimated costs of all related improvements, the method or methods by which these costs will be assessed, the impacts on property rights, and other actual or potential costs reasonably related to the proposed improvement.
- (b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-2182:
- (i) the county general fund may be used to provide loans to the revolving fund; or
- (ii) a general tax levy may be imposed on all taxable property in the county to meet the financial requirements of the revolving fund.

- (c) The notice must refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice must state the exact purchase price of the existing improvement.
- (4) The provisions of this section do not apply to a resolution of intention to create a district that is passed upon receipt of a petition as provided in 7-12-2102(2)."
 - Section 3. Section 7-12-2109, MCA, is amended to read:
- **"7-12-2109.** Right to protest creation or extension of district exception. (1) (a) Except as provided in subsections (1)(b) and (2), at any time within 30 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for the work proposed in the resolution may make written protest against the proposed work or against the creation or extension of the district to be assessed, or both. The protest must be in writing, and identify the property in the district owned by the protestor, and except as provided in 7-12-2141, be signed by all owners of the property. The protest must be delivered to the county clerk, who shall endorse on the protest document the date of its receipt by the county clerk.
- (b) If the period described in subsection (1)(a) includes a holiday as enumerated in 1-1-216, other than a Sunday, the period must be extended for an additional 2 days.
- (2) The provisions of subsection (1)(a) do not apply if a resolution of intention to create the district is a result of a petition submitted as provided in 7-12-2102(2).
- (3) (a) For purposes of this section, "owner" means, as of the date a protest is filed, the record owner of fee simple title to the property.
- (b) The term does not include a tenant of or other holder of a leasehold interest in the property."
 - **Section 4.** Section 7-12-2112, MCA, is amended to read:
- "7-12-2112. Sufficient protest to bar proceedings exception. (1) Except as provided in subsection (2), further proceedings may not be taken for a period of 6 months from the date when a protest was received by the county clerk if the board of county commissioners finds that the protest is made by:
- (a) the owners of property within the proposed district having projected assessments, when aggregated, representing not less than 50% of the total projected assessments for property within the district; the owners of property in the proposed district to be assessed for more than 50% of the cost of the proposed program or improvements as determined by the method or methods of assessment described in the resolution of intention
- (b) the owners of property within the proposed district having a taxable valuation, when aggregated, representing not less than 50% of the total taxable valuation of the property within the district; or
 - (c) not less than 50% of the owners of property within the district.
- (2) If the improvements are the construction of sanitary sewers, the protests may be overruled by a unanimous vote of the board if:
- (a) the improvements are ordered by the department of environmental quality or the federal environmental protection agency; or
- (b) the governing body makes written findings after a public hearing and public comment, based on evidence in the record, that the proposed

improvements protect public health or the environment, mitigate harm to the public health or environment, and are achievable under current technology."

Section 5. Section 7-13-2256, MCA, is amended to read:

- **"7-13-2256.** Canvass of vote. (1) The Except as provided in part 23 and this part, the board of county commissioners shall canvass the returns of the first election, and thereafter, except as provided in this part and part 23 for subsequent elections, the board of directors shall meet as a canvassing board and duly canvass the returns within 4 days at the first regular meeting of the board of directors after any district election, including any district bond election.
- (2) If the district lies in more than one county, the board of county commissioners whose county contains the largest percentage of the territory of said the district shall canvass the returns of the first election."

Section 6. Section 7-13-2301, MCA, is amended to read:

- "7-13-2301. Establishment of charges for services payment of charges. (1) The board of directors shall fix all water and sewer rates and shall, through the general manager, collect the sewer charges and the charges for the sale and distribution of water to all users.
- (2) (a) The board, in furnishing water, sewer service, other services, and facilities, shall review, at least once every 2 years year, and from time to time fix set, as required, the rate, fee, toll, rent, tax, or other charge for the services, facilities, and benefits directly afforded by the facilities, taking into account services provided and direct benefits received, that will Taking into account the collections of any special assessments levied pursuant to 7-13-2280 through 7-13-2290 and any property taxes that will be levied to pay debt service on general obligation bonds authorized pursuant to 7-13-2331, the amount to be collected and appropriated must be sufficient in each year to provide income and revenue adequate, with the collections of any special assessments levied pursuant to 7-13-2280 through 7-13-2289 and appropriated, for the:
- (a)(i) the payment of the reasonable expense of operation and maintenance of the facilities;
 - (b)(ii) administration of the district;
- (e)(iii) the payment of principal and interest on any bonded or other indebtedness of the district; and
- (d)(iv) the establishment or maintenance of any required reserves, including reserves needed for expenditures for depreciation and replacement of facilities, as may be determined necessary from time to time by the board or as covenanted in the ordinance or resolution authorizing the outstanding bonds of the district.
- (b) A portion of the rate, fee, toll, rent, tax, or other charge provided for in subsection (2)(a) may be charged to the owner of an undeveloped lot, tract, or parcel to pay a share of the principal of and interest on bonded indebtedness issued to finance the capital cost of improvements to an existing water or sewer system, so long as the board makes findings in a resolution or ordinance of the district that demonstrate the improvements to the existing system to be financed by the bonded indebtedness confer a direct benefit on the lot, tract, or parcel.
- (3)(3) A person or entity may not use any facility without paying the rate established for the facility. In the event of nonpayment, the board may order the discontinuance of water or sewer service, or both, to the property and may require that all delinquent charges, interest, penalties, and deposits be paid before restoration of the service.

- (4)(4) (a) If the board has ordered discontinuance of service as provided in subsection (3)(3) and the person or entity who received the service has not made full payment of all delinquent charges, interest, penalties, and deposits, then a district may elect to have its delinquent charges for water or sewer services collected as a tax against the property by following the procedures of this subsection (4)(4). If a charge for services is due and payable in a fiscal year and is not paid by the end of the fiscal year, the general manager shall, by July 15 of the succeeding fiscal year, give notice to the owners of the property to which the service was provided. The notice must be in writing and:
 - (i) must specify the charges owed, including any interest and penalty;
- (ii) must specify that the amount due must be paid by August 15 or it will be levied as a tax against the property;
- (iii) must state that the district may institute suit in any court of competent jurisdiction to recover the amount due; and
- (iv) may be served on the owner personally or by letter addressed to the post-office address of the owner as recorded in the county assessor's office.
- (b) On September 1 of each year, the general manager shall certify and file with the county assessor a list of all property, including legal descriptions, on which arrearages remain unpaid. The list must include the amount of each arrearage, including interest and penalty. The county assessor shall assess the amount owed as a tax against each lot or parcel with an arrearage. If the property on which arrearages remain unpaid contains a mobile home, the amount owed must be assessed as a tax against the owner of the mobile home. If the mobile home for which arrearages remain unpaid is no longer on the property, the amount owed must be assessed as a tax against the property.
- (5)(6)(5) In addition to collecting delinquent charges in the same manner as a tax, a district may bring suit in any court of competent jurisdiction to collect amounts due as a debt owed to the district.
- (6)(7)(6) Notwithstanding any other section of part 22 or this part or any limitation imposed in part 22 or this part, when the board has applied for and received from the federal government any money for the construction, operation, and maintenance of facilities, the board may adopt a system of charges and rates to require that each recipient of facility services pays its proportionate share of the costs of operation, maintenance, and replacement and may require industrial users of facilities to pay the portion of the cost of construction of the facilities that is allocable to the treatment of that industrial user's wastes."

Section 7. Section 7-13-2302, MCA, is amended to read:

"7-13-2302. Levy of taxes to meet bond obligations and other expenses. (1) If for any reason the revenue of the district is inadequate to pay the interest or principal of any bonded debt as it becomes due, exclusive of revenue or special assessment bonded indebtedness incurred pursuant to 7-13-2333 or bonded indebtedness incurred to refund the revenue or special assessment bonded indebtedness without authorization at an election, or any other expenses or claims against the district, then the board of directors shall, at least 15 days before the first day of the month in which the board of county commissioners of the county, city and county, or counties in which the district is located are required by law to levy the amount of taxes required for county or city and county purposes, furnish to the board or boards of county commissioners and to the auditor or auditors, respectively, an estimate in writing:

- (a) of the amount of money required by the district for the payment of the principal of or interest on any bonded debt as it becomes due;
- (b) of the amount of money required to establish reasonable reserve funds for either purpose, together with a description of the lands benefited by the bonds, as stated by the board of directors in the resolution declaring the necessity to incur bonded indebtedness; and
- (c) of the amount of money required by the district for any other purpose set forth in this section.
- (2) The board of county commissioners of the county or city and county, annually, at the time and in the manner of levying other county or city and county taxes, shall:
- (a) until any bonded debt is fully paid, levy upon the benefited lands and collect the proportionate share to be borne by the land located in their county of a tax sufficient for the payment of the bonded debt, to be known as the district bond tax; and
- (b) until all other expenses or claims are fully paid, levy upon all of the lands of the district and collect the proportionate share to be borne by the land located in their county of a tax sufficient for the payment of the bonded debt other expenses or claims, to be known as the district water and/or sewer tax.
- (3) Taxes for the payment of any bonded debt must be levied on the property benefited, as stated by the board of directors in the resolution declaring the necessity for the bonds, and all taxes for other purposes must be levied on all property in the territory comprising the district."
 - **Section 8.** Section 17-5-305, MCA, is amended to read:
- "17-5-305. Sale of bonds and debentures. The refunding bonds or debentures which that may be issued under the provisions of this part shall must be sold by the board of examiners in such a manner as that they shall deem for the board considers to be in the best interests of the state, provided that:
 - (1) none thereof shall be sold at less than its par value; and
- (2) However, if the state shall hold holds any bonds or debentures to be refunded by any such an issue of refunding bonds or debentures as investments of institutional or other funds, the same original bonds or debentures may be exchanged for the refunding bonds or debentures if such the exchange be is authorized by the proper state officers or board."
 - Section 9. Section 17-5-803, MCA, is amended to read:
- "17-5-803. Form principal and interest fiscal agent bond registrar and transfer agent deposit of proceeds. (1) Subject to the limitations contained in this part and in the bond act and in the furtherance of each bond act, bonds may be issued by the board upon request of the department. The bonds may be issued in the denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with provisions for conversion or exchange, and for the issuance of temporary bonds bearing interest at a rate or rates, maturing at times not exceeding 30 years from date of issue, subject to redemption at earlier times and prices and on notice, and payable at the office of the fiscal agency of the state as the board determines.
- (2) In all other respects, the board is authorized to prescribe the form and terms of the bonds and do whatever is lawful and necessary for their issuance and payment. Action taken by the board under this part must be by a majority

vote of its members. The state treasurer shall keep a record of all bonds issued and sold.

- (3) The board is authorized to employ a fiscal agent and a bond registrar and transfer agent to assist in the performance of its duties under this part.
- (4) The board, in its discretion, is authorized to pay all costs of issuance of bonds, including without limitation rating agency fees, printing costs, legal fees, bank or trust company fees, costs to employ persons or firms to assist in the sale of the bonds, line of credit fees and charges, and all other amounts related to the costs of issuing the bonds from amounts available for these purposes in the general fund or from the proceeds of the bonds.
- (5) All proceeds of bonds and notes issued under this part to pay the costs of a project must be deposited in the capital projects account or in a separate general obligation bond or note account created in the state special revenue fund established in 17-2-102, except that any premiums, unless used to pay the costs of issuance, and accrued interest received and the proceeds of refunding bonds or notes must be deposited in the debt service account."

Section 10. Section 69-7-112, MCA, is amended to read:

- **"69-7-112. Conduct of municipal rate hearing.** (1) At the hearing, all persons, associations, corporations, or companies affected or interested, including the Montana consumer counsel, may be present and represented by counsel. The hearing may be continued from time to time by the governing body of the municipality. At the conclusion of the hearing, all interested parties shall must be allowed to make such arguments as that they may consider proper.
- (2) Within 30 days after the hearing, the governing body of the municipality shall issue its decision. The decision is final 10 days after being filed with the municipal clerk. A copy of each revised rate schedule shall be filed with the public service commission upon final decision."

Section 11. Section 75-5-1113, MCA, is amended to read:

- "75-5-1113. Conditions on loans. (1) Upon approval of a project by the department, the department of natural resources and conservation may lend amounts on deposit in the revolving fund to a municipality or private person to pay part or all of the cost of a project or to buy or refinance an outstanding obligation of a municipality that was issued to finance a project. The loan is subject to the municipality or private person complying with the following conditions:
- (a) meeting requirements of financial capability set by the department of natural resources and conservation to ensure sufficient revenue to operate and maintain the project for its useful life and to repay the loan, including the establishment and maintenance by the municipality of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the municipality's obligation;
- (b) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than the term of the loan;
- (c) agreeing to maintain proper financial records in accordance with generally accepted accounting standards and agreeing that all records are subject to audit;
- (d) meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;

- (e) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;
- (f) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department and the department of natural resources and conservation to fulfill their responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;
- (g) complying with plan and specification requirements and other requirements established by the department; and
 - (h) providing for proper construction inspection and project management.
- (2) (a) Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest paid in annual or more frequent installments, the first of which must be received not more than 1 year after the completion date of the project and, except as provided in subsection (2)(b), the last of which must be received not more than 20 years after the completion date.
- (b) If the applicant is a disadvantaged community, as defined by rule, that has qualified for and applied for a loan subsidy, the department may determine that the last installment must be received not more than 30 years after the completion date of the project if the period of the loan does not exceed the expected design life of the project being financed.
- (3) (a) Subject to the limitations of the federal act, the interest rate on a loan must ensure that the interest payments on the loan and on other outstanding loans will be sufficient, if paid timely and in full, with other available funds in the revolving fund, including investment income, to enable the state to pay the principal of and interest on the bonds issued pursuant to 75-5-1121.
- $\frac{(a)}{(b)}$ The interest rate must be determined as of the date the loan is authorized by the department of natural resources and conservation.
- (b)(c) The rate may include any additional rate that the department of natural resources and conservation considers reasonable or necessary to provide a reserve for the repayment of the loans. The additional rate may be fixed or variable or may be calculated according to a formula, and it may differ from the rate established for any other loan. Once the reserve has been established at a level considered by the department to be reasonable and prudent for the loans outstanding, the department may use excess reserve payments to make grants to aid in the feasibility of projects.
- (4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the municipality or private person, in a form prescribed or approved by the department of natural resources and conservation, except that the bond, note, or other evidence must include provisions required by the federal act and must be consistent with the provisions of this part. The bond, note, or other evidence is not required to be identical for all loans. The department of natural resources and conservation may require that loans to private persons be further secured by a mortgage and other security interests in the project that is being financed or other forms of additional security as considered necessary, including personal guarantees and letters of credit.
- (5) As a condition to making a loan, the department of natural resources and conservation, with the concurrence of the department, may impose a reasonable administrative fee that may be paid from the proceeds of the loan or other available funds of the municipality or private person. Administrative fees may be deposited:

- (a) in a special administrative costs account that the department of natural resources and conservation may create for that purpose outside the revolving fund provided for in 75-5-1106; or
- (b) in the administration account. Money deposited in the administration account established in 75-5-1106 must be used for the payment of administrative costs of the program. Money deposited in the special administration costs account must be used for the payment of administrative costs of the program unless not required for that purpose, in which case the money may be transferred to other funds and accounts in the program."

Section 12. Effective date. [This act] is effective on passage and approval. Approved April 24, 2009

CHAPTER NO. 343

[HB 487]

AN ACT PROVIDING THAT FARM IMPLEMENTS OR CONSTRUCTION EQUIPMENT THAT IS RENTED UNDER A PURCHASE INCENTIVE RENTAL PROGRAM IS CONSIDERED BUSINESS INVENTORY FOR THE PURPOSE OF EXEMPTION FROM PROPERTY TAXATION; REQUIRING THAT PROPERTY MUST MEET CERTAIN CONDITIONS TO QUALIFY AS PURCHASE INCENTIVE RENTAL PROGRAM PROPERTY; AMENDING SECTIONS 15-6-138, 15-6-202, AND 15-24-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-138, MCA, is amended to read:

- "15-6-138. Class eight property description taxable percentage.
 (1) Class eight property includes:
- (a) all agricultural implements and equipment that are not exempt under 15-6-207 or 15-6-220;
- (b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-219, and supplies except those included in class five *under 15-6-135*;
- (c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-219, and supplies except those included in class five;
- (d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as provided in 15-6-220, and supplies except those included in class five;
- (e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class or that are rented under a purchase incentive rental program as defined in 15-6-202(4);
 - (f) special mobile equipment as defined in 61-1-101;
- (g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;
 - (h) x-ray and medical and dental equipment;

- (i) citizens' band radios and mobile telephones;
- (j) radio and television broadcasting and transmitting equipment;
- (k) cable television systems;
- (l) coal and ore haulers:
- (m) theater projectors and sound equipment; and
- (n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.
 - (2) As used in this section, the following definitions apply:
- (a) "eoal "Coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds an axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.
- (3)(b) "Commercial establishment" includes any hotel, motel, office, petroleum marketing station, or service, wholesale, retail, or food-handling business.
 - (4)(3) Class eight property is taxed at 3% of its market value.
- (5)(4) The class eight property of a person or business entity that owns an aggregate of \$20,000 or less in market value of class eight property is exempt from taxation."
 - Section 2. Section 15-6-202, MCA, is amended to read:
- "15-6-202. Freeport merchandise and business inventories exemption—definitions. (1) Freeport merchandise and business inventories are exempt from taxation.
- (2) (a) "Freeport merchandise" means those stocks of merchandise manufactured or produced outside this state that are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state for storage in transit prior to shipment to a final destination outside the state and that have acquired a taxable situs within the state.
- (3)(b) Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled, or repackaged.
- (4)(c) Any A person or other group seeking to qualify its the person's property for inclusion in the as freeport merchandise class shall make application to the department of revenue in the manner or form as may be required prescribed by the department.
- (5)(3) (a) "Business inventories" includes include goods primarily intended for sale and not for lease in the ordinary course of business and raw materials and work in progress with respect to those goods. Business Except for farm implements and construction equipment described in subsection (3)(b), business inventories do not include goods that are leased or rented.
- (b) Business inventories include farm implements, as defined in 30-11-801, or construction equipment, as defined in 30-11-901, that are held pursuant to a purchase incentive rental program.
- (4) (a) For the purpose of subsection (3)(b), "purchase incentive rental program" means a program operated by a dealer of farm implements, as defined in 30-11-801, or a dealer of construction equipment, as defined in 30-11-901, where the farm implement or construction equipment is owned by the dealership, held for sale, and rented to a single user of the farm implement or construction equipment as an incentive for the purchase of the property.

- (b) A purchase incentive rental program does not include a farm implement or construction equipment that is:
 - (i) rented to a person for more than 9 months;
 - (ii) rented more than once to the same person; or
- (iii) not owned by a farm implement dealership or construction equipment dealership.
- (c) All farm implements and construction equipment in a purchase incentive rental program must be reported to the department each calendar quarter on a form provided by the department."

Section 3. Section 15-24-301, MCA, is amended to read:

- "15-24-301. Personal property brought into state assessment exceptions custom combine equipment. (1) Except as provided in subsections (2) through (5) (6), the following property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:
- (a) personal property, excluding livestock, brought into this state at any time during the year that is used in the state for hire, compensation, or profit;
- (b) property belonging to an owner or user who is engaged in a gainful occupation or business enterprise in the state; or
 - (c) property that becomes a part of the general property of the state.
- (2) The taxes on this property are levied in the same manner, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other another county of the state.
- (3) This section does not levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer.
- (4) Except as provided in 15-6-217, a motor vehicle that is brought into this state by a nonresident person temporarily employed in Montana and used exclusively for transportation of the person is subject to registration under 61-3-701.
- (5) Agricultural harvesting machinery classified under class eight, licensed in another state, and operated on the land of a person other than the owner of the machinery under a contract for hire is subject to a fee in lieu of tax of \$35 for each machine for the calendar year in which the fee is collected. The machinery is subject to taxation under class eight 15-6-138 only if the machinery is sold in Montana.
- (6) This section does not levy a tax on farm implements, as defined in 30-11-801, or construction equipment, as defined in 30-11-901, that is brought into the state under a purchase incentive rental program as defined in 15-6-202(4). The property is subject to taxation under 15-6-138 only if the property is sold in Montana or otherwise disposed of in the state."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2008.

Approved April 24, 2009

CHAPTER NO. 344

[HB 562]

AN ACT ALLOWING A SCHOOL DISTRICT THAT HAS PROPERTY SUBJECT TO PENDING PROPERTY TAX PROTESTS TO WAIVE THE DISTRICT'S RIGHT TO RECEIVE ITS PORTION OF THE PROTESTED TAXES UPON SETTLEMENT OF THE TAX PROTEST; PROVIDING THAT A DISTRICT THAT HAS WAIVED ITS RIGHT TO RECEIVE ITS PORTION OF PROTESTED PROPERTY TAXES WILL HAVE ITS GUARANTEED TAX BASE AID DETERMINED ON PROPERTY VALUE THAT DOES NOT INCLUDE THE VALUE OF THE PROTESTED PROPERTY; AMENDING SECTION 15-1-402, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Exclusion of property subject to property tax protest guarantee tax base tax refund. (1) A school district that has property subject to pending property tax protests shall, prior to February 1 of each year, elect whether to waive the school district's right to receive its portion of protested taxes for the previous year.
- (2) If the school district elects to waive its right to its portion of the protested taxes, the district's guaranteed tax base aid calculated under 20-9-366 must be determined based on the total taxable value of property in the school district that is not subject to a tax protest. Upon settlement or other resolution of the protest, the department is responsible for refunding protested taxes or paying any other costs due the protesting taxpayer and retaining any portion of protested taxes that would have been distributed to the school district for each year the school district has elected to waive receiving its portion of the protested taxes.

Section 2. Section 15-1-402, MCA, is amended to read:

- **"15-1-402. Payment of property taxes or fees under protest.** (1) (a) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested.
 - (b) The protested payment must:
 - (i) be made to the officer designated and authorized to collect it;
 - (ii) specify the grounds of protest; and
- (iii) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.
- (c) If the protested property tax or fee is on property that is subject to central assessment pursuant to 15-23-101, the person shall report to the department the grounds of the protest and the amount of the protested payment for each county in which a protested payment was made. By November 1 of each year, the department shall mail a notice stating the requirements of this subsection (1)(c) to owners of property subject to central assessment under 15-23-101(1) and (2) who have filed a timely appeal under 15-1-211.
- (2) A person appealing a property tax or fee pursuant to chapter 2 or 15, including a person appealing a property tax or fee on property that is subject to central assessment pursuant to 15-23-101(1) or (2), shall pay the tax or fee

under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

- (3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.
- (4) (a) Except as provided in subsection (4)(b), all property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.
- (b) (i) Property taxes that are levied by the state against property that is centrally assessed pursuant to 15-23-101 and any protested taxes in a school district that has elected to waive its right to protested taxes in a specific year pursuant to [section 1] must be remitted by the county treasurer to the department for deposit as provided in subsections (4)(b)(ii) through (4)(b)(iv).
- (ii) The department shall deposit 50% of that portion of the funds levied for the university system pursuant to 15-10-107 15-10-108 in the state special revenue fund to the credit of the university system, and the other 50% of the funds levied pursuant to 15-10-107 15-10-108 must be deposited in a centrally assessed property tax state special revenue fund.
- (iii) Fifty percent of the funds remaining after the deposit of university system funds must be deposited in the state general fund, and the other 50% must be deposited in a centrally assessed property tax state special revenue fund.
- (iv) Fifty percent of the funds from a school district that has waived its right to protested taxes must be deposited in the state general fund, and the other 50% must be deposited in a school district property tax protest state special revenue fund.
- (5) (a) Except as provided in subsection subsections (5)(b) and (5)(c), the governing body of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

- (b) The governing body of a taxing jurisdiction affected by the payment of taxes under protest on property that is centrally assessed pursuant to 15-23-101 in the first and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled. The decision in a previous year of a taxing jurisdiction to leave protested taxes of centrally assessed property in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled.
- (c) The provisions of subsections (5)(a) and (5)(b) do not apply to a school district that has elected to waive its right to its portion of protested taxes for that specific year as provided in [section 1].
- (6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the protested portions of the property tax or fee must be taken from the protest fund or the centrally assessed property tax state special revenue fund and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged to the local government units.
- (b) (i) If the action is finally determined adversely to the governmental entity levying the tax, then the treasurer of the municipality, county, or state entity levying the tax shall, upon receipt of a certified copy of the final judgment in the action and upon expiration of the time set forth for appeal of the final judgment, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee that the person holding the judgment is entitled to recover, together with interest from the date of payment under protest. The department shall refund from the school district property tax protest state special revenue fund the protested portions of property taxes and interest to a taxpayer in a school district in which the school district has elected to waive its right to its portion of protested taxes for that specific year as provided in [section 1]. If the amount available for the refund in the school district property tax payments, the department shall pay the remainder of the refund from the state general fund.
- (ii) The taxing jurisdiction shall pay interest at the rate of interest earned by the pooled investment fund provided for in 17-6-203 for the applicable period.
- (c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.
- (d) (i) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible. The treasurer is not responsible for the amount required to be refunded by the state treasurer as provided in subsection (6)(b).
- (ii) For an adverse protest action against the state for centrally assessed property, the department shall refund from the centrally assessed property tax

state special revenue fund the amount of protested taxes and from the state general fund the amount of interest as required in subsection (6)(b). The amount refunded for an adverse protested action from the centrally assessed property tax state special revenue fund may not exceed the amount of protested taxes or fees required to be deposited for that action pursuant to subsections (4)(b)(ii) and (4)(b)(iii) or, for taxes or fees protested prior to April 28, 2005, an equivalent amount of the money transferred to the fund pursuant to section 3, Chapter 536, Laws of 2005. If the amount available for the adverse protested action in the centrally assessed property tax state special revenue fund is insufficient to refund the tax payments to which the taxpayer is entitled and for which the state is responsible, the department shall pay the remainder of the refund proportionally from the state general fund and from money deposited in the state special revenue fund levied pursuant to $\frac{15-10-107}{15-10-108}$.

- (e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction, including the state, is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the rate referred to in subsection (6)(b) from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus 4 percentage points, from the date of final resolution of the protest until refund is made.
- (7) A taxing jurisdiction, except the state, may satisfy the requirements of this section by use of funds from one or more of the following sources:
- (a) imposition of a property tax to be collected by a special tax protest refund levy;
- (b) the general fund or any other funds legally available to the governing body; and
- (c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.
- (8) If the department revises an assessment that results in a refund of taxes of \$5 or less, a refund is not owed."
- **Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 1, part 4, and the provisions of Title 15, chapter 1, part 4, apply to [section 1].
- **Section 4. Applicability.** [This act] applies to tax years beginning after December 31, 2009.

Approved April 24, 2009

CHAPTER NO. 345

[HB 585]

AN ACT PROMOTING MONTANA'S FAMILY HUNTING HERITAGE BY CREATING NONRESIDENT COMBINATION HUNTING LICENSES THAT MAY BE USED BY ADULT NONRESIDENT FAMILY MEMBERS WHO WISH TO RETURN TO MONTANA TO HUNT WITH A SPONSOR OR

FAMILY MEMBER; ESTABLISHING THE TERMS AND CONDITIONS OF LICENSURE AND SPONSORSHIP; DEDICATING MONEY FROM THE SALE OF THE LICENSES TO THE ACQUISITION OF PUBLIC HUNTING ACCESS TO INACCESSIBLE PUBLIC LAND; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, Montana's hunting heritage is promoted when families can continue to hunt together; and

WHEREAS, members of many Montana families have been required to move out of state to pursue expanded employment opportunities; and

WHEREAS, it can be difficult for these adult nonresident family members to draw a nonresident license in order to come back to Montana to hunt with their families; and

WHEREAS, there is a need for new revenue to address public land access concerns because access to public land for hunting is becoming increasingly difficult to obtain as traditional routes across private land are closed to public hunters; and

WHEREAS, creating a temporary new pool of nonresident licenses dedicated to former residents who desire to return to Montana to hunt with their families and directing the revenue from those licenses to fund public access to inaccessible public land would assist in strengthening both aspects of Montana's hunting heritage; and

WHEREAS, statistics compiled by the Department of Fish, Wildlife, and Parks will provide a measurement of the success of the pilot program to provide more opportunities for former residents to come back home to hunt and to determine whether the license and the associated public land access efforts have resulted in a net increase or decrease in hunting opportunities for resident hunters.

Be it enacted by the Legislature of the State of Montana:

Section 1. License for nonresident to hunt with resident sponsor or family member — use of license revenue. (1) In addition to the nonresident licenses provided for in 87-2-505 and 87-2-510, the department may offer for sale 500 B-10 nonresident big game combination licenses and 500 B-11 nonresident deer combination licenses. The licenses may be used only as provided in this section and as authorized by department rules. Sale of licenses pursuant to this section may not affect the license quotas established in 87-2-505 and 87-2-510. The price of licenses sold under this subsection must be the same as nonresident big game combination licenses and nonresident deer combination licenses offered by general drawing pursuant to 87-2-505 and 87-2-510.

- (2) A license authorized in subsection (1) may be used only by an adult nonresident family member of a resident who sponsors the license application and who meets the qualifications of subsection (3). The nonresident family member must have completed a Montana hunter safety and education course prior to March 1, 2010, or have previously purchased a resident hunting license. A nonresident family member who receives a license pursuant to subsection (1) must be accompanied in the field by a sponsor or family member who meets the qualifications of subsection (3).
- (3) To qualify as a sponsor or family member who will accompany a nonresident licensed under subsection (1), a person must be a resident, as defined in 87-2-102, who is 18 years old or older and possesses a current resident hunting license and who is related to the nonresident within the second degree

of kinship by blood or marriage. The second degree of kinship includes a mother, father, brother, sister, son, daughter, spouse, grandparent, grandchild, brother-in-law, sister-in-law, son-in-law, daughter-in-law, father-in-law, mother-in-law, stepfather, stepmother, stepbrother, stepsister, stepson, and stepdaughter. The sponsor shall list on the license application the names of family members who are eligible to hunt with the nonresident hunter.

- (4) If the department receives more applications for licenses than the number that are available under subsection (1), the department shall conduct a drawing for the licenses. Applicants who are unsuccessful in the drawing must be entered in the general drawing for a nonresident license provided under 87-2-505 or 87-2-510, as applicable.
- (5) All money received from the sale of licenses under subsection (1) must be deposited in a separate account and must be used by the department to acquire public hunting access to inaccessible public land, which may include obtaining hunting access through private land to inaccessible public land.
- **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 5, and the provisions of Title 87, chapter 2, part 5, apply to [section 1].

Section 3. Effective date. [This act] is effective March 1, 2010.

Section 4. Termination. [This act] terminates March 1, 2014.

Approved April 24, 2009

CHAPTER NO. 346

[HB 608]

AN ACT AUTHORIZING LOCAL GOVERNMENTS TO EXECUTE A LIEN FOR PURPOSES OF DEBRIS REMOVAL; AMENDING SECTIONS 27-18-101, 27-18-202, 27-18-203, 27-18-204, AND 27-18-1502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-18-101, MCA, is amended to read:

- **"27-18-101. Cases in which property may be attached.** (1) Property may be attached in:
- (a) an action upon a contract, express or implied, for the direct payment of money where the contract:
 - (i) is not secured by any mortgage or lien upon real property; or
- (ii) is originally secured and such security has, without any act of the plaintiff or the person to whom the security was given, become valueless; and
 - (b) an action based upon a statutory stockholders' liability; and
- (c) an action by a local government for the purpose of ensuring debris removal if it is determined that the underlying property is worth less than the cost of debris removal.
- (2) Attachment may not issue if the defendant gives security to pay the judgment.
- (3) For the purpose of this section, the guaranty of a loan in which the only condition precedent to the obligation of the guarantor is the default of the principal is an unconditional contract for the direct payment of money."

Section 2. Section 27-18-202, MCA, is amended to read:

- **"27-18-202. Plaintiff's affidavit.** When attachment of a defendant's property is sought, an affidavit must be made by the plaintiff or someone in his on the plaintiff's behalf stating:
- (1) facts which show the defendant is indebted to the plaintiff in the manner specified in 27-18-101(1);
- (2) that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant;
 - (3) facts creating a reasonable belief that the defendant:
- (a) is leaving or about to leave this state taking with him property, money, or other effects which might be subjected to payment of the debt;
- (b) is disposing or about to dispose of his property which would be subject to execution;
- (c) has the power to dispose of or conceal or remove from the state property which that would be subject to execution; or
- (d) is likely to suffer liens or encumbrances on his the defendant's property which that would be subject to execution;
- (4) a particular description and the actual value of the property to be attached:
- (5) facts creating a reasonable basis for a local government belief that the underlying property is worth less than the cost of debris removal."

Section 3. Section 27-18-203, MCA, is amended to read:

- "27-18-203. Affidavit requirements when debt not yet due. Actions may be commenced and writs of attachment issued upon any debt for the payment of money or specific property before the same shall have debt has become due, or upon a local government debris removal issue, when it shall appear appears by the affidavit, in addition to what is required in 27-18-202:
- (1) that the defendant is leaving or is about to leave this state, taking with him property, moneys money, or other effects which that might be subjected to the payment of the debt, for the purpose of defrauding his the defendant's creditors or a local government; or
- (2) that the defendant is disposing of his property or is about to dispose of his property, subject to execution, for the purpose of defrauding his the defendant's creditors or a local government."

Section 4. Section 27-18-204, MCA, is amended to read:

"27-18-204. Plaintiff's undertaking. Before issuing the writ, the court must require a written undertaking on the part of the plaintiff, *except a local government*, with two or more sufficient sureties to be approved by the court, in a sum not less than double the amount claimed by the plaintiff if such the amount be is \$1,000 or under or, in case the amount so claimed by plaintiff shall exceed exceeds \$1,000, then in a sum equal to such that amount. In no case shall an An undertaking may not be required exceeding in amount the sum of \$20,000. The condition of such the undertaking shall must be to the effect that if the defendant recovers judgment or if the court finally decides that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant and all damages he the defendant may sustain by reason of the issuing of the attachment, not exceeding the sum specified in the undertaking."

Section 5. Section 27-18-1502, MCA, is amended to read:

"27-18-1502. Plaintiff's undertaking. Before issuing the writ, the justice must require a written undertaking in due form on the part of the plaintiff, except a local government, with two or more sureties, in a sum of not less than \$50 or more than \$300, to the effect that if defendant recover judgment, the plaintiff will pay all costs that may be awarded to defendant and all damages which he that the defendant may sustain by reason of the attachment, not exceeding the sum specified in the undertaking."

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2009

CHAPTER NO. 347

[HB 622]

AN ACT REVISING LAWS RELATING TO CONSTITUENT ACCOUNTS; EXPANDING THE PERSONS WHO MAY ESTABLISH A CONSTITUENT ACCOUNT; REQUIRING THAT MONEY REMAINING IN A CONSTITUENT SERVICES ACCOUNT ESTABLISHED PRIOR TO MAY 14, 2007, MUST BE DONATED TO CHARITY OR DEPOSITED TO A NEW CONSTITUENT SERVICES ACCOUNT; AMENDING SECTION 13-37-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-402, MCA, is amended to read:

- "13-37-402. Constituent accounts reports. (1) A constituent services account may be established by a person elected to a statewide or legislative office or as a public service commissioner to pay for constituent services by a successful candidate required to report contributions under 13-37-229 and expenditures under 13-37-230. A constituent services account may be established by filing an appropriate form with the commissioner.
- (2) (a) A successful candidate for the legislature, a statewide elected office, or the public service commission may deposit only surplus campaign funds in a constituent services account.
- (b) The money in the account may be used only for constituent services. The money in the account may not be used for personal benefit. Expenditures from a constituent services account may not be made when the holder of the constituent services account also has an open campaign account.
- (3) A statewide elected official, legislator, or public service commissioner person described in subsection (1) may not establish any account related to the public official's office other than a constituent services account. This subsection does not prohibit a statewide elected official, legislator, or public service commissioner person from establishing a campaign account.
- (4) The holder of a constituent services account shall file a quarterly report with the commissioner, by a date established by the commissioner by rule. The report must disclose the source of all money deposited in the account and enumerate expenditures from the account. The report must include the same information as required for a candidate reporting contributions under 13-37-229 and expenditures under 13-37-230. The report must be certified as provided in 13-37-231.

(5) The holder of a constituent services account shall close the account within 120 days after the account holder leaves public office."

Section 2. Constituent services account — prior contributions — donation to charity. A person who established a constituent services account prior to May 14, 2007, shall donate any money remaining in the account on [the effective date of this act] to charity by July 1, 2009, or deposit the money by July 1, 2009, into a constituent services account established after May 14, 2007, and shall close the old account. The holder of a constituent services account subject to this section shall file a report with the commissioner of political practices describing the disposition of the money subject to this section.

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [Section 2] applies retroactively, within the meaning of 1-2-109, to money placed in a constituent services account that was established prior to May 14, 2007.

Approved April 24, 2009

CHAPTER NO. 348

[HB 628]

AN ACT PROVIDING A STATUTE OF LIMITATIONS FOR PROSECUTION OF CARELESS DRIVING RESULTING IN DEATH AND RECKLESS DRIVING RESULTING IN DEATH; AND AMENDING SECTIONS 45-1-205 AND 61-5-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-1-205, MCA, is amended to read:

"45-1-205. General time limitations. (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

- (b) Except as provided in subsection (9), a prosecution for a felony offense under 45-5-502, 45-5-503, or 45-5-507(4) or (5) may be commenced within 10 years after it is committed, except that it may be commenced within 10 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred. A prosecution for a misdemeanor offense under those provisions may be commenced within 1 year after the offense is committed, except that it may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.
- (c) Except as provided in subsection (9), a prosecution under 45-5-504, 45-5-505, 45-5-507(1), (2), (3), or (6), 45-5-625, or 45-5-627 may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.
- (2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:
- (a) A prosecution for a felony must be commenced within 5 years after it is committed.
- (b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.
- (3) The periods prescribed in subsection (2) are extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

- (a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination of the minority or incompetency;
- (b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.
- (4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.
- (5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.
- (6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.
- (7) (a) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.
- (b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized control over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may be commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over the property, except that the prosecution must be commenced within 1 year after the investigating officer discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.
- (8) A prosecution is commenced either when an indictment is found or an information or complaint is filed.
- (9) If a suspect is conclusively identified by DNA testing after a time period prescribed in subsection (1)(b) or (1)(c) has expired, a prosecution may be commenced within 1 year after the suspect is conclusively identified by DNA testing.
- (10) A prosecution for reckless driving resulting in death may be commenced within 3 years after the offense is committed.
- (11) A prosecution of careless driving resulting in death may be commenced within 3 years after the offense is committed."
 - **Section 2.** Section 61-5-405, MCA, is amended to read:
- "61-5-405. Offenses furnishing ground for suspension or revocation of license return to licensing jurisdiction of abstracts of court records and reports of conviction. (1) Items enumerated in Article IV(1), subsections (a), (b), (c), and (d) of 61-5-401 refer specifically to 45-5-103,

45-5-104, 61-8-401, the definition of felony as provided in 45-2-101, and 61-7-103, respectively.

- (2) In addition to convictions mentioned in subsection (1), the department, for the purpose of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if the conduct had occurred in this state for:
- (a) convictions of perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (61-5-303); and
- (b) three convictions of reckless driving committed within a period of 12 months (61-8-301); or
- (c) convictions of careless driving resulting in death or reckless driving resulting in death.
- (3) Court abstracts or reports of conviction received by the department that name an individual licensed in another jurisdiction must be forwarded to the jurisdiction of licensure. The department may not take action against the driver's license or driving privilege of the individual as may be required elsewhere in this title."

Approved April 26, 2009

CHAPTER NO. 349

[HB 630]

AN ACT REVISING LAWS RELATED TO REVOLVING FUNDS FOR RURAL IMPROVEMENT DISTRICTS AND SPECIAL IMPROVEMENT DISTRICTS; INCREASING THE AMOUNT OF MONEY THAT MAY BE REQUIRED FOR DEPOSIT IN REVOLVING FUNDS WHEN USED TO SECURE BONDS OR WARRANTS FOR IMPROVEMENTS; MAKING THE PURPOSES FOR WHICH EXCESS FUNDS IN RURAL IMPROVEMENT DISTRICT REVOLVING FUNDS MAY BE USED COMPARABLE TO THOSE OF SPECIAL IMPROVEMENT DISTRICT REVOLVING FUNDS; AMENDING SECTIONS 7-12-2153, 7-12-2182, 7-12-2185, 7-12-2186, 7-12-4169, 7-12-4222, 7-12-4225, AND 7-12-4227, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2153, MCA, is amended to read:

- "7-12-2153. Incidental expenses considered as cost of improvements costs for bonds or warrants secured by revolving fund district reserve account. (1) Incidental expenses connected with the formation of a special rural improvement district, including the cost of preparation of plans, specifications, maps, or plats; engineering, superintendence, and inspection; preparation of assessment rolls; and the other incidental expenses described in 7-12-2101(7) are considered a part of the cost of making the improvements within the special rural improvement district.
- (2) If the bonds or warrants are secured by the revolving fund pursuant to 7-12-2185, the original costs of any improvement must include an amount equal to of at least 5% and not more than 10% of the principal amount of any bonds or warrants to be issued, which must be deposited in the revolving fund created in 7-12-2181.

- (3) (a) Subject to the provisions of subsections (3)(b) through (3)(e), the board of county commissioners may create a district reserve account.
- (b) As part of the original costs of the improvements, the board of county commissioners may include an amount, in addition to the amount, if any, specified in subsection (2), not to exceed 5% of the principal amount of any rural special improvement district bonds or warrants issued. The amount must be deposited in a district reserve account created and maintained in the district fund.
- (c) If there are insufficient funds in the district bond and interest accounts to pay when due the principal of and the interest on bonds or warrants, the district reserve account, if established, must be used to pay the principal of and the interest on the bonds or warrants issued against the district fund.
- (d) If bonds or warrants are secured by the revolving fund, the district reserve account, if established, must be exhausted before a loan may be made from the revolving fund pursuant to 7-12-2183.
- (e) Money remaining in the district reserve account after the principal and interest on all bonds and warrants drawn on the district have been paid or discharged must be transferred to the revolving fund.
- (4) The establishment of a district reserve account does not preclude the board of county commissioners from requiring additional security from the owners of real property in the district."
 - **Section 2.** Section 7-12-2182, MCA, is amended to read:
- "7-12-2182. Sources of money for revolving fund. (1) For the purpose of providing funds for the revolving fund, the board of county commissioners:
- (a) shall, if the bonds or warrants are secured by the revolving fund pursuant to 7-12-2185, include in the cost of the improvements to be defrayed paid from the proceeds of the bonds or warrants an amount equal to of at least 5% and not more than 10% of the principal amount of the bonds or warrants to be issued as provided in 7-12-2153(2);
- (b) may, from time to time, transfer to the revolving fund from the general fund of the county an amount as may be necessary. The amount transferred is a loan from the general fund to the revolving fund.
- (c) shall, in addition to a transfer or transfers from the general fund or in lieu of a transfer, levy for the revolving fund a tax, declared to be for a public purpose, on all taxable property in the county as is necessary to meet the financial requirements of the revolving fund. A tax may not be levied if the balance in the revolving fund exceeds 5% will exceed 10% or, with the amount levied by the tax, will exceed 10% of the principal amount of the then-outstanding rural special improvement district bonds and warrants secured by the revolving fund after all required transfers have been made to the district funds through fiscal yearend. If a tax is levied, the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then-outstanding rural special improvement district bonds and warrants secured by the revolving fund.
- (2) Whenever there is money in the district fund that is not required for payment of any bond or warrant of the district secured by the revolving fund or of interest on the bond or warrant, as much of the money as may be necessary to pay the loan provided for in 7-12-2183 must, by order of the board, be transferred to the revolving fund and the balance of the money or, if there is no outstanding loan, as much of the money as the board considers necessary may be transferred to the improvement district's maintenance fund. After all the bonds

and warrants secured by the revolving fund issued on any rural special improvement district have been fully paid, all money remaining in the district fund must, by order of the board, be transferred to and become part of the revolving fund or the improvement district's maintenance fund."

Section 3. Section 7-12-2185, MCA, is amended to read:

- "7-12-2185. Covenants to use revolving fund duration of revolving fund obligation factors to be considered. (1) In connection with the issuance of rural special improvement district bonds or warrants, the board of county commissioners may undertake and agree:
- (a) to make loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts, to the extent that funds are available; and
- (b) to provide funds for the revolving fund pursuant to the provisions of 7-12-2182 by annually making a tax levy (or, in lieu of the tax levy, a loan from the general fund), subject to the maximum limitations imposed by 7-12-2182-; and
- (c) to retain in the revolving fund a balance up to 10% of the then-outstanding rural improvement district bonds and warrants secured by the revolving fund.
- (2) (a) The undertakings and agreements are binding upon the county with respect to the rural special improvement district bonds or warrants until the earlier of:
- (i) the date on which all bonds or warrants of the issue and interest on the bonds or warrants have been fully paid or discharged in a bankruptcy case in which the special *rural* improvement district is the debtor; or
 - (ii) the date that is the later of:
 - (A) the final stated maturity date of the bonds or warrants; or
- (B) the date on which all special assessments levied in the district have been either paid or discharged.
- (b) The discharge of delinquent special assessments levied with respect to a particular lot or parcel is considered to occur upon:
- (i) the issuance of a tax deed, as provided in 15-18-214, or, if the county is the recipient of the tax deed, upon the sale, lease, or other disposition of the property by the county as provided in Title 7, chapter 8, part 22, 23, 24, or 25, or other applicable law; or
- (ii) payment in full of the allowed secured claim for the special assessments in a bankruptcy case in which the owner of the lot or parcel is the debtor.
- (3) Prior to entering into the undertakings and agreements set forth in subsection (1), the board of county commissioners shall take into consideration the following factors, including other circumstances that the board may determine to be material to the public interest of securing the bonds or warrants by the revolving fund:
- (a) the estimated market value of the lots, parcels, or tracts included in the district at the time that the district is created in comparison to the estimated market value of the lots, parcels, or tracts after the improvements are made;
 - (b) the diversity of ownership of property in the district;
- (c) the amount of the special assessments proposed to be levied against each lot, parcel, or tract in the district in comparison to the estimated market value of the lot, parcel, or tract after the improvements are made;

- (d) the amount of any outstanding special assessments against the property in the district:
- (e) the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against property in the district;
 - (f) the public benefit of the improvements proposed to be financed; and
- (g) in the case of a district created to make improvements in a newly platted subdivision:
- (i) the prior subdivision development experience and credit rating or credit history of the person developing the land; and
- (ii) any contribution by property owners to the costs of the improvements or any security given by property owners to secure payment of special assessments levied in the district.
- (4) Any findings or determinations with respect to the factors contained in subsection (3) made by the board of county commissioners in a resolution authorizing the undertakings and agreements or the issuance of bonds or warrants are conclusive evidence that the board has taken into consideration the factors required by subsection (3).
- (5) In lieu of the undertakings and agreements set forth in subsection (1), the board of county commissioners may determine in the resolution authorizing the issuance of the bonds or warrants that the revolving fund does not secure the bonds or warrants and that the bonds or warrants are payable solely from the district fund created for the bonds or warrants and do not have a claim against the revolving fund."

Section 4. Section 7-12-2186, MCA, is amended to read:

- "7-12-2186. Utilization of excess money in revolving fund. Whenever there is in the revolving fund an amount in excess of 5% the amount deposited pursuant to 7-12-2153(2) and in excess of 10% of the then-outstanding rural special improvement district bonds and warrants secured thereby by the revolving fund and the board considers any part of the excess to be greater than the amount necessary for payment or redemption of maturing bonds or warrants secured thereby by the revolving fund or interest thereon on the revolving fund, the board may order that any part of the amount the board considers greater than the amount necessary or any part thereof to be:
 - (1) transferred to the general fund of the county;
- (2) used for the purchase of property at sales for delinquent taxes, assessments, or both; or
- (3) used for the purchase of property that may have been struck off or sold to the county for delinquent taxes, assessments, or both and against which there is an unpaid assessment for special improvements and there are outstanding special improvement district bonds or warrants of the city or town."

Section 5. Section 7-12-4169, MCA, is amended to read:

"7-12-4169. Incidental expenses considered as cost of improvements — costs for bonds or warrants secured by revolving fund — district reserve account. (1) Incidental expenses connected with the formation of a special improvement district, including costs of preparation of plans, specifications, maps, and plats; engineering, superintendence, and inspection; preparation of assessment rolls; and the other incidental expenses described in 7-12-4101(7) are considered a part of the cost of making the improvements within the special improvement district.

- (2) If the bonds or warrants are secured by the revolving fund under 7-12-4225, the costs of any improvement must include an amount equal to of at least 5% and not more than 10% of the principal amount of any bonds or warrants to be issued, which must be deposited in the revolving fund created in 7-12-4221.
- (3) (a) Subject to the provisions of subsections (3)(b) through (3)(e), the city or town council may create a district reserve account.
- (b) As part of the original costs of the improvements, the city or town council may include an amount, in addition to the amount, if any, specified in subsection (2), not to exceed 5% of the principal amount of any special improvement district bonds or warrants issued. The amount must be deposited in a district reserve account created and maintained in the district fund.
- (c) If there are insufficient funds in the district bond and interest accounts to pay when due the principal of and the interest on bonds or warrants, the district reserve account, if established, must be used to pay the principal of and the interest on the bonds or warrants issued against the district fund.
- (d) If bonds or warrants are secured by the revolving fund, the district reserve account, if established, must be exhausted before a loan may be made from the revolving fund pursuant to 7-12-4223.
- (e) Money in the district reserve account may be used to pay the final principal and interest payment on bonds or warrants.
- (4) The establishment of a district reserve account does not preclude the city or town council from requiring additional security from owners of real property in the district."

Section 6. Section 7-12-4222, MCA, is amended to read:

- "7-12-4222. Sources of money for revolving fund. (1) For the purpose of providing funds for the revolving fund, the city or town council:
- (a) may, from time to time, transfer to the revolving fund from the general fund of the city or town an amount as may be necessary. The amount transferred is a loan from the general fund to the revolving fund.
- (b) shall, if the bonds or warrants are secured by the revolving fund pursuant to 7-12-4225, include in the cost of the improvement to be defrayed paid from the proceeds of the bonds or warrants an amount equal to of at least 5% and not more than 10% of the principal amount of the bonds or warrants as provided in 7-12-4169; and
- (c) shall, in addition to a transfer or transfers from the general fund or in lieu of a transfer, levy for the revolving fund a tax, declared to be for a public purpose, on all taxable property in the city or town as is necessary to meet the financial requirements of the revolving fund. A tax may not be levied if the balance in the revolving fund exceeds 5% will exceed 10% or, with the amount levied by the tax, will exceed 10% of the principal amount of the then-outstanding special improvement district bonds and warrants secured by the revolving fund after all required transfers have been made to the district funds through fiscal yearend. If a tax is levied, the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then-outstanding special improvement district bonds and warrants secured by the revolving fund.
- (2) Whenever there is money in the district fund that is not required for payment of any bond or warrant of the district secured by the revolving fund or of interest on the bond or warrant, as much of the money as may be necessary to pay the loan provided for in 7-12-4223 must, by order of the council, be

transferred to the revolving fund. After all the bonds and warrants issued on any special improvement district or sidewalk, curb, and alley approach warrants secured by the revolving fund have been fully paid, all money remaining in the district fund must, by order of the council, be transferred to and become part of the revolving fund."

Section 7. Section 7-12-4225, MCA, is amended to read:

- "7-12-4225. Covenants to use revolving fund duration of revolving fund obligation factors to be considered. (1) In connection with the issuance of special improvement district bonds or sidewalk, curb, and alley approach warrants, the city or town council may undertake and agree:
- (a) to make loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts, to the extent that funds are available; and
- (b) to provide funds for the revolving fund pursuant to the provisions of 7-12-4222(1) by annually making a tax levy (or, in lieu of the tax levy, a loan from the general fund), subject to the maximum limitations imposed by 7-12-4222(1):; and
- (c) to retain in the revolving fund a balance of up to 10% of the then-outstanding special improvement district bonds and warrants secured by the revolving fund.
- (2) The undertakings and agreements referred to in subsection (1) are binding upon the city or town with respect to the special improvement district bonds or sidewalk, curb, and alley approach warrants until the earlier of:
- (a) the date on which all bonds or warrants of the issue and interest on the bonds or warrants have been fully paid or discharged in a bankruptcy case in which the special improvement district is the debtor; or
 - (b) the date that is the later of:
 - (i) the final stated maturity date of the bonds or warrants; or
- (ii) the date on which all special assessments levied in the district have been either paid or discharged.
- (3) The discharge of delinquent special assessments levied with respect to a particular lot or parcel is considered to have occurred upon:
- (a) the issuance of a tax deed, as provided in 15-18-214, or, if the county is the recipient of the tax deed, upon the sale, lease, or other disposition of the property by the county as provided in Title 7, chapter 8, part 22, 23, 24, or 25, or other applicable law;
- (b) the discharge of the trust pursuant to 15-17-318 or upon the sale or lease of the property under 15-17-319 if the property in the district has been assigned to the city or town under Title 15, chapter 17, part 3; or
- (c) payment in full of the allowed secured claim for the special assessments in a bankruptcy case in which the owner of the lot or parcel is the debtor.
- (4) Prior to entering into the undertakings and agreements set forth in subsection (1), the city or town council shall take into consideration the following factors, including other circumstances that the city or town council may determine to be material to the public interest of securing the bonds or warrants by the revolving fund:
- (a) the estimated market value of the lots, parcels, or tracts included in the district at the time that the district is created in comparison to the estimated market value of the lots, parcels, or tracts after the improvements are made;

- (b) the diversity of ownership of property in the district;
- (c) the amount of the special assessments proposed to be levied against each lot, parcel, or tract in the district in comparison to the estimated market value of the lot, parcel, or tract after the improvements are made;
- (d) the amount of any outstanding special assessments against the property in the district;
- (e) the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against property in the district;
 - (f) the public benefit of the improvements proposed to be financed; and
- (g) in the case of a district created to make improvements in a newly platted subdivision:
- (i) the prior subdivision development experience and credit rating or credit history of the person developing the land; and
- (ii) any contribution by property owners to the costs of the improvements or any security given by property owners to secure payment of special assessments levied in the district.
- (5) Any findings or determinations with respect to the factors contained in subsection (4) made by the city or town council in a resolution authorizing the undertakings and agreements or the issuance of bonds or warrants are conclusive evidence that the city or town council has taken into consideration the factors required by subsection (4).
- (6) In lieu of the undertakings and agreements set forth in subsection (1), the city or town council may determine in the resolution authorizing the issuance of the bonds or warrants that the revolving fund does not secure the bonds or warrants and that the bonds or warrants are payable solely from the district fund created for the bonds or warrants and do not have a claim against the revolving fund."

Section 8. Section 7-12-4227, MCA, is amended to read:

- "7-12-4227. Utilization of excess money in revolving fund. Whenever there is an amount in the revolving fund in excess of the amount deposited in the revolving fund under 7-12-4169(2) and in excess of 5% 10% of the outstanding special improvement district bonds and warrants secured by the revolving fund and the council considers any part of the excess to be greater than the amount necessary for payment or redemption of maturing bonds or warrants secured thereby by the revolving fund or interest thereon on the revolving fund, the council may:
- (1) by vote of all of its members at a meeting called for that purpose, order that any part of the amount of the excess that is greater than the amount necessary for the payment or redemption of maturing bonds or warrants secured thereby by the revolving fund or interest thereon or any part thereof on the revolving fund to be:
 - (1) transferred to the general fund of such the city or town; or
- (2) use the excess that is greater than the amount necessary for the payment or redemption of maturing bonds or warrants secured thereby or interest thereon or any part thereof used for the purchase of property at sales for delinquent taxes, or assessments, or both, or
- (3) used for the purchase of property which that may have been struck off or sold to the county for delinquent taxes, or assessments, or both, and against which property there then be any is an unpaid assessment for special

improvements on account whereof and there are outstanding special improvement district bonds or warrants of the city or town."

Section 9. Effective date. [This act] is effective on passage and approval.

Approved April 24, 2009

CHAPTER NO. 350

[HB 653]

AN ACT PROVIDING FOR THE ADJUSTMENT OF BASE TAXABLE VALUE IN AN URBAN RENEWAL AREA, AN INDUSTRIAL DISTRICT, OR A TECHNOLOGY DISTRICT FOR TAX INCREMENT FINANCING PURPOSES BECAUSE OF A LOCAL DISASTER; AMENDING SECTION 7-15-4293, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4293, MCA, is amended to read:

- "7-15-4293. Adjustment of base taxable value following change of law or local disaster. (1) If the base taxable value of an urban renewal area, an industrial district, or a technology district is affected after its original determination by a statutory, administrative, or judicial change in the method of appraising property, the tax rate applied to it, the tax exemption status of property, or the taxable valuation of property if the change in taxable valuation is based on conditions existing at the time the base year was established, the governing body of the municipality may request the department of revenue to estimate the base taxable value so that the tax increment resulting from the increased incremental value is sufficient to pay all principal and interest on the bonds as those payments become due.
- (2) If a tax increment financing district created after January 1, 2002, has not issued bonds, the governing body of a municipality may request the department of revenue to adjust the base taxable value to account for a loss of taxable revenue resulting from the state granting property in the district tax-exempt status within the first year of creation of the tax increment financing district. The municipality shall give notice of and hold a public hearing on the proposed change.
- (3) (a) If an urban renewal area, an industrial district, or a technology district suffers a loss of property value directly related to a disaster for which the principal executive officer of the local jurisdiction has made a disaster declaration pursuant to 10-3-402, the department of revenue shall decrease the base taxable value of the area or district by the amount of the base taxable value lost because of the disaster in the tax year in which the disaster is declared. The principal executive officer shall forward a copy of the disaster declaration to the department of revenue.
- (b) The taxable value removed from the base taxable value of the area or district under subsection (3)(a) must be added to the base taxable value of the area or district upon reconstruction of the property in the tax year of reconstruction. If reconstruction of the property is only partially completed as of January 1 of the tax year, the department of revenue shall determine the base taxable value of the property for that tax year by multiplying the percentage of completion, expressed as a decimal equivalent, of reconstruction of the property by the original base taxable value of the property. The addition to the base taxable

value under this subsection (3)(b) is limited to the amount of the original base taxable value of each parcel before the disaster occurred."

- **Section 2. Coordination instruction.** If Senate Bill No. 48 is passed and approved and if it includes a section that amends 7-15-4293, then [section 1(3) of this act] must read as follows:
- "(3) (a) If an urban renewal area, an industrial district, a technology district, or an aerospace transportation and technology district suffers a loss of property value directly related to a disaster for which the principal executive officer of the local jurisdiction has made a disaster declaration pursuant to 10-3-402, the department of revenue shall decrease the base taxable value of the area or district by the amount of the base taxable value lost because of the disaster in the tax year in which the disaster is declared. The principal executive officer shall forward a copy of the disaster declaration to the department of revenue.
- (b) The taxable value removed from the base taxable value of the area or district under subsection (3)(a) must be added to the base taxable value of the area or district upon reconstruction of the property in the tax year of reconstruction. If reconstruction of the property is only partially completed as of January 1 of the tax year, the department of revenue shall determine the base taxable value of the property for that tax year by multiplying the percentage of completion, expressed as a decimal equivalent, of reconstruction of the property by the original base taxable value of the property. The addition to the base taxable value under this subsection (3)(b) is limited to the amount of the original base taxable value of each parcel before the disaster occurred."
 - Section 3. Effective date. [This act] is effective on passage and approval.
- **Section 4. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2008.

Approved April 24, 2009

CHAPTER NO. 351

[SB 8]

AN ACT ALLOWING FOR THE CREATION AND EXPANSION OF REGIONAL RESOURCE AUTHORITIES; GRANTING A REGIONAL RESOURCE AUTHORITY CERTAIN POWERS; AUTHORIZING THE ISSUANCE OF REVENUE BONDS TO FUND PROJECTS; AMENDING SECTIONS 2-7-501, 7-6-4020, 7-6-4035, AND 15-10-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

- Section 1. Regional resource authorities purpose. (1) Electors residing within the boundaries of a proposed regional resource authority may create or expand an authority by proceeding under the provisions of [sections 1 through 23].
- (2) Regional resource authorities may be created to provide for collaboration and coordination in the conservation of water resources or in the management of water resources for agricultural and recreational uses.
- Section 2. Authorization to create or expand regional resource authorities. (1) A petition requesting the establishment or expansion of a regional resource authority must be signed by at least 10% of the registered electors within the boundaries of the territory proposed to be organized into the

authority or expansion and must be presented to the board of county commissioners of the county in which the proposed authority expansion is located.

- (2) When the area to be included within the proposed authority or expansion lies in more than one county, the electors within the proposed area shall present a petition to the board of county commissioners in each county. Each petition must contain the signatures of at least 10% of the registered electors within the boundaries of the proposed authority or expansion that lies within that county.
 - (3) The petition must include:
- (a) a legal description or map of the proposed authority or expansion boundaries. Boundaries must coincide with the boundaries of political subdivisions of the state to the greatest extent possible and may exclude incorporated cities or towns.
 - (b) the proposed name of the authority;
- (c) a statement that there is a need in the interest of the public health, safety, and welfare for an authority to function or expand in the territory described in the petition;
- (d) a request that a referendum be held in the territories included within the proposed boundaries on the question of creating or expanding the authority; and
- (e) the structure of the governing body for the authority as provided in [section 7].
- (4) Land, water, projects, as defined in [section 9], or other resources within the exterior boundaries of an Indian reservation may not be included within the boundaries of a regional resource authority without the consent of the governing body of the tribe of the Indian reservation.
- Section 3. Regional resource authority or expansion notice of petition hearing. (1) The board of county commissioners shall publish the text of the petition described in [section 2], as provided in 7-1-2121, in each county in which the proposed regional resource authority or expansion lies and shall publish the date, time, and place that a public hearing on the petition will be held.
- (2) If the proposed authority or expansion lies within two or more counties, the provisions of this section apply to each county.
- (3) Upon concluding the hearing on the petition, the board of county commissioners shall determine whether the petition complies with the requirements of [section 2] and enter its determination into the minutes of a regularly scheduled meeting.
- Section 4. Regional resource authority or expansion election required notice. (1) Upon a determination that the petition complies with the provisions of [section 2], the board of county commissioners of each county in which the proposed regional resource authority or expansion lies shall give notice of an election to be held within the boundaries of the proposed authority or expansion for the purpose of determining whether a regional resource authority should be created or expanded. The election must be held in conjunction with a regular or primary election.
 - (2) Notice of the election must be made as provided in 13-1-108 and must:
 - (a) describe the purpose of the proposed authority or expansion; and

- (b) state the name of the proposed authority.
- (3) The election on the question of creating or expanding a regional resource authority must be conducted as provided by Title 13 with respect to general and school elections.
- (4) If the proposed authority or expansion lies in more than one county, the board of county commissioners whose county contains the largest percentage of the territory of the proposed authority or expansion shall administer the election and canvass the returns.
- Section 5. Resolution creating or expanding regional resource authority upon favorable vote. (1) If a majority of the votes cast within the proposed boundaries of the regional resource authority or expansion are in favor of creating or expanding the authority, the board of county commissioners in the county that administered the election shall, by resolution, declare the territory enclosed within the proposed boundaries or expansion duly organized as a regional resource authority.
- (2) Immediately following adoption of the resolution creating or expanding the regional resource authority, the board of county commissioners shall file a copy of the resolution with the secretary of state and the county clerk and recorder.
- Section 6. Regional resource authority certificate of incorporation or expansion from secretary of state. Within 10 days of receiving a copy of the resolution described in [section 5], the secretary of state shall issue a certificate stating that the regional resource authority has been established or expanded under the laws of the state of Montana. The secretary of state shall file a copy of the certificate with the clerk and recorder in each county in which the authority is located.
- Section 7. Governing body of regional resource authority. (1) The initial members of the local governing body must be appointed by the county commissioners in the county where the election is administered pursuant to [section 4(4)], based on the recommendations of the petitioners.
- (2) The commissioners shall appoint members of the governing body to staggered 2-year and 4-year terms.
- (3) The appointments under subsection (1) must be made within 30 days after the adoption of the resolution for creation provided for in [section 5].
- (4) Prior to the expiration of the initial appointments, the governing body shall divide itself into districts from which members are elected to succeeding terms.
- Section 8. Regional resource authority powers limits. (1) A regional resource authority has power to:
 - (a) sue and be sued;
 - (b) purchase and hold lands within its limits;
- (c) make contracts and purchase and hold personal property that may be necessary to the exercise of its powers;
- (d) make orders for the disposition or use of its property that the interests of its inhabitants require; and
- (e) subject to 15-10-420, levy and collect taxes for public or governmental purposes, as described in 7-6-2527, under its exclusive jurisdiction unless prohibited by law;

- (f) impose fees or assessments for services provided;
- (g) pay debts and expenses;
- (h) solicit and accept bequests, donations, or grants of money, property, services, or other advantages and comply with any condition that is not contrary to the public interest;
- (i) execute documents necessary to receive money, property, services, or other advantages from the state government, the federal government, or any other source;
- (j) make grants and loans of money, property, and services for public purposes;
- (k) require the attendance of witnesses and production of documents relevant to matters being considered by the governing body;
- (l) hire, direct, and discharge employees and appoint and remove members of boards;
- (m) ratify any action of the regional resource authority or its officers or employees that could have been approved in advance;
- (n) acquire by eminent domain, as provided in Title 70, chapter 30, any interest in property for a public use authorized by law;
- (o) initiate a civil action to restrain or enjoin an action adverse to the regional resource authority;
- (p) enter private property, obtaining warrants when necessary, for the purpose of enforcing its authority that affects the general welfare and public safety;
 - (q) conduct preparatory studies;
 - (r) purchase insurance and establish self-insurance plans;
- (s) exercise powers not inconsistent with law necessary for effective administration of authorized services and functions;
- (t) enter into interlocal agreements or other agreements with the federal government or its agencies; and
- (u) issue bonds and notes for the purpose of funding projects as provided in [sections 9 through 23].
 - (2) A regional resource authority may not:
 - (a) authorize a tax on income or the sale of goods or services;
 - (b) regulate private activity beyond its geographic limits;
- (c) impose a duty on another unit of local government, except that nothing in this limitation affects the right of a regional resource authority to enter into and enforce an agreement on interlocal cooperation;
- (d) exercise any judicial function, except as an incident to the exercise of an administrative power; or
 - (e) exercise any power enumerated in 7-1-111.
- Section 9. Regional resource authority projects definition. (1) A regional resource authority may:
- (a) construct, reconstruct, improve, or extend any project within the boundaries of the regional resource authority or partially within or partially outside of the boundaries, and acquire by gift, purchase, or the exercise of the

right of eminent domain pursuant to Title 70, chapter 30, any project and land or rights in land or water rights in connection with the project;

- (b) operate and maintain any project and furnish the service, facilities, and commodities of the project for its own use and for the use of public and private consumers within or outside of the boundaries of the regional resource authority; and
- (c) prescribe and collect rates, fees, and charges for the services, facilities, and commodities furnished by the project.
- (2) The project may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended and bonds may be issued under [sections 9 through 23] for those purposes.
- (3) As used in [sections 9 through 23], "project" means one or a combination of water systems, together with all parts of the systems and appurtenances to the systems, including but not limited to supply and distribution systems, reservoirs, dams, and treatment and disposal works.
- Section 10. Role of state agencies. A regional resource authority acting pursuant to [sections 9 through 23] is not required to obtain any certificate of convenience or necessity, franchise, license, permit, or other authorization from any bureau, board, commission, or other instrumentality of the state in order to acquire, construct, purchase, reconstruct, improve, better, extend, maintain, and operate a project. The supervisory powers and duties of the department of environmental quality apply to projects under [sections 9 through 23], and the functions of the department of natural resources and conservation and the water court apply to water rights associated with projects.
- Section 11. Authority to issue revenue bonds. A regional resource authority may:
- (1) issue its bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any project;
- (2) pledge to the punctual payment of the bonds issued under [sections 9 through 23] and interest on the bonds an amount of the revenue of the project or of any part of the project sufficient to pay the bonds and interest as the bonds and interest become due and create and maintain reasonable reserves for the payments.
- Section 12. Determination of cost. The governing body of a regional resource authority, in determining cost for purposes of [section 11], may include:
- (1) all costs and estimated costs of the issuance of revenue bonds, including a permissible underwriter's discount, if any:
 - (2) all engineering, inspection, fiscal, and legal expenses; and
- (3) interest estimated to accrue during the construction period and for 6 months after construction on money borrowed or on money that it is estimated will be borrowed pursuant to [sections 9 through 23].
- Section 13. Nature of revenue bonds. (1) The holder or holders of any bonds issued under [sections 9 through 23] does not have the right to compel any exercise of taxing power of the regional resource authority to pay the revenue bonds or the interest on the bonds.
- (2) Each bond issued under [sections 9 through 23] must recite in substance that:

- (a) the bond, including interest on the bond, is payable from the revenue pledged to the payment of the bond; and
- (b) the bond does not constitute a debt of the regional resource authority within the meaning of any constitutional or statutory limitation or provision.
- Section 14. Projects to be self-supporting. (1) A regional resource authority issuing bonds pursuant to [sections 9 through 23] shall prescribe and collect reasonable rates, fees, or charges for the services, facilities, and commodities of the project and shall revise the rates, fees, or charges from time to time whenever necessary so that the project is and remains self-supporting. The property taxes specifically authorized to be levied for the general purpose served by the project constitute revenue of the project and may not result in a project being considered not self-supporting.
- (2) The rates, fees, or charges prescribed, along with any appropriated property tax collections, must produce revenue at least sufficient to:
- (a) pay when due all bonds and interest on the bonds, the payment for which the revenue has been pledged, charged, or otherwise encumbered, including reserves for the bonds; and
- (b) provide for all expenses of operation and maintenance of the project, including reserves.
- Section 15. Use of revenue from project. (1) A regional resource authority issuing bonds pursuant to [sections 9 through 23] for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any project has the right to appropriate, apply, or expend the revenue of the project for the following purposes:
- (a) to pay when due all bonds and interest on the bonds for the payment of which the revenue is or has been pledged, charged, or otherwise encumbered, including reserves;
- (b) to provide for all expenses of operation and maintenance of the project, including reserves; and
 - (c) to provide a reserve for improvements or enhancements to the project.
- (2) Unless and until adequate provision has been made for the purposes of subsection (1), a regional resource authority may not transfer the revenue of the project to its general fund.
- Section 16. Covenants in resolution authorizing issuance of bonds. Any resolution or resolutions authorizing the issuance of bonds under [sections 9 through 23] may contain covenants as to:
- (1) the purpose or purposes to which the proceeds of sale of the bonds may be applied and the disposition of the proceeds;
- (2) the use and disposition of the revenue of the project for which the bonds are to be issued, including the creation and maintenance of reserves and including the pledge or appropriation of all or a portion of the property tax revenue referred to in [section 8];
- (3) the transfer from the general fund of the regional resource authority to the account or accounts of the project of an amount equal to the cost of furnishing the regional resource authority or any of its departments or boards with the services, facilities, or commodities of the project;
- (4) the issuance of other or additional bonds payable from the revenue of the project;

- (5) the operation and maintenance of the project;
- (6) the insurance to be carried on the project and the use and disposition of insurance money;
 - (7) books of account and the inspection and audit of the books; and
- (8) the terms and conditions upon which the holders or trustees of the bonds or any proportion of the bonds are entitled to the appointment of a receiver by the district court having jurisdiction. The receiver may:
 - (a) enter and take possession of the project;
 - (b) operate and maintain the project;
- (c) prescribe rates, fees, or charges, subject to the approval of the public service commission; and
 - (d) collect, receive, and apply all revenue arising from the project.

Section 17. Remedies. The provisions of [sections 9 through 23] and any resolution or resolutions are enforceable by any bondholder in any court of competent jurisdiction by mandamus or other appropriate suit, action, or proceeding.

- Section 18. Presumption of validity of bonds. (1) Bonds bearing the signatures of the officers of the regional resource authority in office on the date of the signing of the bonds are valid and binding obligations, notwithstanding that before the delivery of the bonds and payment for the bonds, any or all the persons whose signatures appear on the bonds have ceased to be officers of the regional resource authority issuing the bonds.
- (2) The validity of the bonds is not dependent on or affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the project for which the bonds are issued.
- (3) The resolution authorizing the bonds may provide that the bonds must contain a recital that they are issued pursuant to [sections 9 through 23]. The recital is conclusive evidence of the validity of the bonds and of the regularity of their issuance.
- Section 19. Liens arising from bonds. The resolution or resolutions authorizing the bonds must specify and define the revenue or portion of the revenue that is appropriated and pledged for the security and payment of the bond principal and interest and the relative security of liens on the revenue in favor of bonds of one or more series or issues, whether issued concurrently or at different times.

Section 20. Details relating to revenue bonds. (1) Bonds authorized to be issued under [sections 9 through 23]:

- (a) must bear interest at a rate or rates not exceeding the limitation of 17-5-102;
 - (b) may be issued in one or more series;
 - (c) may bear a date or dates;
- (d) may mature at a time or times not exceeding 40 years from their respective dates of issue;
 - (e) may be payable in a place or places;
 - (f) may carry registration privileges;
 - (g) may be subject to terms of redemption;

- (h) may be executed;
- (i) may contain terms, covenants, and conditions; and
- (j) may be in coupon or registered form, as provided by the initial resolution or subsequent resolutions.
- (2) The regional resource authority may fix the minimum price for the bonds in an amount less than the principal amount of the bonds but not less than 97% of the principal amount if it determines that a sale at that price is in the best interests of the project.
- **Section 21. Sale of bonds.** (1) Bonds authorized to be issued under [sections 9 through 23] must be sold at a price not less than that prescribed by the governing body of the regional resource authority, plus interest to the date of delivery of the bonds.
- (2) (a) The bonds may be sold at private sale to the United States or the state of Montana or any agency, instrumentality, or corporation of the United States or the state.
- (b) Unless sold to the United States or the state of Montana or an agency, instrumentality, or corporation of the United States or the state, the bonds must be sold at public sale after notice of the sale.
- Section 22. Notice of sale of bonds. The notice of sale of bonds required by [section 21(2)(b)] must be published once at least 5 days prior to the sale in a newspaper of general circulation in the state, and the regional resource authority may publish the notice or summary of the notice in a financial newspaper published in the city of New York, Chicago, or San Francisco.
- **Section 23. Interim receipts or certificates.** Pending the preparation of the definitive bonds, interim receipts or certificates, in a form and with provisions that the governing body of the regional resource authority may determine, may be issued to the purchaser or purchasers of bonds sold pursuant to [sections 9 through 23]. The bonds and interim receipts or certificates are fully negotiable, as provided by Title 30, chapter 8.
 - **Section 24.** Section 2-7-501, MCA, is amended to read:
- **"2-7-501. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:
- (1) "Audit" means a financial audit and includes financial statement and financial-related audits as defined by government auditing standards as established by the U.S. comptroller general.
- (2) "Board" means the Montana board of public accountants provided for in 2-15-1756.
 - (3) "Department" means the department of administration.
- (4) (a) "Financial assistance" means assistance provided by a federal, state, or local government entity to a local government entity or subrecipient to carry out a program. Financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance. Financial assistance includes awards received directly from federal and state agencies or indirectly when subrecipients receive funds identified as federal or state funds by recipients. The granting agency is responsible for identifying the source of funds awarded to recipients. The recipient is responsible for identifying the source of funds awarded to subrecipients.

- (b) Financial assistance does not include direct federal, state, or local government cash assistance to individuals.
- (5) "Financial report" means a presentation of financial statements, including applicable supplemental notes and supplemental schedules, that are prepared in a format published by the department using the Budgetary Accounting and Reporting System for Montana Cities, Towns, and Counties Manual and that reflect a current financial position and the operating results for the 1-year reporting period.
 - (6) "Independent auditor" means:
- (a) a federal, state, or local government auditor who meets the standards specified in the government auditing standards; or
 - (b) a licensed accountant who meets the standards in subsection (6)(a).
- (7) (a) "Local government entity" means a county, city, district, or public corporation that:
- (i) has the power to raise revenue or receive, disburse, or expend local, state, or federal government revenue for the purpose of serving the general public;
- (ii) is governed by a board, commission, or individual elected or appointed by the public or representatives of the public; and
 - (iii) receives local, state, or federal financial assistance.
 - (b) Local government entities include but are not limited to:
 - (i) airport authority districts;
 - (ii) cemetery districts;
 - (iii) counties;
 - (iv) county housing authorities;
 - (v) county road improvement districts;
 - (vi) county sewer districts;
 - (vii) county water districts;
 - (viii) county weed management districts;
 - (ix) drainage districts;
 - (x) fire companies;
 - (xi) fire districts;
 - (xii) fire service areas;
 - (xiii) hospital districts;
 - (xiv) incorporated cities or towns;
 - (xv) irrigation districts;
 - (xvi) mosquito districts;
 - (xvii) municipal fire departments;
 - (xviii) municipal housing authority districts;
 - (xix) port authorities;
 - (xx) solid waste management districts;
 - (xxi) rural improvement districts;
 - (xxii) school districts, including a district's extracurricular funds;
 - (xxiii) soil conservation districts;

- (xxiv) special education or other cooperatives;
- (xxv) television districts;
- (xxvi) urban transportation districts;
- (xxvii) water conservancy districts; and
- (xxviii) regional resource authorities; and
- (xxix) other miscellaneous and special districts.
- (8) "Revenues" means all receipts of a local government entity from any source excluding the proceeds from bond issuances."

Section 25. Section 7-6-4020, MCA, is amended to read:

- **"7-6-4020. Preliminary annual operating budget.** (1) A preliminary annual operating budget must be prepared for the local government.
- (2) This part does not provide for the consolidation or reassignment, but does not prohibit delegation by mutual agreement, of any duties of elected county officials.
- (3) (a) Before June 1 of each year, the county clerk and recorder shall notify the county commission and each board, office, *regional resource authority*, or official that they are required to file preliminary budget proposals for their component of the total county budget.
- (b) Component budgets must be submitted to the clerk and recorder before June 10th or on a date designated by the county commission and must be submitted on forms provided by the county clerk and recorder.
- (c) The county clerk and recorder shall prepare and submit the county's preliminary annual operating budget.
- (d) Component budget responsibilities as provided in this subsection (3) include but are not limited to the following:
- (i) The county surveyor or any special engineer shall compute road and bridge component budgets and submit them to the county commission.
 - (ii) The county commission shall submit road and bridge component budgets.
 - (iii) The county treasurer shall submit debt service component budgets.
- (iv) The county commission shall submit component budgets for construction or improvements to be made from new general obligation debt.
- (4) The preliminary annual operating budget for each fund must include, at a minimum:
- (a) a listing of all revenue and other resources for the prior budget year, current budget year, and proposed budget year;
- (b) a listing of all expenditures for the prior budget year, the current budget year, and the proposed budget year. All expenditures must be classified under one of the following categories:
 - (i) salaries and wages;
 - (ii) operations and maintenance;
 - (iii) capital outlay;
 - (iv) debt service; or
 - (v) transfers out.
- (c) a projection of changes in fund balances or cash balances available for governmental fund types and a projection of changes in cash balances and

working capital for proprietary fund types. This projection must be supported by a summary for each fund or group of funds listing the estimated beginning balance plus estimated revenue, less proposed expenditures, cash reserves, and estimated ending balances.

- (d) a detailed list of proposed capital expenditures and a list of proposed major capital projects for the budget year;
 - (e) financial data on current and future debt obligations;
- (f) schedules or summary tables of personnel or position counts for the prior budget year, current budget year, and proposed budget year. The budgeted amounts for personnel services must be supported by a listing of positions, salaries, and benefits for all positions of the local government. The listing of positions, salaries, and benefits is not required to be part of the budget document.
 - (g) all other estimates that fall under the purview of the budget.
- (5) The preliminary annual operating budget for each fund for which the local government will levy an ad valorem property tax must include the estimated amount to be raised by the tax."

Section 26. Section 7-6-4035, MCA, is amended to read:

- "7-6-4035. Tax levies for boards and commissions bond exemption. (1) The proposed budget and mill levy for each board, commission, or other governing entity are subject to approval by the governing body.
- (2) Except for a port authority created under Title 7, chapter 14, part 11, the taxes, revenue, or fees legally pledged for the payment of debt or for the operations of a regional resource authority are not subject to approval by the governing body.
- (3) Except for judgment levies under 2-9-316 or 7-6-4015, all tax levies are subject to 15-10-420."

Section 27. Section 15-10-420, MCA, is amended to read:

- "15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.
- (b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.
- (c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

- (2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.
 - (3) (a) For purposes of this section, newly taxable property includes:
 - (i) annexation of real property and improvements into a taxing unit;
 - (ii) construction, expansion, or remodeling of improvements;
 - (iii) transfer of property into a taxing unit;
 - (iv) subdivision of real property; and
 - (v) transfer of property from tax-exempt to taxable status.
- (b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.
- (4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:
 - (i) a change in the boundary of a tax increment financing district;
- (ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or
 - (iii) the termination of a tax increment financing district.
- (b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.
- (c) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonqualified agricultural land as described in 15-6-133(1)(c).
 - (5) Subject to subsection (8), subsection (1)(a) does not apply to:
 - (a) school district levies established in Title 20; or
- (b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703; or
 - (c) a mill levy imposed for a newly created regional resource authority.
- (6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.
- (7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.
- (8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

- (9) (a) The provisions of subsection (1) do not prevent or restrict:
- (i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;
- (ii) a levy to repay taxes paid under protest as provided in 15-1-402;
- (iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326; or
- (iv) a levy for the support of a study commission under 7-3-184; or
- (v) a levy for the support or a newly established regional resource authority.
- (b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.
- (10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.
- (11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."
- **Section 28. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.
- **Section 29. Codification instruction.** [Sections 1 through 23] are intended to be codified as an integral part of Title 7, and the provisions of Title 7 apply to [sections 1 through 23].
- Section 30. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 31. Effective date. [This act] is effective on passage and approval. Approved April 24, 2009

CHAPTER NO. 352

[SB 32]

AN ACT PROVIDING THAT CERTIFICATION OF A PERSON AS DISABLED FOR PURPOSES OF OBTAINING A PERMIT TO HUNT FROM A VEHICLE MAY BE ENDORSED BY A LICENSED CHIROPRACTOR IN ADDITION TO CERTAIN OTHER MEDICAL CARE PROVIDERS; AMENDING SECTION 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-803, MCA, is amended to read:

"87-2-803. Persons with disabilities — service members — definitions. (1) Persons with disabilities are entitled to fish and to hunt game birds, not including turkeys, with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule. A person who has purchased a conservation license and a resident fishing license or game bird license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the fishing license or game bird license previously purchased for that license year. A

person who is certified as disabled pursuant to subsection (3) and who was issued a permit to hunt from a vehicle for license year 2000 or a subsequent license year is automatically entitled to a permit to hunt from a vehicle for subsequent license years if the criteria for obtaining a permit does not change.

- (2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase a Class A-3 deer A tag for \$6.50 and a Class A-5 elk tag for \$8. A person who has purchased a conservation license and a resident deer license or resident elk license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the deer license or elk license previously purchased and reissuance of the license for that license year at the rate established in this subsection.
- (3) A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person establishes one or more of the disabilities pursuant to subsection (9).
- (4) (a) A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection (4) as a permitholder, may hunt by shooting a firearm from:
- (i) the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-101, except a state or federal highway;
- (ii) within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted; or
- (iii) an off-highway vehicle or snowmobile, as defined in 61-1-101, in any area where hunting is permitted and that is open to motorized use, unless otherwise prohibited by law, as long as the off-highway vehicle or snowmobile is marked as described in subsection (4)(d) of this section.
- (b) This subsection (4) does not allow a permitholder to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner.
- (c) A permitholder must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the permitholder by hunting a game animal that has been wounded by the permitholder when the permitholder is unable to pursue and kill the wounded game animal.
- (d) Any vehicle from which a permitholder is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle, or as prescribed by the department.
- (5) A veteran who meets the qualifications in subsection (9) as a result of a combat-connected injury may apply at a fish, wildlife, and parks office for a regular Class A-3 deer A tag, a Class A-4 deer B tag, a Class B-7 deer A tag, a Class B-8 deer B tag, and a special antelope license at one-half the license fee. Fifty licenses of each license type must be made available annually. Licenses issued to veterans under this part do not count against the number of special antelope licenses reserved for people with permanent disabilities, as provided in 87-2-706.
- (6) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of \$10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as

authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure.

- (b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses, in the manner provided in subsection (2) of this section, and must be accompanied by a companion, as provided in subsection (4)(c) of this section.
- (7) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.
- (8) As used in this section, "disabled person", "person with a disability", or "disabled" means or refers to a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.
 - (9) A person is entitled to a permit to hunt from a vehicle if the person:
- (a) is certified by a licensed physician, a licensed chiropractor, an advanced practice registered nurse, or a licensed physician assistant to be dependent on an oxygen device or dependent on a wheelchair, crutch, or cane for mobility;
 - (b) is an amputee above the wrist or ankle; or
- (c) is certified by a licensed physician, a licensed chiropractor, an advanced practice registered nurse, or a licensed physician assistant to be unable to walk, unassisted, 600 yards over rough and broken ground while carrying 15 pounds within 1 hour and to be unable to handle and maneuver up to 25 pounds.
- (10) Certification by a licensed physician, a licensed chiropractor, an advanced practice registered nurse, or a licensed physician assistant under subsection (9) must be on a form provided by the department.
- (11) The department or a person who disagrees with a determination of disability or eligibility for a permit to hunt from a vehicle may request a review by the board of medical examiners pursuant to 37-3-203.
- (12) (a) A Montana resident who is a member of the Montana national guard or the federal reserve as provided in 10 U.S.C. 10101 or who was otherwise engaged in active duty and who participated in a contingency operation as provided in 10 U.S.C. 101(a)(13) that required the member to serve at least 2 months outside of the state, upon request and upon presentation of the documentation described in subsection (12)(b), must be issued a free resident wildlife conservation license or a Class AAA resident combination sports license, which may not include a bear license, upon payment of the resident hunting access enhancement fee provided for in 87-2-202(3)(c), in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election. A member who participated in a contingency operation after September 11, 2001, that required the member to serve at least 2 months outside of the state may make an election in 2007 or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election and be entitled to a free resident wildlife conservation license or a free Class AAA resident combination sports license in the year of election and in any of the 4 years after the member's election.
- (b) To be eligible for the free resident wildlife conservation license or free Class AAA resident combination sports license provided for in subsection (12)(a), an applicant shall, in addition to the written application and proof of residency required in 87-2-202(1), provide to any regional department office or

to the department headquarters in Helena, by mail or in person, the member's DD form 214 verifying the member's release or discharge from active duty. The applicant is responsible for providing documentation showing that the applicant participated in a contingency operation as provided in 10 U.S.C. 101(a)(13).

- (c) A Montana resident who meets the service qualifications of subsection (12)(a) and the documentation required in subsection (12)(b) is entitled to a free Class A resident fishing license in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election.
- (d) The department's general license account must be reimbursed by a quarterly transfer of funds from the general fund to the general license account for costs associated with the free licenses granted pursuant to this subsection (12) during the preceding calendar quarter. Reimbursement costs must be designated as license revenue."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 24, 2009

CHAPTER NO. 353

[SB 73]

AN ACT REVISING THE DEFINITION OF MEDIUM-SPEED ELECTRIC VEHICLE; AND AMENDING SECTION 61-1-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-101, MCA, is amended to read:

- **"61-1-101. Definitions.** As used in this title, unless the context indicates otherwise, the following definitions apply:
- (1) (a) "Authorized agent" means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department's motor vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or purposes upon behalf of a third party.
- (b) For purposes of this subsection (1), "person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.
- (2) "Authorized agent agreement" means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent is required to operate in performing specific motor vehicle or driver-related record functions.
- (3) "Bus" means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.
- (4) (a) "Business entity" means a corporation, association, partnership, limited liability partnership, limited liability company, or other legal entity recognized under state law.

- (b) The term does not include an individual.
- (5) (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.
 - (b) The term does not include a truck canopy cover or topper.
- (6) "Certificate of title" means the paper record issued by the department or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor vehicle specifically described in the record and that provides notice of a perfected security interest in the motor vehicle.
 - (7) "Commercial driver's license" means:
- (a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; and
- (b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.
- (8) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:
- (i) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
- (ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;
 - (iii) is designed to transport at least 16 passengers, including the driver;
 - (iv) is a school bus; or
- (v) is of any size and is used in the transportation of hazardous materials as defined in 61-8-801.
 - (b) The following vehicles are not commercial motor vehicles:
 - (i) an authorized emergency service vehicle:
- (A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and
 - (B) entitled to the exemptions granted under 61-8-107;
 - (ii) a vehicle:
- (A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;
- (B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and
 - (C) not used to transport goods for compensation or for hire; or
- (iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United States coast guard personnel.

- (c) For purposes of this subsection (8):
- (i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;
- (ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;
- (iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; and
 - (iv) "school bus" has the meaning provided in 49 CFR 383.5.
 - (9) "Commission" means the state transportation commission.
 - (10) "Custom-built motorcycle" means a motorcycle that is equipped with:
- (a) an engine that was manufactured 20 years prior to the current calendar year and that has been altered from the manufacturer's original design;
- (b) an engine that was manufactured to resemble an engine 20 or more years old and that has been constructed in whole or in part from nonoriginal materials.
 - (11) "Custom vehicle" means a motor vehicle other than a motorcycle that:
- (a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or
- (ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and
- (b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.
 - (12) "Customer identification number" means:
- (a) a driver's license or identification card number when the customer is an individual who has been issued a driver's license or identification card by a state driver licensing authority;
- (b) a federal employer or tax identification number when the customer is a business entity that has been issued a federal employer or tax identification number;
- (c) the identification number assigned by the secretary of state to a business entity authorized to do business in this state under Title 35 if the customer is a business entity that does not have a federal employer or tax identification number other than a social security number; or
- (d) if the customer has not been issued one of the numbers described in subsections (12)(a) through (12)(c), a number assigned to the customer by the department when a transaction is initiated under this title.
- (13) (a) "Dealer" means a person that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, or accepting on consignment new or used motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, off-highway vehicles, or special mobile equipment that is not registered in the name of the person.
 - (b) The term does not include the following:
- (i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

- (ii) employees of the persons included in subsection (13)(b)(i) when engaged in the specific performance of their duties as employees; or
 - (iii) public officers while performing or in the operation of their duties.
- (14) "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.
- (15) "Department" means the department of justice acting directly or through its duly authorized officers or agents.
- (16) "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.
 - (17) "Domiciled" means a place where:
 - (a) an individual establishes residence;
 - (b) a business entity maintains its principal place of business;
 - (c) the business entity's registered agent maintains an address; or
- (d) a business entity most frequently uses, dispatches, or controls a motor vehicle, trailer, semitrailer, or pole trailer that it owns or leases.
- (18) "Driver" means a person who drives or is in actual physical control of a vehicle.
- (19) "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:
 - (a) any temporary license or instruction permit;
- (b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;
 - (c) any nonresident's driving privilege;
 - (d) a motorcycle endorsement; or
 - (e) a commercial driver's license.
- (20) "Electric personal assistive mobility device" means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.
- (21) "For hire" means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.
- (22) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.
- (23) "Highway" or "public highway" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.
- (24) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.
- (25) "Implement of husbandry" means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner's agricultural operations.

- (26) "Kit vehicle" is a motor vehicle assembled from a manufactured kit either as:
- (a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or
- (b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.
- (27) "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.
 - (28) "Manufactured home" has the meaning provided in 15-24-201.
- (29) "Manufacturer" includes any person engaged in the manufacture of motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, or off-highway vehicles as a regular business.
- (30) "Manufacturer's certificate of origin" means the original paper record produced and issued by the manufacturer of a vehicle or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.
- (31) (a) "Medium-speed electric vehicle" is a motor vehicle, upon or by which a person may be transported, that:
- (i) has a maximum speed of 35 45 miles an hour as certified by the manufacturer;
- (ii) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;
- (iii) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;
 - (iv) is fully enclosed and includes at least one door for entry;
- (v) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;
- (vi) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565;
- (vii) bears a sticker, affixed by the manufacturer or dealer, on the left side of the rear window that indicates the vehicle's maximum speed rating; and
 - (viii) as certified by the manufacturer, is equipped as provided in 61-9-432.
- (b) A medium-speed electric vehicle must be treated as a light vehicle for purposes of titling and registration under Title 61, chapter 3.
- (c) A medium-speed electric vehicle may not have a gross vehicle weight in excess of $5{,}000$ pounds.
 - (32) "Mobile home" or "housetrailer" has the meaning provided in 15-24-201.
 - (33) "Montana resident" means:
 - (a) an individual who resides in Montana as determined under 1-1-215;
- (b) for the purposes of chapter 3, a business entity that maintains a principal place of business or a registered agent in this state.
- (34) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description,

whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

- (b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.
- (35) (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis
- (b) The term does not include motor carriers regulated under Title 69, chapter 12.
- (36) (a) "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the operator and that is designated to travel on not more than three wheels in contact with the ground. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.
- (b) The term does not include a tractor, a bicycle as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.
- (37) (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.
- (b) The term does not include a bicycle, as defined in 61-8-102, or a motorized nonstandard vehicle.
 - (38) "Motor home" means a motor vehicle:
- (a) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;
- (b) containing permanently installed independent life support systems that meet the ANSIA/A119.2 standard; and
 - (c) providing at least four of the following types of facilities:
 - (i) cooking, refrigeration, or icebox;
 - (ii) self-contained toilet;
 - (iii) heating or air-conditioning, or both;
 - (iv) potable water supply, including a faucet and sink; or
- (v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply; or both.
- (39) (a) "Motorized nonstandard vehicle" means a vehicle, upon or by which a person may be transported, that:
- (i) is propelled by its own power, using an internal combustion engine or an electric motor:
- (ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and
- (iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.
- (b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

- (c) The term does not include an electric personal assistive mobility device or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.
 - (40) (a) "Motor vehicle" means:
- (i) a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state; and
- (ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9.
- (b) The term does not include a bicycle as defined in 61-8-102, an electric personal assistive mobility device, a motorized nonstandard vehicle, or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.
- (41) "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.
 - (42) "Nonresident" means a person who is not a Montana resident.
- (43) (a) "Not used for general transportation purposes" means the operation of a motor vehicle, registered as a collector's item, a custom vehicle, a street rod, or a custom-built motorcycle to or from a car or motorcycle club activity or event or an exhibit, show, cruise night, or parade, or other occasional transportation activity.
- (b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.
- (44) (a) "Off-highway vehicle" means a self-propelled vehicle designed for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.
 - (b) The term does not include:
 - (i) vehicles designed primarily for travel on, over, or in the water;
 - (ii) snowmobiles; or
- (iii) motor vehicles designed to transport persons or property upon the highways unless the vehicle is used for off-road recreation on public lands.
- (45) "Operator" means a person who is in actual physical control of a motor vehicle.
- (46) "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.
- (47) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

- (48) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.
- (49) "Pole trailer" means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.
- (50) "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.
- (51) (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor capable of producing not more than 50 horsepower.
 - (b) The term does not include golf carts.
- (52) "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.
- (53) (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated upon rails.
 - (b) The term does not include streetcars.
 - (54) "Recreational vehicle" includes a motor home, travel trailer, or camper.
- (55) "Registration" or "register" means the act or process of creating an electronic record, maintained by the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.
- (56) "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county treasurer to the owner of a motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat, personal watercraft, or snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department under 61-3-101.
- (57) "Registration receipt" means a paper record that is produced and issued or, if authorized by the department, an electronic record that is transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.
- (58) "Retail sale" means the sale of a motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment by a dealer to a person for purposes other than resale.
- (59) "Revocation" means the termination by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for and be issued a driver's license for a period of time designated by law, during which the license or privilege may not be renewed, restored, or exercised. An application for a new license may be

presented and acted upon by the department after the expiration of the period of the revocation.

- (60) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.
- (61) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.
 - (b) The term does not include a canoe or kayak propelled by wind.
- (62) "Sell" means to transfer ownership from one person to another person or from a dealer to another person for consideration.
- (63) "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.
- (64) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that is not otherwise registered or licensed under the laws of the state of Montana.
- (65) "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.
- (66) (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:
- (i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;
- (ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles:
- (iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;
- (iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or
- (v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.
- (b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.
- (67) (a) "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.
- (b) The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

- (68) (a) "Stop", when required, means complete cessation from movement.
- (b) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrol officer, or traffic control sign or signal.
- (69) "Storage lot" means property owned, leased, or rented by a dealer that is not contiguous to the dealer's established place of business where a motor vehicle from the dealer's inventory may be placed when space at the dealer's established place of business is not available.
- (70) "Street" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.
 - (71) "Street rod" means a motor vehicle, other than a motorcycle, that:
- (a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and
- (b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.
- (72) "Suspension" means the temporary withdrawal by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for or be issued a driver's license for a period of time designated by law.
 - (73) "Temporary registration permit" means a paper record:
- (a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:
 - (i) required vehicle and owner information; and
 - (ii) the purpose for which the record was generated; and
- (b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs.
- (74) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.
- (75) (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.
- (b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.
- (76) "Transaction summary receipt" means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and

verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.

- (77) "Travel trailer" means a vehicle:
- (a) that is 40 feet or less in length;
- (b) that is of a size or weight that does not require special permits when towed by a motor vehicle;
 - (c) with gross trailer area of less than 320 square feet; and
- (d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.
- (78) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.
- (79) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.
 - (80) "Under the influence" has the meaning provided in 61-8-401.
- (81) "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, given away, or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as "secondhand" within the ordinary meaning of that term.
- (82) "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.
- (83) (a) "Vehicle" means a device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.
- (b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.
- (84) "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the motor vehicle or a component part of the motor vehicle.
- (85) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.
- (86) "Wholesaler" means a person that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment only to dealers and auto auctions licensed under chapter 4, part 1."

Approved April 24, 2009

CHAPTER NO. 354

[SB 79]

AN ACT DEFINING "NONEMERGENCY AMBULANCE TRANSPORT" AND "VOLUNTEER EMERGENCY MEDICAL TECHNICIAN"; ESTABLISHING STAFFING REQUIREMENTS FOR CERTAIN AMBULANCE TRANSPORTS; AMENDING SECTION 50-6-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-6-302, MCA, is amended to read:

"50-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

- (1) "Aircraft" has the same meaning given in 67-1-101. The term includes any fixed-wing airplane or helicopter.
- (2) (a) "Ambulance" means a privately or publicly owned motor vehicle or aircraft that is maintained and used for the transportation of patients.
 - (b) The term does not include:
- (i) a motor vehicle or aircraft owned by or operated under the direct control of the United States; or
- (ii) air transportation services, such as charter or fixed-based operators, that are regulated by the federal aviation administration and that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.
- (3) "Department" means the department of public health and human services provided for in 2-15-2201.
- (4) "Emergency medical service" means a prehospital or interhospital emergency medical transportation or treatment service provided by an ambulance or nontransporting medical unit.
- (5) "Medical control" means the function of a licensed physician in providing direction, advice, or orders to an emergency medical service provider.
- (6) "Nonemergency ambulance transport" means the use of an ambulance to transport a patient between health care facilities, as defined in 50-5-101, including federal facilities, when the patient's medical condition requires special transportation considerations, supervision, or handling but does not indicate a need for medical treatment during transit or for emergency medical treatment upon arrival at the receiving health care facility.
- (6)(7) "Nontransporting medical unit" means an aggregate of persons who are organized to respond to a call for emergency medical service and to treat a patient until the arrival of an ambulance. Nontransporting medical units provide any one of varying types and levels of service defined by department rule but may not transport patients.
- (7)(8) "Offline medical director" means a physician who is responsible and accountable for the overall medical direction and medical supervision of an emergency medical service and who is responsible for the proper application of patient care techniques and the quality of care provided by the emergency medical services personnel. The term includes only a physician who volunteers the physician's services as an offline medical director or whose total reimbursement for those services in any 12-month period does not exceed \$5,000.

- (8)(9) (a) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.
- (b) The term does not include an individual who is nonambulatory and who needs transportation assistance solely because that individual is confined to a wheelchair as the individual's usual means of mobility.
- (9)(10) "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States.
- (11) "Volunteer emergency medical technician" means an individual who is licensed pursuant to Title 50, chapter 6, part 2, and provides emergency medical care:
 - (a) on the days and at the times of the day chosen by the individual; and
 - (b) for an emergency medical service other than:
- (i) a private ambulance company, unless the care is provided without compensation and outside of the individual's regular work schedule; or
- (ii) a private business or a public agency, as defined in 7-1-4121, that employs the individual on a regular basis with a regular, hourly wage to provide emergency medical care as part of the individual's job duties."
- Section 2. Staffing nonemergency ambulance transports transports in rural areas. An emergency medical service that is staffed primarily by volunteer emergency medical technicians may staff an ambulance with one emergency medical technician licensed at an emergency medical technician-basic level or higher and one driver trained in the operation of emergency vehicles for the following types of responses:
 - (1) nonemergency ambulance transports;
- (2) emergency medical service provided by an ambulance company located in a county with a population of fewer than 20,000 residents; and
- (3) emergency medical service provided by an ambulance company located in a county with a population of 20,000 residents or more if the ambulance company is transporting a patient from a community within that county that has a population of 1,500 residents or less to the nearest health care facility that is able to meet the patient's medical needs.
- **Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 50, chapter 6, part 3, and the provisions of Title 50, chapter 6, apply to [section 2].

Section 4. Effective date. [This act] is effective on passage and approval. Approved April 24, 2009

CHAPTER NO. 355

[SB 86]

AN ACT GENERALLY REVISING GAMBLING LAWS; REVISING DEFINITIONS; REQUIRING THE SUBMISSION OF FINGERPRINTS FOR THE PURPOSE OF CRIMINAL BACKGROUND CHECKS BY LICENSE APPLICANTS; PROVIDING FOR A LICENSE FOR ASSOCIATED GAMBLING BUSINESSES; REQUIRING APPROVAL OF CERTAIN BINGO CARDS; REMOVING CERTAIN RESTRICTIONS ON RAFFLE PRIZES;

AMENDING SECTIONS 23-5-112, 23-5-115, 23-5-157, 23-5-324, 23-5-412, 23-5-413, AND 23-5-621, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-112, MCA, is amended to read:

- **"23-5-112. Definitions.** Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:
- (1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter.
- (2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.
- (3) "Associated gambling business" means a person who provides a service or product to a licensed gambling business and who:
 - (a) has a reason to possess or maintain control over gambling devices;
 - (b) has access to proprietary information or gambling tax information; or
 - (c) is a party in processing gambling transactions.
- (3)(4) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.
- (4)(5) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. More than 75 numbers may not be used. One number must or more numbers may appear in each square, except for the center square, which may be considered a free play. Numbers are must be randomly drawn using authorized equipment until the game is won by the person or persons who first cover one or more previously designated arrangements of numbers on the bingo card.
- (5)(6) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.
 - (6)(7) "Card game table" or "table" means a live card game table:
- (a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or
 - (b) operated by a senior citizen center.
- (7)(8) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.
- (8)(9) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.
 - (9)(10) "Department" means the department of justice.
 - (10)(11) "Distributor" means a person who:
- (a) purchases or obtains from a licensed manufacturer, distributor, or route operator equipment of any kind for use in gambling activities; and
 - (b) sells the equipment to a licensed distributor, route operator, or operator.
- (11)(12) (a) "Gambling" or "gambling activity" means risking any money, credit, deposit, check, property, or other thing of value for a gain that is

contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise.

- (b) The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.
- (c) The term does not include social card games played solely for prizes of minimal value, defined as class I gaming by 25 U.S.C. 2703.
- (12)(13) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.
- (13)(14) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.
- (14)(15) (a) "Gift enterprise" means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services.
 - (b) The term does not mean:
- (i) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;
 - (ii) a promotional game of chance; or
 - (iii) an amusement game regulated under Title 23, chapter 6.
 - (15)(16) "Gross proceeds" means gross revenue received less prizes paid out.
- (16)(17) "House player" means a person participating in a card game who has a financial relationship with the operator, card room contractor, or dealer or who has received money or chips from the operator, card room contractor, or dealer to participate in a card game.
- (17)(18) "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:
- (a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under Title 23, chapter 7, or under part 5 of this chapter or in a promotional game of chance approved by the department; and
- (b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, craps table, or slot machine, except as provided in 23-5-153.
- (18)(19) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:
- (a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;
- (b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160;

- (c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in Title 23, chapter 4, and parts 2, 5, and 8 of this chapter;
 - (d) credit gambling; and
 - (e) internet gambling.
- (19)(20) (a) "Internet gambling", by whatever name known, includes but is not limited to the conduct of any legal or illegal gambling enterprise through the use of communications technology that allows a person using money, paper checks, electronic checks, electronic transfers of money, credit cards, debit cards, or any other instrumentality to transmit to a computer information to assist in the placing of a bet or wager and corresponding information related to the display of the game, game outcomes, or other similar information.
- (b) The term does not include the operation of a simulcast facility or advance deposit wagering with a licensed advance deposit wagering hub operator allowed by Title 23, chapter 4, or the state lottery provided for in Title 23, chapter 7. If all aspects of the gaming are conducted on Indian lands in conformity with federal statutes and with administrative regulations of the national Indian gaming commission, the term does not include class II gaming or class III gaming as defined by 25 U.S.C. 2703.
- (20)(21) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.
- (21)(22) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.
- (22)(23) "License" means a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab game seller, manufacturer of electronic live bingo or keno equipment, other manufacturer, distributor, or route operator that is issued to a person by the department.
- (23)(24) "Licensee" means a person who has received a license from the department.
- (24)(25) "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.
- (25)(26) (a) "Lottery" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance.
 - (b) The term does not mean lotteries authorized under Title 23, chapter 7. (26)(27) "Manufacturer" means a person who:
- (a) assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device and who sells the equipment directly to a licensed distributor, route operator, or operator; or
- (b) possesses gambling devices or components of gambling devices for the purpose of testing them.

(27)(28) "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established for purposes other than to conduct a gambling activity to support charitable activities, scholarships or educational grants, or community service projects.

(28)(29) "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public a gambling device or gambling enterprise authorized under parts 1 through 8 of this chapter.

(29)(30) "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

(30)(31) "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

(31)(32) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

(32)(33) "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the department that was manufactured or intended for use for purposes other than gambling.

(33)(34) "Public gambling" means gambling conducted in:

- (a) a place, building, or conveyance to which the public has access or may be permitted to have access;
- (b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or
- (c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

(34)(35) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

(35)(36) "Route operator" means a person who:

- (a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;
 - (b) leases the equipment to a licensed operator for use by the public; and
- (c) may sell to a licensed operator equipment that had previously been authorized to be operated on a premises.

(36)(37) "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this

definition must be recognized in the state plan on aging adopted by the department of public health and human services.

- (37)(38) (a) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner.
- (b) This definition does not apply to video gambling machines authorized under part 6 of this chapter.
- (38)(39) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."
 - **Section 2.** Section 23-5-115, MCA, is amended to read:
- **"23-5-115. Powers and duties of department licensing.** (1) The department shall administer the provisions of parts 1 through 8 of this chapter.
- (2) The department shall adopt rules to administer and implement parts 1 through 8 of this chapter.
- (3) The department shall provide licensing procedures, prescribe necessary application forms, and grant or deny license applications.
- (4) The department shall, as a prerequisite to the issuance of a license pursuant to the authority contained in this chapter, require the applicant to submit fingerprints for the purpose of a criminal background investigation by the department and the federal bureau of investigation.
- (5) The applicant shall sign a release of information to the department and is responsible to the department for the payment of all fees associated with the criminal background check.
- (4)(6) The department shall prescribe recordkeeping requirements for licensees, provide a procedure for inspection of records, provide a method for collection of taxes, and establish penalties for the delinquent reporting and payment of required taxes.
- $\frac{(5)}{(7)}$ The department may suspend, revoke, deny, or place a condition on a license issued under parts 1 through 8 of this chapter.
- (6)(8) The department may not make public or otherwise disclose confidential criminal justice information, as defined in 44-5-103, information obtained in the tax reporting processes, personal information protected by an individual privacy interest, or trade secrets, as defined in 30-14-402, specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege.
- (7)(9) The department shall assess, collect, and disburse any fees, taxes, or charges authorized under parts 1 through 8 of this chapter."
 - **Section 3.** Section 23-5-157, MCA, is amended to read:
- **"23-5-157. Gambling on cash basis penalties.** (1) (a) In every gambling activity, except raffles as authorized in 23-5-413 and card games authorized in part 3 of this chapter and normally scored using points, the consideration paid for the chance to play must be made in cash. A check or exedit debit card may be used to obtain cash to participate in a gambling activity. A

participant shall present the cash needed to play the game as the game is being played. If a check or eredit debit card is used to obtain cash on the premises of a licensee then it must be delivered and accepted unconditionally. A licensee or employee of a licensee may not hold a check or other evidence of indebtedness for redemption pending the outcome of a gambling activity.

- (b) Credit gambling is prohibited. Credit gambling is offering or accepting as part of the price of participation in a gambling activity or as payment of a debt incurred in a gambling activity:
- (i) a check, or credit card, or debit card held pending the outcome of a gambling activity;
 - (ii) a loan of any kind at any time from or on behalf of a licensee;
- (iii) any form of deferred payment, including a note, IOU, post-dated check, hold check, or other evidence of indebtedness; or
- (iv) a check issued or delivered that is accepted by the licensee with the knowledge that it will not be paid by the depository.
- (2) A person who violates this section is guilty of a criminal offense under 23-5-156 and must be punished in accordance with 23-5-161 or 23-5-162."

Section 4. Section 23-5-324, MCA, is amended to read:

- **"23-5-324. Card room contractor's license** fee submission of **contract.** (1) It is a misdemeanor for a person to enter into a contract with a licensed operator to operate one or more live card game tables on the operator's premises without obtaining a card room contractor's license from the department.
- (2) The department shall charge an annual license fee of \$150 for issuing or renewing a card room contractor's license. The department shall retain the fee for administrative purposes.
- (3) The applicant shall submit at the time of application for a card room contractor's license a copy of the *a proposed lease* agreement entered into with the *a* licensed operator."

Section 5. Section 23-5-412, MCA, is amended to read:

- **"23-5-412. Card prices and prizes exception.** (1) Except as provided in subsection (3):
 - (a) the price for an individual bingo or keno card may not exceed 50 cents;
- (b) a prize may not exceed the value of \$100 for each individual bingo game or keno card; and
- (c) it is unlawful to, in any manner, combine any bingo or keno games so as to increase the ultimate value of the prize.
- (2) Bingo and keno prizes may be paid in either tangible personal property or cash.
- (3) (a) A variation of the game of keno, as approved by the department, in which a player selects three or more numbers and places a wager on various combinations of these numbers is permissible if:
 - (i) no more than 50 cents is wagered on each combination of numbers; and
 - (ii) a winning combination does not pay more than \$100.
- (b) A variation of the game of bingo, as approved by the department, in which prizes may be awarded for each winning bingo pattern on a card is permissible if:

- (i) no more than 50 cents is wagered on each bingo pattern; and
- (ii) a winning pattern does not pay more than \$100.
- (4) Any bingo card other than a standard card with 5 columns and 25 squares with 1 number appearing in each square or any card that allows the player to print numbers on the card must be approved by the department prior to being offered for play.
- (4)(5) A player may give a keno caller a card with instructions on the card to play that card and its marked numbers for up to the number of successive games that the house allows and that the player has indicated on the card, upon payment of the price per game times the number of successive games indicated. The player shall remain on the house premises until the card is played or withdrawn. The caller shall keep the card until the end of the number of games indicated, and the department may by rule provide that at that time the caller shall pay the player any prizes won.
- (5)(6) If a licensed operator conducts a promotional game of chance involving bingo or keno, the prize limit provided for in subsection (1) applies to prizes awarded as a result of the promotional game of chance."
 - **Section 6.** Section 23-5-413, MCA, is amended to read:
- "23-5-413. Raffle prizes permits exceptions investigations rulemaking. (1) (a) Except as provided in subsections (1)(b) and (1)(c), a permit must be issued by the board of county commissioners for each raffle conducted within its jurisdiction. The permit must be issued before the raffle may be conducted. The department shall investigate all violations of this part.
- (b) If tickets for a raffle are to be sold in more than one county, a permit must be obtained only in the county where the winners of the raffle are to be determined. The department may adopt rules to require recordkeeping for receipts and payouts under this part and to establish procedures to ensure the fair selection of winners.
- (c) If a raffle is to be conducted by a religious corporation sole or a nonprofit organization, as defined in 23-5-112, a county permit is not required.
- (2) (a) Except for a religious corporation sole or a nonprofit organization, a A person or organization conducting a raffle shall own all prizes to be awarded as part of the raffle before the sale of any tickets.
- (b) The value of a prize awarded for an individual ticket for a raffle conducted by a person or an organization may not exceed \$5,000. Prizes may not be combined in any manner to increase the ultimate value of the prize awarded for each ticket.
- (c) The provisions of subsections (2)(a) and (2)(b) do not apply to a nonprofit organization, a college, a university, a public school district as provided in 20-6-101 and 20-6-701, or a nonpublic school as described in 20-5-102(2)(e). The proceeds from the sale of tickets for a raffle conducted by a nonprofit organization, college, university, or school district may be used only for charitable purposes or to pay for prizes and may not be used for the administrative costs of conducting the raffle.
- (3) A person who has conducted a raffle must submit an accounting to the board of county commissioners within 30 days following the completion of the raffle.
- (4)(3) (a) The sale of raffle tickets authorized by this part is restricted to events and participants within the geographic confines of the state.

- (b) The sale of raffle tickets may not be conducted over the internet. All raffle announcements or advertisements conducted over the internet must include this sale restriction, the name of the organization offering the raffle, and all raffle terms.
- (5) The value of a prize awarded for an individual ticket for a raffle conducted by a person or an organization, other than a religious corporation sole or a nonprofit organization, may not exceed \$5,000. The prize may be in the form of eash, other intangible personal property, tangible personal property, or real property. Prizes may not be combined in any manner to increase the ultimate value of the prize awarded for each ticket.
- (6) (a) A religious corporation sole or a nonprofit organization shall comply with the requirements in subsections (3) and (4).
- (b) The proceeds from the sale of tickets for a raffle conducted by a religious corporation sole or a nonprofit organization may be used only for charitable purposes or to pay for prizes. Proceeds may not be used for the administrative cost of conducting the raffle.
- (e) (i) The value of a prize awarded for an individual ticket for a raffle conducted by a religious corporation sole or a nonprofit organization may equal or exceed \$5,000 if the prize is in the form of:
 - (A) tangible personal property; or
- (B) real property the fair market value of which has been certified in writing by an appraiser licensed under 37-54-201.
- (ii) If the value of the prize is less than \$5,000, the prize may be in the form of eash, other intangible personal property, tangible personal property, or real property."
 - **Section 7.** Section 23-5-621, MCA, is amended to read:
 - "23-5-621. Rules. (1) The department shall adopt rules that:
 - (a) implement 23-5-637;
- (b) describe the video gambling machines authorized by this part and state the specifications for video gambling machines authorized by this part, including a description of the images and the minimum area of a screen that depicts a bingo, poker, or keno game;
- (c) allow video gambling machines to be imported into this state and used for the purposes of trade shows, exhibitions, and similar activities;
- (d) allow each video gambling machine to offer any combination of approved poker, keno, and bingo games within the same video gambling machine cabinet if the owner of the video gambling machine has received approval to report video gambling machine information utilizing an approved automated accounting and reporting system or has entered into an agreement with the department to utilize an approved automated accounting and reporting system;
- (e) allow, on an individual license basis, licensed machine owners and operators of machines that utilize an approved automated accounting and reporting system to:
- (i) electronically acquire and use for an individual licensed premises the information and data collected for business management, accounting, and payroll purposes; however, the rules must specify that the data made available as a result of an approved automated accounting and reporting system may not be used by licensees for player tracking purposes; and

- (ii) acquire and use, at the expense of a licensee, a department-approved site controller:
- (f) minimize, whenever possible, the recordkeeping and retention requirements for video gambling machines that utilize an approved automated accounting and reporting system.
- (2) The department's rules for an approved automated accounting and reporting system must, at a minimum:
- (a) provide for confidentiality of information received through the approved automated accounting and reporting system within the limits prescribed by 23-5-115(6) 23-5-115(8) and 23-5-116;
- (b) prescribe specifications for maintaining the security and integrity of the approved automated accounting and reporting system;
- (c) limit and prescribe the circumstances for electronic issuance of video gambling machine permits and electronic transfer of funds for payment of taxes, fees, or penalties to the department;
- (d) describe specifications and a review and testing process for approved automated accounting and reporting systems to be utilized by licensed operators, including the requirements for electronically captured data; and
- (e) prescribe the frequency of reporting from an approved automated accounting and reporting system and provide exceptions for geographically isolated video gambling operators."
- **Section 8. Associated gambling business.** (1) The department may adopt rules for the licensing of associated gambling businesses, including but not limited to accounting software vendors and video gambling machine recyclers.
- (2) The licensing of an associated gambling business may consider only the legality of the product being sold and the suitability of the owners of the business as provided in 23-5-176.
 - (3) The annual fee for an associated gambling business license is \$100.
- **Section 9. Codification instruction.** [Section 8] is intended to be codified as an integral part of Title 23, chapter 5, part 1, and the provisions of Title 23, chapter 5, part 1, apply to [section 8].
 - Section 10. Effective date. [This act] is effective on passage and approval.
- **Section 11. Applicability.** [This act] applies to applications for gambling licenses made on or after [the effective date of this act].

Approved April 24, 2009

CHAPTER NO. 356

[SB 108]

AN ACT REVISING CUSTODY LAWS RELATING TO MILITARY SERVICE; PRECLUDING A COURT FROM CONSIDERING MILITARY SERVICE ALONE AS A DETRIMENT TO THE BEST INTEREST OF THE CHILD IN CHILD CUSTODY PROCEEDINGS; ESTABLISHING AN EXPEDITED HEARING PROCEDURE WHEN A PARENT RECEIVES MILITARY SERVICE ORDERS; PROVIDING THAT A COURT-ORDERED MODIFICATION OF A PARENTING PLAN BASED ON MILITARY SERVICE ORDERS OF A PARENT IS TEMPORARY; ALLOWING VISITATION

RIGHTS TO CERTAIN FAMILY MEMBERS WHEN A PARENT RECEIVES MILITARY SERVICE ORDERS; PRECLUDING A COURT FROM CONSIDERING MILITARY SERVICE ALONE IN PARENTING PLANS; AND AMENDING SECTIONS 40-4-212, 40-4-216, 40-4-219, 40-4-228, AND 40-4-234, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-212, MCA, is amended to read:

- "40-4-212. Best interest of child. (1) The court shall determine the parenting plan in accordance with the best interest of the child. The court shall consider all relevant parenting factors, which may include but are not limited to:
 - (a) the wishes of the child's parent or parents;
 - (b) the wishes of the child;
- (c) the interaction and interrelationship of the child with the child's parent or parents and siblings and with any other person who significantly affects the child's best interest;
 - (d) the child's adjustment to home, school, and community;
 - (e) the mental and physical health of all individuals involved;
- (f) physical abuse or threat of physical abuse by one parent against the other parent or the child;
- (g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent;
 - (h) continuity and stability of care;
 - (i) developmental needs of the child;
- (j) whether a parent has knowingly failed to pay birth-related costs that the parent is able to pay, which is considered to be not in the child's best interests;
- (k) whether a parent has knowingly failed to financially support a child that the parent is able to support, which is considered to be not in the child's best interests:
- (l) whether the child has frequent and continuing contact with both parents, which is considered to be in the child's best interests unless the court determines, after a hearing, that contact with a parent would be detrimental to the child's best interests. In making that determination, the court shall consider evidence of physical abuse or threat of physical abuse by one parent against the other parent or the child, including but not limited to whether a parent or other person residing in that parent's household has been convicted of any of the crimes enumerated in 40-4-219(8)(b).
- (m) adverse effects on the child resulting from continuous and vexatious parenting plan amendment actions.
- (2) When determining the best interest of the child of a parent in military service, the court shall consider all relevant parenting factors provided in subsection (1) and may not determine the best interest of the child based only upon the parent's military service.
- (2)(3) A defacto parenting arrangement, in the absence of a prior parenting decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219.
- (3)(4) The following are rebuttable presumptions and apply unless contrary to the best interest of the child:

- (a) A parenting plan action brought by a parent within 6 months after a child support action against that parent is vexatious.
- (b) A motion to amend a final parenting plan pursuant to 40-4-219 is vexatious if a parent seeks to amend a final parenting plan without making a good faith effort to comply with the provisions of the parenting plan or with dispute resolution provisions of the final parenting plan."

Section 2. Section 40-4-216, MCA, is amended to read:

- "40-4-216. Hearings. (1) Parenting plan proceedings shall must receive priority in being set for hearing.
- (2) Upon motion of a parent who has received military service orders, the court shall, for good cause shown, hold an expedited hearing in parenting or visitation matters instituted under 40-4-228(6) if the military service, as defined in 10-1-1003, of the parent has a material effect on the parent's ability or anticipated ability to appear in person at a hearing scheduled in an unexpedited manner.
- (2)(3) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court considers necessary to determine the best interest of the child.
- (3)(4) The court, without a jury, shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the court may exclude the public from a parenting hearing but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.
- (4)(5) If the court finds it necessary that the record of any interview, report, investigation, or testimony in a parenting proceeding be kept secret to protect the child's welfare, the court may make an appropriate order sealing the record."

Section 3. Section 40-4-219, MCA, is amended to read:

- "40-4-219. Amendment of parenting plan mediation. (1) The court may in its discretion amend a prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child and that the amendment is necessary to serve the best interest of the child. In determining the child's best interest under this section, the court may, in addition to the criteria in 40-4-212, also consider whether:
 - (a) the parents agree to the amendment;
- (b) the child has been integrated into the family of the petitioner with consent of the parents;
 - (c) the child is 14 years of age or older and desires the amendment;
 - (d) one parent has willfully and consistently:
 - (i) refused to allow the child to have any contact with the other parent; or
- (ii) attempted to frustrate or deny contact with the child by the other parent; or
- (e) one parent has changed or intends to change the child's residence in a manner that significantly affects the child's contact with the other parent.
- (2) A court may modify a de facto parenting arrangement in accordance with the factors set forth in 40-4-212.

- (3) The court shall presume a parent is not acting in the child's best interest if the parent does any of the acts specified in subsection (1)(d) or (8).
- (4) The court may amend the prior parenting plan based on subsection (1)(e) to provide a new residential schedule for parental contact with the child and to apportion transportation costs between the parents.
- (5) Attorney fees and costs must be assessed against a party seeking frivolous or repeated amendment if the court finds that the amendment action is vexatious and constitutes harassment.
- (6) A parenting plan may be amended upon the death of one parent pursuant to 40-4-221.
- (7) As used in this section, "prior parenting plan" means a parenting determination contained in a judicial decree or order made in a parenting proceeding. In proceedings for amendment under this section, a proposed amended parenting plan must be filed and served with the motion for amendment and with the response to the motion for amendment. Preference must be given to carrying out the parenting plan.
- (8) (a) If a parent or other person residing in that parent's household has been convicted of any of the crimes listed in subsection (8)(b), the other parent or any other person who has been granted rights to the child pursuant to court order may file an objection to the current parenting order with the court. The parent or other person having rights to the child pursuant to court order shall give notice to the other parent of the objection as provided by the Montana Rules of Civil Procedure, and the other parent has 20 days from the notice to respond. If the parent who receives notice of objection fails to respond within 20 days, the parenting rights of that parent are suspended until further order of the court. If that parent responds and objects, a hearing must be held within 30 days of the response.
 - (b) This subsection (8) applies to the following crimes:
 - (i) deliberate homicide, as described in 45-5-102;
 - (ii) mitigated deliberate homicide, as described in 45-5-103;
 - (iii) sexual assault, as described in 45-5-502:
 - (iv) sexual intercourse without consent, as described in 45-5-503;
- (v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-5-505;
 - (vi) incest, as described in 45-5-507;
- (vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b):
 - (viii) endangering the welfare of children, as described in 45-5-622;
 - (ix) partner or family member assault of the type described in 45-5-206(1)(a);
 - (x) sexual abuse of children, as described in 45-5-625.
- (9) Except in cases of physical abuse or threat of physical abuse by one parent against the other parent or the child, or when a parent has been convicted of a crime enumerated in subsection (8)(b), the court may, in its discretion, order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding amendment of the parenting plan. The dispute resolution process may include counseling or mediation by a specified person or agency, and court action.

- (10) (a) Except as provided in subsection (10)(b), a court-ordered or de facto modification of a parenting plan based in whole or in part on military service orders of a parent is temporary and reverts to the previous parenting plan at the end of the military service. If a motion for an amendment of a parenting plan is filed after a parent returns from military service, the court may not consider a parent's absence due to that military service in its determination of the best interest of the child.
- (b) A parent who has performed or is performing military service, as defined in 10-1-1003, may consent to a temporary or permanent modification of a parenting plan:
 - (i) for the duration of the military service; or
 - (ii) that continues past the end of the military service."

Section 4. Section 40-4-228, MCA, is amended to read:

- "40-4-228. Parenting and visitation matters between natural parent and third party. (1) In cases when a nonparent seeks a parental interest in a child under 40-4-211 or visitation with a child, the provisions of this chapter apply unless a separate action is pending under Title 41, chapter 3.
- (2) A court may award a parental interest to a person other than a natural parent when it is shown by clear and convincing evidence that:
- (a) the natural parent has engaged in conduct that is contrary to the child-parent relationship; and
- (b) the nonparent has established with the child a child-parent relationship, as defined in 40-4-211, and it is in the best interests of the child to continue that relationship.
- (3) For purposes of an award of visitation rights under this section, a court may order visitation based on the best interests of the child.
- (4) For purposes of this section, voluntarily permitting a child to remain continuously in the care of others for a significant period of time so that the others stand in loco parentis to the child is conduct that is contrary to the parent-child relationship.
- (5) It is not necessary for the court to find a natural parent unfit before awarding a parental interest to a third party under this section.
- (6) If the parent receives military service orders that involve moving a substantial distance from the parent's residence or otherwise have a material effect on the parent's ability to parent the child for the period the parent is called to military service, as defined in 10-1-1003, the court may grant visitation rights to a family member of the parent with a close and substantial relationship to the minor child during the parent's absence if granting visitation rights is in the best interests of the child as determined by 40-4-212."

Section 5. Section 40-4-234, MCA, is amended to read:

"40-4-234. Final parenting plan criteria. (1) In every dissolution proceeding, proceeding for declaration of invalidity of marriage, parenting plan proceeding, or legal separation proceeding that involves a child, each parent or both parents jointly shall submit to the court, in good faith, a proposed final plan for parenting the child, which may include the allocation of parenting functions. A final parenting plan must be incorporated into any final decree or amended decree, including cases of dissolution by default. As used in this section, parenting functions means those aspects of the parent-child relationship in

which the parent makes decisions and performs functions necessary for the care and growth of the child, which may include:

- (a) maintaining a loving, stable, consistent, and nurturing relationship with the child:
- (b) attending to the daily needs of the child, such as feeding, physical care, development, and grooming, supervision, spiritual growth and development, health care, day care, and engaging in other activities that are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;
- (c) attending to adequate education for the child, including remedial or other education essential to the best interest of the child;
- (d) ensuring the interactions and interrelationship of the child with the child's parents and siblings and with any other person who significantly affects the child's best interest; and
- (e) exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances.
- (2) Based on the best interest of the child, a final parenting plan may include, at a minimum, provisions for:
- (a) designation of a parent as custodian of the child, solely for the purposes of all other state and federal statutes that require a designation or determination of custody, but the designation may not affect either parent's rights and responsibilities under the parenting plan;
- (b) designation of the legal residence of both parents and the child, except as provided in 40-4-217;
- (c) a residential schedule specifying the periods of time during which the child will reside with each parent, including provisions for holidays, birthdays of family members, vacations, and other special occasions;
 - (d) finances to provide for the child's needs;
- (e) any other factors affecting the physical and emotional health and well-being of the child;
- (f) periodic review of the parenting plan when requested by either parent or the child or when circumstances arise that are foreseen by the parents as triggering a need for review, such as attainment by the child of a certain age or if a change in the child's residence is necessitated;
- (g) sanctions that will apply if a parent fails to follow the terms of the parenting plan, including contempt of court;
 - (h) allocation of parental decisionmaking authority regarding the child's:
 - (i) education;
 - (ii) spiritual development; and
 - (iii) health care and physical growth;
- (i) the method by which future disputes concerning the child will be resolved between the parents, other than court action; and
- (j) the unique circumstances of the child or the family situation that the parents agree will facilitate a meaningful, ongoing relationship between the child and parents.

- (3) In approving a final parenting plan for a child of a parent in military service, the court may not disapprove the plan only because of the parent's military service.
- (3)(4) The court may in its discretion order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding adoption of the parenting plan. The dispute resolution process may include counseling or mediation by a specified person or agency or court action.
- (4)(5) Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent, and either parent may make emergency decisions affecting the child's safety or health. When mutual decisionmaking is designated in the parenting plan but cannot be achieved regarding a particular issue, the parents shall make a good faith effort to resolve the issue through any dispute resolution process provided for in the final parenting plan.
- (5)(6) If a parent fails to comply with a provision of the parenting plan, the other parent's obligations under the parenting plan are not affected.
- (6)(7) At the request of either parent or appropriate party, the court shall order that the parenting plan be sealed except for access by the parents, guardian, or other person having custody of the child."

Approved April 24, 2009

CHAPTER NO. 357

[SB 198]

AN ACT CLASSIFYING CERTAIN BIOMASS GENERATION FACILITIES UP TO 25 MEGAWATTS IN NAMEPLATE CAPACITY AS CLASS FOURTEEN PROPERTY; INCLUDING CLASS FOURTEEN BIOMASS GENERATION FACILITIES WITH WIND GENERATION FACILITIES RELATING TO CERTAIN TRANSMISSION LINES AS FACILITIES UNDER THE MAJOR FACILITY SITING ACT; AMENDING SECTIONS 15-6-137, 15-6-141, 15-6-156, 15-6-157, AND 75-20-104, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-137, MCA, is amended to read:

- "15-6-137. Class seven property description taxable percentage. (1) Except as provided in subsection (2), class seven property includes:
- (a) all property owned by cooperative rural electrical associations that serve less than 95% of the electricity consumers within the incorporated limits of a city or town, except rural electric cooperative properties described in 15-6-141(1)(a);
- (b) electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.
- (2) Class seven property does not include wind generation facilities and biomass generation facilities classified under 15-6-157.
 - (3) Class seven property is taxed at 8% of its market value."

Section 2. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class nine property — description — taxable percentage. (1) Class nine property includes:

- (a) centrally assessed allocations of an electric power company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives. However, rural electric cooperatives' property, except wind generation facilities and biomass generation facilities classified under 15-6-157, used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property or serving an incorporated municipality with a population that is greater than 3,500 persons formerly served by a public utility that after January 1, 1998, received service from the facilities of an electric cooperative is included. For purposes of this subsection (1)(a), "property used for the sole purpose" does not include a headquarters, office, shop, or other similar facility.
- (b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and
 - (c) centrally assessed companies' allocations except:
 - (i) electrical generation facilities classified under 15-6-156;
 - (ii) all property classified under 15-6-157;
 - (iii) all property classified under 15-6-158 and 15-6-159;
- (iv) property owned by cooperative rural electric and cooperative rural telephone associations and classified under 15-6-135;
- (v) property owned by organizations providing telephone communications to rural areas and classified under 15-6-135:
 - (vi) railroad transportation property included in 15-6-145;
 - (vii) airline transportation property included in 15-6-145; and
 - (viii) telecommunications property included in 15-6-156.
 - (2) Class nine property is taxed at 12% of market value."

Section 3. Section 15-6-156, MCA, is amended to read:

- "15-6-156. Class thirteen property description taxable percentage. (1) Except as provided in subsections (2)(a) through (2)(g), class thirteen property includes:
- (a) electrical generation facilities, except wind generation facilities and biomass generation facilities classified under 15-6-157, of a centrally assessed electric power company;
- (b) electrical generation facilities, except wind generation facilities and biomass generation facilities classified under 15-6-157, owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a 42 U.S.C. 16451;

- (c) noncentrally assessed electrical generation facilities, except wind generation facilities and biomass generation facilities classified under 15-6-157, owned or operated by any electrical energy producer; and
- (d) allocations of centrally assessed telecommunications services companies.
 - (2) Class thirteen property does not include:
- (a) property owned by cooperative rural electric cooperative associations classified under 15-6-135;
- (b) property owned by cooperative rural electric cooperative associations classified under 15-6-137 or 15-6-157;
 - (c) allocations of electric power company property under 15-6-141;
 - (d) electrical generation facilities included in another class of property;
- (e) property owned by cooperative rural telephone associations and classified under 15-6-135;
- (f) property owned by organizations providing telecommunications services and classified under 15-6-135; and
 - (g) generation facilities that are exempt under 15-6-225.
- (3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power. The term includes but is not limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.
- (b) The term does not include electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes.
- (c) The term also does not include a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and classified under 15-6-134 and 15-6-138.
 - (4) Class thirteen property is taxed at 6% of its market value."

Section 4. Section 15-6-157, MCA, is amended to read:

- "15-6-157. Class fourteen property description taxable percentage. (1) Class fourteen property includes:
 - (a) wind generation facilities of a centrally assessed electric power company;
- (b) wind generation facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a 42 U.S.C. 16451;
- (c) noncentrally assessed wind generation facilities owned or operated by any electrical energy producer;
- (d) wind generation facilities owned or operated by cooperative rural electric associations described under 15-6-137;
- (e) biomass generation facilities up to 25 megawatts in nameplate capacity of a centrally assessed electric power company;

- (f) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;
- (g) noncentrally assessed biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by any electrical energy producer;
- (h) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by cooperative rural electric associations described under 15-6-137;
- (e)(i) all property of a biodiesel production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;
- (f)(j) all property of a biogas production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;
 - (g)(k) all property of a biomass gasification facility, as defined in 15-24-3102;
- (h)(l) all property of a coal gasification facility, as defined in 15-24-3102, except for property in subsection (1)(k) (1)(o) of this section, that sequesters carbon dioxide:
- (i)(m) all property of an ethanol production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;
 - (i)(n) all property of a geothermal facility, as defined in 15-24-3102;
- (k)(o) all property of an integrated gasification combined cycle facility, as defined in 15-24-3102, that sequesters carbon dioxide, as required by 15-24-3111(4)(c);
- (+)(p) all property or a portion of the property of a renewable energy manufacturing facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;
 - (m)(q) all property of a natural gas combined cycle facility;
- (n)(r) equipment that is used to capture and to prepare for transport carbon dioxide that will be sequestered or injected for the purpose of enhancing the recovery of oil and gas, other than that equipment at coal combustion plants of the types that are generally in commercial use as of December 31, 2007, that commence construction after December 31, 2007;
- $(\Theta)(s)$ high-voltage direct-current transmission lines and associated equipment and structures, including converter stations and interconnections, other than property classified under 15-6-159, that:
- (i) originate in Montana with a converter station located in Montana east of the continental divide and that are constructed after July 1, 2007;
 - (ii) are certified under the Montana Major Facility Siting Act; and
- (iii) provide access to energy markets for Montana electrical generation facilities listed in this section that commenced construction after June 1, 2007;
- (p)(t) all property of electric transmission lines, including substations, that originate at facilities specified in this subsection (1), with at least 90% of electricity carried by the line originating at facilities specified in this subsection (1) and terminating at an existing transmission line or substation that has commenced construction after June 1, 2007;
- $(\Theta)(u)$ the qualified portion of an alternating current transmission line and its associated equipment and structures, including interconnections, that has commenced construction after June 1, 2007.

- (2) (a) The qualified portion of an alternating current transmission line in subsection $\frac{1}{q}$ (1)(u) is that percentage, as determined by the department of environmental quality, of rated transmission capacity of the line contracted for on a firm basis by buyers or sellers of electricity generated by facilities specified in subsection (1) that are located in Montana.
- (b) The department of revenue shall classify the total value of an alternating current transmission line in accordance with the determination made by the department of environmental quality pursuant to subsection (2)(a).
- (c) The owner of property described under this subsection (2) shall disclose the location of the generation facilities specified in subsection (1) and information sufficient to demonstrate that there is a firm contract for transmission capacity available throughout the year. For purposes of the initial qualification, the owner is not required to disclose financial terms and conditions of contracts beyond that needed for classification.
 - (3) Class fourteen property does not include facilities:
- (a) at which the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), was not paid during the construction phase; or
 - (b) that are exempt under 15-6-225.
 - (4) For the purposes of this section, the following definitions apply:
- (a) "wind "Wind generation facilities" means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind.
- (b) "Biomass generation facilities" means any combination of boilers, generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from the burning of organic material other than coal, petroleum, natural gas, or any products derived from coal, petroleum, or natural gas, with the use of natural gas or other fuels allowed for ignition and to stabilize boiler operations.
- (5) (a) The department of environmental quality shall determine whether to certify that a transmission line meets the criteria of subsection (1)(e) (1)(s), (1)(p) (1)(t), or (1)(q) (1)(u), as applicable, based on an application provided for in 15-24-3112. The department of environmental quality shall review the certification 10 years after the line is operational, and if the property no longer meets the requirements of subsection (1)(e) (1)(s), (1)(p) (1)(t), or (1)(q) (1)(u), the certification must be revoked.
- (b) If the department of revenue finds that a certification previously granted was based on an application that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time that the certification was in effect.
 - (6) Class fourteen property is taxed at 3% of its market value."

Section 5. Section 75-20-104, MCA, is amended to read:

- "75-20-104. **Definitions.** In this chapter, unless the context requires otherwise, the following definitions apply:
- (1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

- (2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.
- (3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility.
- (b) The term does not include a transmission substation, a switchyard, voltage support, or other control equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.
- (4) "Board" means the board of environmental review provided for in 2-15-3502.
- (5) "Certificate" means the certificate of compliance issued by the department under this chapter that is required for the construction or operation of a facility.
 - (6) "Commence to construct" means:
- (a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions:
- (b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;
- (c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;
- (d) the relocation or upgrading of an existing facility defined by subsection (8)(a) or (8)(b), including upgrading to a design capacity covered by subsection (8)(a), except that the term does not include normal maintenance or repair of an existing facility.
- (7) "Department" means the department of environmental quality provided for in 2-15-3501.
 - (8) "Facility" means:
- (a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:
- (i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;
- (ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;
- (iii) does not include an electric transmission line that is less than 150 miles in length and extends from an electrical generation facility, as defined in 15-24-3001(4), or a wind generation facility or biomass generation facility, as defined in 15-6-157, to the point at which the transmission line connects to a regional transmission grid at an existing transmission substation or other

facility for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

- (iv) does not include an upgrade to an existing transmission line to increase that line's capacity within an existing easement or right-of-way; and
- (v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;
- (b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:
- (A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or
- (B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;
- (ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;
- (c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu's per hour or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant; or
- (d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.
- (9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.
- (10) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.
- (11) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions including but not limited to:
 - (a) installing larger conductors;
 - (b) replacing insulators;
 - (c) replacing pole or tower structures; or
 - (d) changing structure spacing, design, or guying.
- (12) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 6. Applicability. [This act] applies to tax years beginning after December 31, 2009.

Approved April 24, 2009